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Editors' Choice

A "not-for-profit" regulatory model for legal recreational cannabis: Insights from the regulation of gaming machine gambling in New Zealand

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ABSTRACT

A dozen or more regulatory frameworks have been proposed for legal cannabis but many of the "not-for-profit" options have yet to be developed in any detail, reducing the likelihood they will be seriously considered by policy makers. New Zealand's innovative "not-for-profit" regulatory regime for gaming machine gambling (i.e. "slot machines") has reversed the previous increase in gambling expenditure, empowered local councils to cap the number of gambling venues, and is unique in requiring the societies operating gaming machines to distribution 40% of the gross expenditure from machines (i.e. $NZ 262 million in 2015) to community purposes (e.g. sports). However, the regime has been criticised for not addressing the concentration of gaming outlets in poorer communities, and not requiring grants to be allocated in the disadvantaged communities where outlets are located. There have also been cases of gaming societies providing community grants in exchange for direct or indirect benefits. In this paper we adapt this regulatory approach to a legal cannabis market. Under the proposed regime, licensed "not-for-profit" cannabis societies will be required to distribute 20% of cannabis sales to drug treatment and 20% to community purposes, including drug prevention. Grants must be allocated in the regions where cannabis sales are made and grant committees must be independent from cannabis societies. A 20% levy will be used to cover the wider health costs of cannabis use. A further 10% levy will be used to fund the regulator and evaluate the new regime. Local councils will have the power to decide how many, and where, cannabis retail outlets are located. Other important elements include a minimum price for cannabis, effective taxation of cannabis products, regulating CBD in cannabis products, higher taxation of traditional smoking products, advertising restricted to place-of-sale, no internet sales, and restrictions on industry involvement in regulation making and research.

1 Introduction

The aim of this paper is to adapt and enhance an innovative "not-for-profit" regulatory approach to gaming machine gambling to a legal recreational cannabis market. A number of jurisdictions around the world have recently legalised the use and supply of cannabis, including eight U.S. states, Uruguay and Canada (Caulkins & Kilmer, 2016; Caulkins, Kilmer, & Kleiman, 2016). Many of the U. S. states which have legalised cannabis have adopted profit driven markets which resemble those for alcohol (Hall & Kozlowski, 2017; Hall & Lynskey, 2016). This is despite a considerable public health literature documenting how alcohol and tobacco companies maximise profits by targeting young and heavy users, spend heavily on advertising and promotion to normalise use, downplay the health risks of their products, and actively lobby regulators and politicians for industry friendly regulatory environments (Adams, 2013; Babor & Robaina, 2013; Babor et al., 2010a; Caulkins et al., 2016; Caulkins, 2016; Hall, 2016; Lenton, 2014; Pacula, Kilmer, Wagenaar, Chaloupka, & Caulkins, 2014; Room, 2014; Wilkins, 2016). Highly profitable alcohol companies simply have more money to spend on lobbying politicians and regulators, resisting restrictive regulation, and influencing the public than public health groups.

There appears to be little reason to believe a profit driven commercial market for cannabis would be any different (Lenton, 2014; Room, 2014). For example, cannabis businesses in Colorado have formed the National Cannabis Industry Association (NCIA) (consisting of nearly 1000 cannabis businesses) to promote their

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interests, and cannabis industry representatives are on the working group considering appropriate regulation of the cannabis sector for the state (Subritzky, Pettigrew, & Lenton, 2016b). In another parallel, the cannabis industry's media has referred to daily cannabis users as the "backbone of the industry" (Subritzky, Lenton, & Pettigrew, 2016a). The advertising regulations for the cannabis market in Colorado have been modelled on the voluntary code of conduct developed by the alcohol industry, and the Colorado cannabis industry has attempted to weaken pesticide regulations for cannabis cultivation (Lenton, 2014; Subritzky, et al., 2016a). Similarly, in New Zealand, the "legal high" industry formed the Social Tonics Association of New Zealand (STANZ) to promote their interests in the media and among the public, and mounted judicial challenges against decisions to withdraw products with adverse effects, and against attempts by local councils to restrict the location of retail outlets (Rychert & Wilkins, 2016, 2017; Wilkins et al., 2013; Wilkins, 2014).

For their part, drug policy researchers have pointed out that there are actually many more regulatory options for legal cannabis markets than alcohol style regulation, including "social clubs", "grow-your-own", "not-for-profit" and government monopoly (Caulkins & Kilmer, 2016; Caulkins et al., 2015; Decorte et al., 2017; Decorte, 2015; Kilmer, 2014; Room, 2014; Room, Fischer, Hall, Lenton, & Reuter, 2010). Yet these options are often not developed in any detail or adapted to a specific jurisdiction, reducing the likelihood they will be taken seriously by policy makers tasked with developing new regulatory regimes for cannabis.

