

GAMBLING COMMISSION



REPORT OF THE GAMBLING COMMISSION FOR THE YEAR ENDED 30 JUNE 2006

Presented to the House of Representatives pursuant to section 229 of the Gambling Act 2003

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The Minister of Internal Affairs

I have the honour to forward the report of the Gambling Commission (the "Commission") for the year ended 30 June 2006.

Peter Chin

Chief Gambling Commissioner

INTRODUCTION

By Chief Gambling Commissioner

I am pleased to present to you my annual report for the period 1 July 2005 to 30 June 2006, the Commission's second full year of operation.

The Commission has a mixture of regulatory, judicial and advisory functions in relation to gambling and the gambling sector. The functions most regularly exercised by the Commission involve amending casino licence conditions and considering appeals from gaming machine operators against decisions made by the Department of Internal Affairs (the "Department").

This year, the Commission decided a significant number of applications from casino licence holders and appeals from gaming machine operators. It also received an application from the Secretary for Internal Affairs (the "Secretary") to suspend the casino operator's licence for Dunedin casino. A decision was made by the Commission on preliminary legal matters relating to this application in April 2006, with the substantive hearing of the application scheduled to commence at the end of July 2006.

Following a major consultation exercise, the Commission has also, at its own initiative, specified new licence conditions for SKYCITY casino Auckland, the new conditions better reflecting the Gambling Act 2003 (the "Act"), and its changed emphasis. The Commission will in due course review and amend the licence conditions for the remaining five casinos, with the aim of achieving greater consistency in the licensing framework applying to all casinos.

The Commission's aim is to contribute, over time, to the effective and fair regulation of gambling activities. The Commission's work over the last year, and its commitment to producing high quality decisions, puts the Commission on track to achieve this.

Peter Chin

Chief Gambling Commissioner

REPORT ON ACTIVITIES

The Commission

The Commission was established in March 2004 by section 220 of the Act. The Act provides that the Commission shall comprise of up to five Commissioners.

The Chief Gambling Commissioner is Peter Chin. He has more than 40 years legal experience. He is the Mayor of Dunedin. The other four Commissioners are:

- Mark Ford, a businessman and a former member of the Casino Control Authority ("CCA");
- Mary Lythe, who comes from a public health background and holds a number of government and voluntary sector board appointments. Commissioner Lythe was also formerly a member of the CCA;
- Paul Stanley, an operations manager, also with a public health background; and
- Graeme Reeves, a Wellington barrister and solicitor.

Duties and Functions

The duties and functions of the Commission are set out in Appendix 1 to this report.

In relation to casinos, the Commission is responsible for licensing, with the Department responsible for operating and equipment standards, game rules and compliance. Casinos can appeal the Commission's decisions on licensing matters to the High Court.

New Zealand has six casinos (new ones are prohibited under the Act), varying considerably in size, as shown below:

| CASINO | No. of tables | No. of gaming machines |
|---------------------|---------------|------------------------|
| Auckland | 110 | 1,647 |
| Christchurch | 35 | 506 |
| Hamilton | 23 | 339 |
| Dunedin | 12 | 180 |
| SKYCITY, Queenstown | 12 | 86 |
| Wharf, Queenstown | 6 | 74 |

The Department has the primary licensing and enforcement functions in relation to non-casino gambling, with operators of gaming machines and large-scale lotteries having rights of appeal to the Commission.

As at 31 March 2006, there were 513 licensed class 4 gambling operators, 1,721 gaming machine venues, and 21,026 gaming machines in New Zealand.

Applications by Casino Licence Holders

In the year ending 30 June 2006, the Commission made 20 decisions on applications by casino licence holders to amend licence conditions and obtain approvals under licence conditions. Applications received related variously to approval of floor layout plans and alternative game mixes, the deployment of automatic shufflers, cashiering arrangements, and construction changes.

Under section 139 of the Act, the Commission can, on its own initiative, specify, vary and revoke licence conditions. In 2005, the Commission initiated a review of licence conditions for SKYCITY casino Auckland, with the aim of updating and amending conditions to ensure they better reflect the new Act. In initiating this exercise, it signaled its intention to review the licence conditions for the other five casinos in due course. The Commission consulted informally with a range of stakeholders in developing proposed amendments, including casino operators, the Department, the Ministry of Health (the "Ministry") and problem gambling service providers.

Following on from this informal consultation process, in March 2006 the Commission formally revoked the conditions of the venue and operator's licences held by SKYCITY casino Auckland, and specified new conditions under section 139 of the Act. SKYCITY Auckland Limited ("SCAL") and SKYCITY Management Limited ("SCML"), the licence holders for the casino, have appealed limited aspects of the decision, pending the outcome of declaration proceedings involving SKYCITY and the Commission, described below.

The Commission has now initiated a review of licence conditions for SKYCITY's Hamilton and Queenstown casinos, with a view also to updating these and achieving consistency across casino licence conditions.

Appeals to the Commission

The Act requires that appeals to the Commission be heard in Divisions, comprising not more than three Commissioners. Appeals are heard on a *de novo* basis, meaning that the Commission considers the matter afresh.

