



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Commerce Committee

on the

New Zealand International Convention Centre Bill

P O Box 6645

Wellington

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1. Introduction

- 1.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 340,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. This Bill overrides existing gambling laws and makes major changes to the regulatory regime applying at the SKYCITY Casino at Auckland to provide for:
- An extension of the licence term to 2048;
 - An increase in the area of casino venue;
 - Additional gaming machines and tables;
 - An increase in maximum denomination for bank note acceptors from \$20 to \$100 in restricted areas;
 - Authority to operate cashless card based technology and TITO Technology (ticket in ticket out).
- 1.4. The CTU opposes the sections in the Bill that override the purpose of Gambling Act 2003, to control the growth of gambling and prevent and minimise the harm caused by gambling. We believe that the benefits of the Government's deal with SKYCITY have been oversold and the very significant costs and harms underestimated. The process undertaken to date is constitutionally questionable and represents very poor procurement practice. The Bill should not be enacted.

2. Constitutional and procurement issues

2.1. Consultation on this Bill takes place in the shadow of the terms of the contract between the Crown and SKYCITY Entertainment Group Ltd which are set out in the contract entitled New Zealand International Convention Centre Project and Licensing Agreement ('the NZICC Agreement') and dated 5 July 2013. As MBIE's 20 July 2013 briefing note to Ministers notes the "Act must be in a form satisfactory to SKYCITY."¹

2.2. If the legislation is not satisfactory to SKYCITY (specifically if the regulatory concessions set out in clause 4.1j of the NZICC Agreement are not enacted) then the Government is liable for 50 percent of the costs incurred to date (defined broadly as 'Design Costs' under clause 1 and Schedule 18 of the NZICC Agreement up to a maximum of \$10 million in accordance with clause 9.19e-l of the NZICC Agreement.

2.3. As the legal opinion commissioned by the Green Party from Franks & Oglivie notes, running ahead of the legislative process in this manner "exhibits an approach to procurement that skirts important constitutional safeguards."²

2.4. Franks & Oglivie go on to note that:

20. All gambling is prohibited unless authorised under the Gambling Act 2003... Prospective conduct by SkyCity under the concessions proposed by the Heads of Agreement is currently illegal. That includes the extension of Sky City's Auckland Casino licence to 2048 to the extent that it expands the scope of the existing licence, the increases in its casino gambling operations and the operation of a machine capable of accepting banknotes with a denomination greater than \$20. The availability of compensation is also inconsistent with sections 13 and 91, which expressly preclude payment of compensation for loss or damage arising from the enactment of the Act and its operation.

21. The likely criminality of what is proposed, absent a law change, is significant. It is common for governments to agree on proposed law changes... But there is a special

¹ <http://www.med.govt.nz/sectors-industries/regions-cities/new-zealand-international-convention-centre-information-release/briefing-papers/NZICC%20Briefings%2028%20June%202013%20-%203%20July%202013.pdf>

² Franks & Oglivie (16 May 2013) SKYCITY agreement- parliamentary sovereignty- contracting with the State- compensation for regulatory changes available at https://www.greens.org.nz/sites/default/files/skycity_opinion.pdf at [11]

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sensitivity in our constitutional history to dispensations and law changes for the benefit of particular persons, and more so when they pay for that exclusive privilege.

22. The Heads of Agreement effectively cuts across the Gambling Act. In return for the investment in the conventions centre it sells dispensations to SkyCity which are not universally available to others, from statutory prohibitions. The ability to “purchase” a dispensation from regulation sits uncomfortably with the rule of law. To the extent that the HOA purports to create binding obligations, it may be an illegal contract under the foundation statute of our constitution. Article 2 of the Bill of Rights 1688 remains in effect. Any illegality could be validated if and when the dispensations were legislated by Parliament, but in the meantime the degree of commitment from the Cabinet appears to be high-handed and unnecessarily so.
- 2.5. We note also the conclusions of the ‘Inquiry into the Government’s decision to negotiate with SKYCITY Entertainment Group Ltd for an international convention centre’ undertaken by the Office of the Auditor General including their conclusion that the expressions of interest process had been managed inappropriately to SKYCITY’s advantage.
- 2.6. This deal and others like it (such as the negotiations leading to the Employment Relations (Film Production Work) Amendment Bill 2010)³ harm the rule of law in New Zealand and ultimately our democracy.
- 2.7. It is unsurprising that in the Transparency International 2013 Global Corruption Barometer survey a majority of New Zealanders (65 percent) say that corruption has increased in the last two years and 79 percent of New Zealanders believe the country is being run by ‘a few big entities acting in their own best interests.’⁴

3. Social harm

- 3.1. There is undisputed evidence and agreement that the extension of gambling provisions as proposed in this Bill will cause social harm. The precautionary principle asserts that the burden of proof for potentially harmful actions by industry or government rests on the assurance of safety and that when there are threats of serious damage, scientific uncertainty must be resolved in

³ See <http://union.org.nz/policy/nzctu-submission-universal-periodic-review-january-2014> for details and further examples

⁴ http://transparency.org/gcb2013/country//?country=new_zealand

favour of prevention. The provisions in this Bill will create harm and therefore should be opposed on the basis of the precautionary principle.