Drug policy researchers have long suggested that drawing on the history of the regulation of other commercial "vices", such as gambling and prostitution, could facilitate innovative thinking concerning policy approaches to drug markets (Courtwright, 2001; MacCoun & Reuter, 2001; Euchner, Heichel, Nebel, & Raschzok, 2013). In 2003, New Zealand introduced an innovative "not-for-profit" regulatory regime for gaming machine gambling (i.e. "slot machines"). The establishment of this new regime reversed the previous increase in expenditure on gaming machine gambling, empowered local councils to cap the number of gambling venues and gaming machines, and provided substantial funding to community groups (Department of Internal Affairs, 2016a). The gaming machine regime has also been responsible for a number of unsatisfactory outcomes (New Zealand Parliament, 2010). Yet the aims and core components of this "not-for-profit" approach are worth considering when designing a regulatory framework for legal cannabis, and there are proposals available to address the weaknesses in the gaming machine regime which can be applied to a new cannabis regime.

2 The regulatory regime for gaming machine gambling in New Zealand

The New Zealand *Gambling Act 2003* was designed as a targeted response to the rapid growth in expenditure on "gaming machine" gambling through the 1990s (officially known as Class 4 gambling) (Department of Internal Affairs, 2016a) (Fig. 1). Gaming machine gambling has been identified as a particularly high risk form of gambling (Department of Internal Affairs, 2016a). In 2011/12, more than 50% of the people accessing problem gambling services identified non-casino gaming machines as their primary gambling mode (Department of Internal Affairs, 2015). The overarching intention of the new regulatory approach was that gaming machine gambling would be provided by "philanthropic" organisations that were largely focused on benefiting the community rather than making profit (Department of Internal Affairs, 2014).

This overall aim is reflected in the purposes of the *Gambling Act* legislation which include to "control the growth of gambling"; "prevent and minimise harm from gambling, including problem gambling"; and "facilitate community involvement in decisions about the provision of gambling" (Department of Internal Affairs, 2016a). A unique purpose of the *Gambling Act* is to "ensure that money from gambling benefits the community" (Department of Internal Affairs, 2016a).

Under the regulatory framework, gaming machines can only be provided by either "clubs" who operate machines from their own clubrooms and apply net proceeds to specified club purposes, or "not-for-profit" incorporated societies[1] who provide gaming machines to separately owned pubs and bars, and who must distribute their "net proceeds"[2] for authorised community purposes (Department of Internal Affairs, 2014). In 2016, 38 non-club incorporated societies owned 80% of the gaming machines operating in New Zealand (i.e. 13,015 machines) (Department of Internal Affairs, 2016a).

Non-club gaming machine societies are required to distribute "*a minimum*" of 40% of their "gross proceeds"[3] to authorised community purposes by way of a contestable grant process (Department of Internal Affairs, 2016a). Authorised purposes include "charitable purposes" or "non-commercial purposes that benefit the community" (Department of Internal Affairs, 2016a). Societies must specify what authorised purposes it intends to raise money for when applying for a license. In 2015, gaming machine societies distributed $NZ 262 million in grant funding to community groups (Department of Internal Affairs, 2016a). Similar levels of community funding had been paid out to community groups over the previous ten years (Fig. 2).

Grant recipients include sports groups, community services, health services, education, the arts, and emergency services (Fig. 3).

If a society is unable to meet the minimum community contribution their license can be suspended, cancelled or not renewed (Department of Internal Affairs, 2015, 2016b). In 2013, societies distributed an average 42.1% of their gross gaming machine proceeds to the community; ranging from 37.2% to 62.9% across the societies (Department of Internal Affairs, 2015).

Gaming machine societies are also required to pay 23% of their proceeds to the government as levies and licensing fees, 3% to fund the regulatory agency which administers the regime, and 1.5% to support specific responses to problem gambling. A society can pay a maximum of 16% to venues for the "actual, reasonable and necessary" operating costs of hosting machines (Department of Internal Affairs, 2015). The remaining percentage of machine gross proceeds, typically around 20%, is retained to cover the societies' own operating costs (Fig. 4).

Gaming machine societies must have a "net proceeds committee" to review community grant applications and decide who receives funding (Department of Internal Affairs, 2015). The regulator can audit the allocation of grants to ensure they are being used for the stated purpose (Department of Internal Affairs, 2015, 2016a).

[1] Under New Zealand law a corporate society is incorporated under the *Incorporated Societies Act 1908*, or incorporated as a board under the *Charitable Trust Act 1957*, or is 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, 2014, p.2).

[2] "Net proceeds is the dollar amount available to be distributed to authorised purposes after costs, levies and taxes have been deducted from a society's gambling turnover and any interest or earnings from investment or sale of assets (Department of Internal Affairs, 2014, p.2).

[3] "Gross Proceeds" are the turnover of 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, 2014, p.2).