In the year ending June 2006, Divisions of the Commission determined three appeals from gaming machine operators. It has also decided a costs application brought by an appellant, and an interlocutory application by another to exclude evidence.

Commission decisions GC14/06 and GC15/06 relate to appeals by Perry Foundation and Scottwood Trust against decisions by the Secretary to cancel class 4 venue licences held by appellants for ten pin bowling venues. The Commission allowed both appeals, determining that both venues were suitable under section 67(1) of the Act to be class 4 venues and, in particular, that the focus of the primary activity (ten pin bowling) was the onsite entertainment, recreation and leisure of persons 18 years and over. Accordingly, the venues were not unsuitable under Regulation 4 of the Gambling (Harm Prevention and Minimisation) Regulations 2004. The Division hearing the appeals reinstated both licences.

In decision GC16/06, the Appellant, Lion Foundation, appealed, unsuccessfully, against decisions by the Secretary to impose conditions on 11 venue licences requiring the closure of external doors into the gaming room at each venue. The conditions were imposed by the Secretary in order to minimise the possibility of persons under the age of 18 using the external entrances to gain access to gaming machines and to minimise harm. The Division hearing the appeal considered each venue individually, and determined that the condition imposed by the Secretary was appropriate for each venue, as it would assist in minimising the risk of access, and was reasonable in the circumstances.

A list of all the decisions made by the Commission and Divisions of the Commission in the year under review is attached as Appendix 2.

SKYCITY Declaration Proceedings

In deciding the applications put before it by casino licence holders, the Commission is required to ensure the proposal in question will not give rise to an increase in opportunities for casino gambling, which is prohibited under sections 11 and 12 of the Act.

The Commission's approach to sections 11 and 12 over the last two years has been to consider the potential for increase and all relevant factors, on a case-by-case basis, and to make a judgment, in the round, as to whether an increase arises. Using this approach, the Commission has found on only one occasion (in decision GC20/05) that a proposal would increase opportunities by increasing player space numbers, in the absence of any offsetting decrease in opportunity. The application was declined accordingly.

The Commission has not accepted arguments presented by SKYCITY that Parliament intended sections 11 and 12 to be interpreted restrictively, with the Commission's consideration being limited to increases in the number of gaming tables, machines, or places at gaming tables. It considers that other factors may also be relevant in determining whether there is an increase in opportunities for casino gambling, for example, the introduction of electronic versions of table games or aids which increase the speed and the associated level of wagering opportunities available to patrons, thus potentially requiring an offset.

SCAL sought a declaration from the High Court as to the appropriate legal interpretation and scope of sections 11 and 12. At the request of the Court, the Commission participated in these proceedings, which were heard at the end of April 2006. A reserved decision is awaited. The meaning of "increase in the opportunities for casino gambling", a prohibited state of affairs, is a crucial issue in the licensing of casinos. The Commission looks forward with interest to the release of the Court's decision.

Application to Suspend Operator's Licence held by Dunedin Casinos Management Limited

In November 2006, the Secretary applied to the Commission under section 144 of the Act to suspend the casino operator's licence held by Dunedin Casinos Management Limited ("DCML"). The Secretary alleges that DCML breached its licence and the Act in its handling of the case of an alleged problem gambler.

The Commission held a public hearing in April 2006 to hear submissions by the parties on a range of preliminary legal issues raised by DCML. The Commission decided that the matter should proceed to a substantive hearing, which it has set down for late July/early August 2006.

The Commission appointed Commissioner Graeme Reeves as Acting Chairperson for the hearing of the preliminary issues. The Chief Gambling Commissioner has stepped aside from the hearing and determination of the application as the application is a matter of local interest and profile in Dunedin, where the Chief Gambling Commissioner also serves as Mayor.

Appeal of Commission Decision

SCAL successfully appealed a decision of the Commission, GC02/05, relating to floor layouts at the SKYCITY Auckland casino. The appeal was limited to the Commission's decision that Touchbet Roulette and Rapid Roulette (which are electronic versions of roulette) are "gaming machines" as defined in the Act.

The Secretary and the Commission were respondents in the appeal, with the former taking the active role in view of his interest in the outcome. The Commission abided the decision of the High Court. The High Court upheld the Commission's interpretation of the phrase "gaming machine", but allowed the appeal on the grounds that Rapid Roulette came within the scope of a technical exception. Evidence to this effect was advanced at the appeal stage only and had not been before the Commission when it made its decision.

Problem Gambling Strategy

The Ministry is responsible under the Act for the development and implementation of an integrated problem gambling strategy, which came into effect in July 2004. The Commission advises Ministers and facilitates consultation on the amount of the problem gambling levy, and its allocation across industry.

The Commission reported to Ministers on the levy in July 2004, and is expected to report on the Ministry's proposed funding plan for 2007-2010 in the last quarter of 2006. The Commission will convene a meeting of key stakeholders prior to preparing its report, as the Act requires.

