# A "not-for-profit" public health model for the legal sale of recreational cannabis in New Zealand

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## KEY POINTS

- "Not-for-profit" societies have operated gambling machines ("pokies") in New Zealand for over 20 years
- In 2014, pokie trusts paid out $260 million to community groups including sports, community, arts and education organisations, and emergency services
- Similarly "not-for-profit" cannabis societies would wholesale cannabis to licensed retail outlets
- Cannabis societies would be required to pay 20% of the revenue from all cannabis sales to drug treatment, 20% to community groups, and 20% to the government in levies
- Independent grant committees would allocate grants to drug treatment and community groups from cannabis sales
- There would be a requirement that drug treatment and community grants be distributed in the regions where cannabis sales are made
- A further 10% would be paid to fund research into the health risks of cannabis
- Local government authorities would have the power to determine the number of cannabis retail outlets in their areas
- Higher potency cannabis products would be taxed at a higher rate (based on THC levels)
- Minimum levels of CBD (the anti-psychotic compound in cannabis) would be required in all cannabis products
- More harmful cannabis smoking products would be taxed at a higher rate than edibles and vaping products
- Advertising of cannabis would be restricted to the retail outlet only
- No cannabis sales would be allowed from the internet

## Introduction

A number of jurisdictions around the world have recently established legal markets for recreational cannabis, including eight US states, and Uruguay and Canada (Caulkins et al., 2016; Caulkins and Kilmer, 2016). Similarly, a regulated legal market for new psychoactive substances (so called "legal highs") was established in New Zealand in 2013, and an interim market operated for nine months (Rychert et al., 2017; Wilkins, 2014b, 2014c; Rychert & Wilkins, 2015). In response to the new appetite for regulated approaches to cannabis, drug policy researchers have identified up to 12 different regulatory options for legal cannabis, including a number of social club, "not-for-profit" and government monopoly regimes (Caulkins et al., 2015; Decorte, 2015; Wilkins, 2016). However, these regime approaches have yet to be developed in any detail, or adapted to specific country jurisdictions.

1 Jon Caulkins (2016b) has referred to cannabis as a "moral temptation" like prostitution, gambling or pornography, but it could just as easily be described as a "time sink" like video games and Reality TV.

A commonly expressed concern is the need to avoid cannabis being sold under a purely commercial market, such as currently exists for alcohol and tobacco (Pacula et al., 2014; Caulkins et al., 2016; Wilkins, 2016). An established public health literature has shown that that profit-driven companies in these markets tend to target heavy and younger users with their product marketing, spend heavily on marketing, relentlessly oppose restrictive regulation, downplay the health risks of their products, and actively lobby for industry friendly regulatory environments (Babor et al., 2010a; Babor & Robaina, 2013; Adams, 2013; Caulkins, 2016a). The same business strategies used by alcohol and tobacco companies have already been observed in fledgling new legal markets for cannabis and "legal highs" (Rychert & Wilkins, 2016b; Hall, 2016; Subritzky et al., 2016a, Subritzky et al., 2016b).

New Zealand's approach to Class 4 gambling (i.e. "pokie" gaming machines in bars) is an example of a public health approach to a commercially based "vice"[1] leisure activity that could be adapted and enhanced to regulate the legal sale of recreational cannabis. The Class 4 gambling regulatory regime was established by the Gambling Act 2003. Over the past 10 years this regime has succeeded in addressing the harms from problem gambling, controlled the growth of the gaming machine sector, empowered local government authorities to cap the number of gambling venues, and, importantly, includes a requirement that 40% of the gross proceeds from gaming machines be distributed to community groups through contestable community grants.

## The impact of the Gambling Act 2003

Since the introduction of the Gambling Act in 2003, real inflation adjusted expenditure on Class 4 gambling has declined from $NZ1,328 million in 2004 to $NZ818 million in 2015 (Figure 1).