- 3.2. There is strong evidence of the social harm caused by gambling and of the progression from gambling to problem gambling. Problem gambling is responsible for serious and significant social and community harm. The social harm of gambling includes costs to health and social welfare services and decreased labour productivity.
- 3.3. The Ministry of Health reported last year that nearly a quarter of people gambling on gaming machines are likely to be problem gamblers.⁵
- 3.4. A report to the Ministry of Health last year undertaken by the Centre for Social and Health Outcomes Research and Evaluation (SHORE) & Te Ropu Whariki⁶ revealed that 2.4 percent of the population (74,000 of New Zealanders) had worse mental well-being as a result of gambling in 2006 and 2007. The main source of these numbers is from those who used Electronic Gambling Machines (EGMs). EGMs are associated with higher levels of problem gambling with approximately 80 per cent of problem gamblers having issues with EGMs.
- 3.5. Problem gambling imposes adverse health, emotional and financial impacts not only on the gambler and the gambler's family, but also on the local community and wider society. The impact of problem gambling is far-reaching and the hidden impacts are enormous and impossible to fully calculate. The consequences for those at the severe end of the problem gambling continuum and their families are devastating.
- 3.6. Associate Professor Peter Adams, Centre for Addiction Research, University of Auckland, notes in the NZ Herald that:⁷

⁵ Ministry of Health (2012) *Problem Gambling in New Zealand: Preliminary Results from the New Zealand Health Survey*. Wellington: Ministry of Health

⁶ SHORE & Whariki (2008) *Assessment of the Social Impacts of Gambling in New Zealand: Report to the Ministry of Health*. Centre for Social and Health Outcomes research and Evaluation (SHORE) & Te Ropu Whariki. Auckland: Massey University

⁷ Peter Adams (5 March 2013) 'Remember who really pays in SkyCity deal' New Zealand Herald retrieved from http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10869158

A key aspect to the commercialisation of high-volume addictive products is the ability to generate add-on profits way beyond those of ordinary, non-addictive products, such as petrol and pizza. Addicted consumers, by the very nature of addictive behaviour, will consume to excess. Although they are considerably fewer than non-addicted consumers, they invest more heavily and, accordingly, contribute far more to profits. For example, Australian studies indicate that although the prevalence of problem gamblers is 1 or 2 per cent of most adult populations, problem gamblers contribute 40 to 50 per cent of what is spent on pokies.

- 3.7. Social harm from gambling falls disproportionately on low income and marginalised groups in society. The SHORE study⁸ found a stronger negative impact from gambling activities on people in vulnerable and low income groups. People who participated more in gambling activities were more likely to be males aged between 18-35 years, single, either sick or unemployed, have secondary qualification as their highest educational qualification and the majority of them were Māori or Pacific. For the Māori and Pacific samples in the study there were significant associations between gambling participation and poorer quality of life in a number of life domains.
- 3.8. The SHORE study found that people with higher levels of participation in gambling activities reported worse physical health, worse mental health, lower self-esteem, lower satisfaction with life and higher likelihood of unemployment.
- 3.9. The Regulatory Impact Statement on this Bill states that the increase in gaming machines will lead to more than 200 more problem gamblers and an estimated 10,000 more people experiencing negative effects from other people's problem gambling. The advice of government officials in the RIS identifies and recognises this risk:⁹

The key concern in relation to the gambling regulatory changes that are to be given effect through the New Zealand International Convention Centre Bill 2013 (the Bill), is the potential impact this may have in increasing the incidence of problem gambling and its associated harm for New Zealand society

- 3.10. The RIS identifies the clear link between the availability of gaming machines and opportunities to gamble and the incidence of problem gambling but goes

⁸ Ibid

⁹ <http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-mbie-nzic-jul13.pdf>

on to say “that there is no reliable way to quantify or cost the potential harmful effects of the regulatory changes being proposed in the NZICC Project and Licensing Agreement (the Agreement) in relation to the NZICC”.¹⁰

- 3.11. Being unable to quantify the risk or the potential harmful effects of the changes to regulation as proposed in this Bill are reason enough why they should be opposed.
- 3.12. Enacting this legislation will create social harm and increase social risk. The CTU opposes all sections of this Bill that allow extension of gambling facilities and override the Gambling Act 2003.