**Figure 1:** Dollar value ($NZ) expenditure on gambling in New Zealand (inflation adjusted), 1980-2015

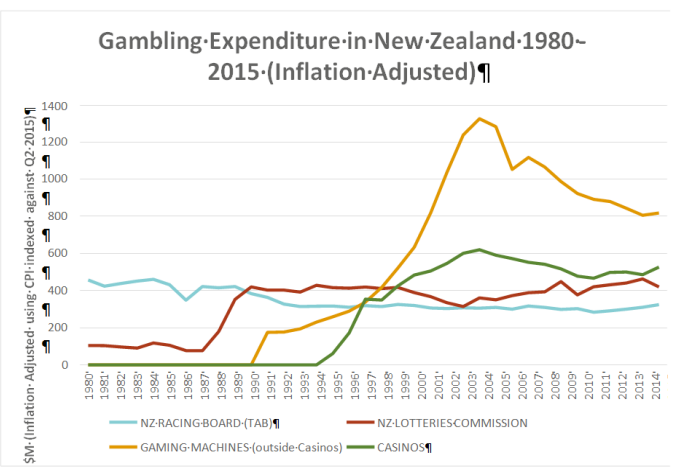



Figure 1: Gambling Expenditure 1980 to 2015 (inflation adjusted[3])

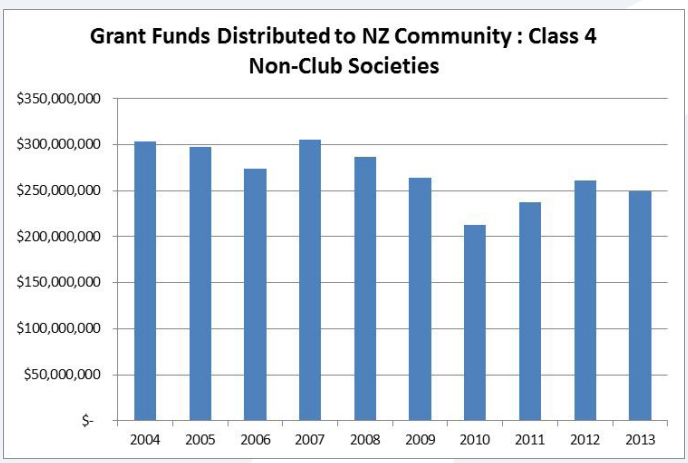
Source: Department of Internal Affairs, 2016

The number of non-club gambling venues has declined, from 1,801 in 2005 to 961 in 2016 (Department of Internal Affairs, 2016).

## How the Class 4 gambling regime works

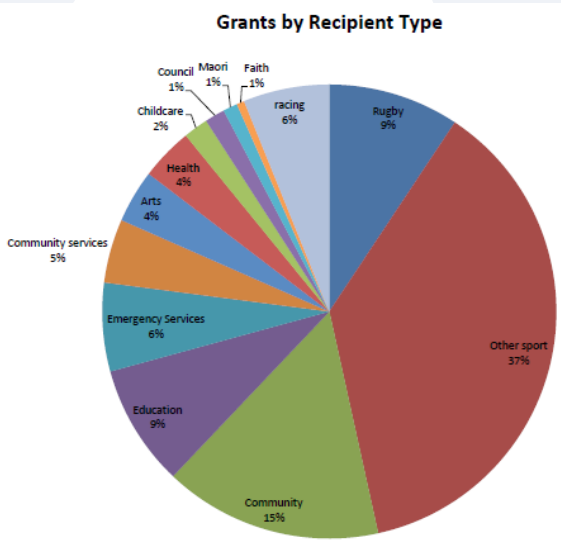
Not-for-profit societies[2] own gaming machines that are hosted by separately owned pubs and bars, and are required to distribute "a minimum" of 40% of the "gross proceeds"[3] from machines for authorised community purposes by way of a contestable grant process (Department of Internal Affairs, 2016). Authorised purposes include "charitable purposes" or "non-commercial purposes that benefit the community" (Department of Internal Affairs, 2016). In 2014, gaming societies returned $NZ 261.9 million to the community, and this level of funding support has been sustained over the past 10 years (Department of Internal Affairs, 2016) (Figure 2).

**Figure 2:** Total dollar value ($NZ) of grants distributed to the community from Class 4 gambling in New Zealand, 2004-2013




Source: Department of Internal Affairs, 2015

**Figure 3:** Community recipients of Class 4 gambling grants 2004-2012




Source: Department of Internal Affairs, 2015

Grant recipients have included sports teams, community services, health services, education programmes, the arts, and emergency services (Figure 3).

## Cannabis non-club societies

The key components of a similar public health approach to the legal sale of recreational cannabis would be:

- Ensure cannabis legislation has clear public health purposes
  - This would include the following purposes: "Prevent and minimise the harm from cannabis use, including cannabis dependency"; "Promote responsible cannabis use, including information on health risks, harm minimisation and drug treatment"; and "Ensure money from the sale of cannabis benefits the community including drug treatment, drug prevention and drug education".

- Employ not-for-profit philanthropic societies to wholesale cannabis to licensed retail outlets

- Set a minimum proportion of gross cannabis sales revenue to be distributed to public drug treatment services (20% of gross cannabis sales proceeds), and for authorised community purposes, such as drug education and prevention, sports, community services and the arts (20% of gross cannabis sales income)
  - Drug treatment would have its own category separate from drug education and prevention, as the latter encompasses a wide range of programmes which have often been found not to be particularly effective (Babor, et al., 2010b). It is important to avoid community grants being spent on low quality industry-friendly drug education and prevention programmes at the expense of drug treatment services. In terms of drug prevention, there is some evidence to suggest that family and pro-social class room behaviour interventions, and brief interventions in a clinical setting, can reduce alcohol and drug use, hence the opportunity to fund a broad range of community interventions from this part of the fund.

- Impose a government levy to cover the wider health and social costs of cannabis use (20% of gross cannabis sales income)
  - The government cannabis levy would fund the additional public services required to address the wider health and

2 Under New Zealand law an incorporated society is incorporated under the Incorporated Societies Act 1908, or incorporated as a board under the Charitable Trust Act 1957, or as a company incorporated under the Companies Act 1993 that does not have the power to make a profit and is incorporated solely for authorised purposes (Department of Internal Affairs, 2016).

3 "Gross Proceeds" are the turnover from gambling plus interest or other investment return on that turnover, plus proceeds from the sale of fittings, chattels, and gambling equipment purchased from that turnover or investment return, less prizes (Department of Internal Affairs, 2016).

social impacts of cannabis use, including police, health and social welfare services.

- Fund research on the health risks of cannabis and policy evaluations of the new cannabis regulatory regime (5% of gross cannabis sales income)
  - Much remains unknown about the specific health risks of cannabis. Ongoing evaluation of the new regulatory regime is also required to inform future refinements of the regime.

- Fully fund a cannabis regulator to ensure effective enforcement and auditing of cannabis societies (5% of gross cannabis sales income)
  - It is important that the cannabis regulatory agency has sufficient resources to investigate inappropriate and fraudulent behaviour by cannabis societies and grant allocation bodies. Under-resourcing of the regulator was a weakness identified with the Psychoactive Substances Act (PSA). Key informants reported the PSA regulator had limited capacity to investigate problematic products, retail outlets and manufacturers, and to develop further regulations (Rychert, et al., 2017).

- Empower local government authorities to make decisions about how many cannabis retail outlets to allow, and where outlets are to be located in their territories
  - Local government authorities will be required to develop a local cannabis policy which specifies where cannabis retail outlets can be located in their area relative to sensitive sites such as schools, play grounds and sports grounds, and include regulation concerning opening hours and other acceptable retail behaviour. The local cannabis policy should include a cap on the maximum number of cannabis retail outlets permitted in a territory, with power to adjust this level up or down in response to information concerning the social impact of cannabis use in an area.