4. Economic costs and benefits

- 4.1. Schedule 7 of the NZICC Agreement sets out the estimated values of the various elements of the deal (perhaps tellingly, from SKYCITY’s perspective):

NPV Summary (\$ millions)	Agreed present values (\$ millions)
NZICC – capital costs	(307)
NZICC – ground lease	(35)
NZICC – operations and on-spend	13
Subtotal – NZICC	(329)
Additional STGM’s	105
Additional ATG’s	93
Additional Tables	87
TITO uplift	86
Subtotal – Regulatory concessions	370
Casino capital costs	(64)
Value attributed to licence extension	90
SKYCITY estimated risk premium	67

- 4.2. The profit to SKYCITY of \$67 million is based on values estimated by KordiaMentha in their “Report in connection with the New Zealand International Convention Centre.”¹¹ However, as KordiaMentha notes in the introduction to their report:

¹⁰ Ibid.

¹¹ Available at: <http://www.med.govt.nz/sectors-industries/regions-cities/pdf-docs-library/nz-international-convention-centre/NZICC-report.pdf>

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The financial analysis of both the NZICC and the regulatory concessions are based on an Excel Model dated 18 April 2013 (the 'Model'), prepared by SkyCity. The assumptions underpinning the modelling of the NZICC include information and opinions provided by external parties, as well as SkyCity. The assumptions underpinning the modelling of the concessions are based on detailed information and assumptions provided by SkyCity. ... We have evaluated the key assumptions underpinning the analysis to assess whether they lie within a reasonable range, from the perspective of both parties, for the purposes of forming our opinion. We are not casino industry experts and have not been instructed to verify the accuracy or completeness of information provided to us nor have we carried out any form of due diligence or audit of the information. ... We have relied upon information set out in Excel Models (including the Model) prepared by SkyCity, the Ministry and their respective advisers. We have not verified the models nor confirmed their mechanical accuracy.

- 4.3. KordiaMentha go on to note (at section 3.4) that "We have assessed that the operational assumptions for the regulatory concessions adopted by the parties broadly lie within a wide range of reasonableness, although in some cases they are at the end of the range which is favourable to SkyCity."
- 4.4. The value of the deal to SKYCITY is likely to be at least \$67 million and perhaps substantially more. The social costs of the deal are unquantified but likely to be massive.
- 4.5. The Regulatory Impact Statement sets out the expected benefits of the International Convention Centre at [7]-[10]. These benefits are taken from an (apparently unreleased and therefore difficult to assess) NZIER Report from May 2011 and include:
 - A \$49 million increase in national Gross Domestic Product per annum;
 - An additional 33,000 conference attendees per annum; and
 - Around 500 FTE employed by the convention centre.
- 4.6. This last figure appears dubious (and according to the regulatory impact statement was provided by SKYCITY). As the Green Party note, the Sydney Convention Centre (with an equivalent 3500 delegate capacity) employs only 200 FTE.
- 4.7. The CTU supports job creation but not at any cost. We believe the costs to communities are too high and the benefits are overstated. Locking the deal in for 35 years though compensation payable to SKYCITY will leave future generations to pay for this mistake.

5. Conclusion

- 5.1. We find ourselves in the unusual position of agreeing strongly with Treasury officials. We concur with their comments in January 2012:¹²

Treasury is not convinced by the cost benefit analysis for the NZICC. For example, New Zealand already attracts a disproportionate share of the international conference market. In addition, international arrivals for conferences have plateaued since 2005, despite increases in the number of international travellers arriving in the country. Taken together with international evidence on the low net public benefit of conference centres, these considerations lead Treasury to doubt that an expanded conference centre in Auckland will attract significantly more international conference attendees.

Treasury is also concerned about the social costs to increasing gambling in Auckland, balanced against which are the potential benefits of the NZICC, paid for through the concessions. As soon as the cost of building the NZICC are recouped by SkyCity, public costs will go only to private gain. Given the poor information on the value of the concessions, Treasury has strong concerns that private benefits to SkyCity will exceed public benefits to New Zealanders.

However, if Ministers wish to proceed with a contractual arrangement with SkyCity, Treasury considers that the difficulty of accurately assessing both the costs of building and the revenue generated by the concessions will inevitably expose the Government to significant risks. These relate to both the information asymmetry between SkyCity and the Crown and costs to the Crown in respect of both negotiating the contract initially and then managing it over an extended period such as 25 years.

- 5.2. While the NZICC Agreement means that the Government is already liable for costs up to \$10 million the much greater liability lies ahead if this Bill is passed. We should not throw good money after bad. The Bill should not be passed.

¹² Ministry of Economic Development (18 January 2012) 'Negotiating Position for New Zealand International Convention Centre' at [25]-[27]