- Ensure local communities benefit directly from the sale of cannabis in their area by requiring treatment and community grants, as outlined above, to be allocated in the regions where cannabis sales are made
  - Community grants made by cannabis societies for drug treatment must be spent in the region where the cannabis sales are made to ensure the availability of local drug treatment services. Drug users have frequently reported "lack of transport" as a barrier to accessing drug treatment in New Zealand (Wilkins et al., 2015). In addition, 80% of community grants from cannabis sales must be spent in the region where the sales are made. The 20% permitted to be spent outside of the region reflects the need for funding of national sports and community bodies (Department of Internal Affairs, 2013)

## Other key regulatory elements

- Set a minimum price for cannabis
  - Public health research has long identified price as the most effective policy lever to reduce alcohol and tobacco consumption, with price found to be particularly effective among heavy and younger users - the groups that bear the greatest harms (Babor et al., 2010a). Modelling of the price of cannabis under large scale agricultural production suggests the price could fall considerably (Caulkins et al., 2016). Setting a minimum price for cannabis is therefore important to prevent the price falling to a trivial level.

- Taxation based on THC level
  - A tax based on level of THC in a cannabis product is required to raise the price of more potent products. High levels of THC have been associated with increased risk of mental health problems and cannabis dependency (Englund et al., 2017).

- A minimum level of CBD in cannabis products
  - Emerging research has highlighted the importance of CBD levels in cannabis as this compound can reduce the risk of psychosis and dependency (Englund et al., 2017).

- Higher taxation of traditional smoking products
  - Lower health risk means of administration, such as edibles and vaping, should be taxed at a lower rate than traditional but higher risk smoking products.

- Restrict advertising to the physical premise of the retail sale outlet

- No internet sales

## Discussion

This research briefing has outlined the key pillars of a public health approach to the legal sale of recreational cannabis based on the established approach taken to regulating "pokie" gaming machines under the *Gambling Act 2003*. Some aspects and outcomes from the "pokie" machine regime remain unsatisfactory. We have attempted to address these limitations by requiring: that cannabis grant allocation committees be independent of cannabis societies; that treatment and community grants be spent in the regions where cannabis sales are made; greater transparency concerning any potential conflicts of interest between societies and grant recipients; and that local authorities have the power to reduce the number of cannabis retail outlets in response to evidence of community harm. More detail could of course be provided about how the regime will work in practice; some of this finer detail is set out in a longer paper describing the model (Wilkins, 2017). However, it is not our intention to provide a detailed blueprint for a Cannabis Act. Inevitably, these details will be debated and negotiated

by politicians, informed by public submissions from interested parties, and subject to analysis in government agency regulatory impact statements. At this preliminary stage our main aim is to set out the key pillars of a public health approach to a legal cannabis market and illustrate how such an approach has operated effectively in New Zealand for over 10 ten years.

Some may question how the proposed highly prescriptive legal cannabis regime will be able to compete with and reduce the existing cannabis black market. Firstly, our regime requires a continued enforcement focus on suppressing the cannabis black market in order to keep the black market price for cannabis high. Under these conditions the minimum price set for legal cannabis need only approximate the higher black market price to be effective. Secondly, as a general rule most people prefer to follow the law, even if only to avoid the (remote) risk of legal penalties, and consequently it is reasonable to believe the majority of consumers will be naturally inclined to want to purchase legal cannabis, particularly if the legal market offers safer and more innovative products. Legal cannabis products will be cultivated subject to industry standards for fertilisers and pesticides and other containments, and be labelled with THC and CBD levels. The general propensity of consumers to prefer legal retail markets over the black market is illustrated by the fact that although the legal markets for tobacco and alcohol are heavily regulated and taxed the vast majority of consumers continue to purchase these products from the legal rather than the black market, or conversely brew their own alcohol or grow their own tobacco. The convenience, safety and innovation of the legal commercial sector should be viewed as the means to attract users away from the black market rather than lower legal prices, which would then act to encourage higher consumption and related harm. A successful legal regime will reduce the scale of the black market and, consequently, make the existing level of police effort more effective. Furthermore, it is reasonable to expect that the legal cannabis sector and public in general will be more likely to engage with reporting black market activity once a legal supply network is available.

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