Procedures

In exercising its functions, the Commission has wide powers to determine its own procedures, to engage experts and to receive evidence. The policies and procedures developed by the Commission, and the decisions which it makes, are all published on its website.

Appeal proceedings are run along judicial lines. Procedures involve filing of submissions and affidavit evidence by the appellant, submissions and evidence in response by the respondent Secretary, and submissions and evidence in reply from the appellant.

The Commission consults on applications to amend licence conditions with the casino licence holder, the Secretary and affected persons.

The Commission can, and does, obtain independent legal advice in relation to matters under consideration – both casino applications and appeals.

Administration

Under the Act, the Commission has no power to acquire, hold or alienate property, or to employ people. Instead, the Act requires the Department to service the Commission, by arranging the administrative services necessary for the Commission to perform its functions.

The Act also requires the Commission to make decisions independently of the Minister and the Secretary, and to have stand-alone offices. These are located in Auckland.

The Commission is funded from the Department's vote, but, as noted above, is functionally independent. The Commission's annual budget for 2005/2006 was \$899,000.

Commission Meetings

The Commission meets at least monthly, except January, as its workload dictates. The full Commission met 12 times during the year under review, on 15 July, 12 August, 9 September, 7 October, 11 November, 25 November, 16 December 2005, 10 February, 10 March, 2 May, 7 and 12 April, 8 and 9 June 2006. In the absence of the Chief Gambling Commissioner it also met on 24 November 2005 and 7 April 2006 to hear preliminary legal matters relating to the application by the Secretary to suspend the casino operator's licence held by DCML.

Divisions of the Commission met on 10 February, 10 March, 7 April, and 8 and 9 June 2006 to determine appeals before the Commission.

Future Directions

The primary focus of the Commission in 2006/2007 will be the following activities:

- the ongoing effective discharge of its licensing and appeal functions;
- completing the review of the casino licence conditions for SKYCITY Hamilton and Queenstown casinos and initiating a review of licence conditions for one or two other casinos;
- determination of the application by the Secretary to suspend the casino operator's licence held by DCML; and
- keeping the Minister informed of developments relating to the Commission's functions.

COMMISSION MEMBERS

Peter Wing Ho Chin

Chief Gambling Commissioner
Mayor of Dunedin
Barrister and Solicitor
Appointed 1 March 2004
Term expiring 1 March 2007

Kenneth Mark Ford

Chief Executive
Auckland
Appointed 1 March 2004
Term expiring 1 March 2007

Mary Manson Lythe

Training Manager
Auckland
Appointed 1 March 2004
Term expiring 1 March 2007

Paul Joseph Stanley

Operations Manager
Tauranga
Appointed 1 March 2004
Term expiring 1 March 2007

Graeme Leonard Reeves

Barrister and Solicitor
Wellington
Appointed June 2004
Term expiring June 2007

CONTACT DETAILS FOR COMMISSION

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90 Symonds Street
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Shortland Street
Auckland
Tel: 09-300 1113
Facsimile: 09-300 1118

Heather Harris

Executive Director

www.gamblingcom.govt.nz

APPENDIX 1

Duties and Functions of the Commission under the Gambling Act 2003

The Commission is an independent decision-making body with the powers of a Commission of Inquiry. Its functions are wide-ranging, and include the following:

- considering and determining applications for casino operators' licences and the renewal of casino venue licences (the first of the existing six venue licences expires in 2019)
- approving agreements and changes to agreements between casino operators and casino venue licence holders
- specifying, varying and revoking casino licence conditions

- considering and determining appeals against regulatory and licensing decisions made by the Department in respect of class 3 and class 4 gambling. Class 3 gambling involves prizes of more than \$5,000, but does not take place at a casino or involve gaming machines. Class 4 gambling relates to non-casino gaming machine operations
- considering and dealing with complaints about the way the Department has handled complaints in relation to class 4 gambling
- advising Ministers and facilitating consultation on the setting of the problem gambling levy
- advising the Minister of Internal Affairs on matters relating to the performance of the Commission's functions and the administration of the Act, either at the Minister's request or on its own initiative.

APPENDIX 2

Decisions of the Commission: 2005/2006

| Decision | | Status |
|----------------------------------|--|----------|
| GC17/05: 4 July 2005 | Decision on a Reference by the Secretary to the Commission relating to an amendment of the casino game rules | Allowed |
| GC20/05: 15 July 2005 | Application by SKYCITY Auckland Limited ("SCAL") for approval of floor layout plans | Declined |
| GC21/05: 12 Aug 2005 | Application by SKYCITY Hamilton Limited ("SCHL") for approval of floor layout plans | Approved |
| GC22/05: 9 Sept 2005 | Application by SKYCITY Casino Management Limited ("SCML") for approval of an EFTPOS terminal | Approved |
| GC23/05: 9 Sept 2005 | Application by SCAL for approval of floor layout plans | Approved |
| GC24/05: 7 Oct 2005 | Interim Decision on Application by Dunedin Casino Limited ("DCL") to vary a condition of its venue licence and for approval of floor layout plans | Interim |
| GC25/05: 11 Nov 2005 | Application by Queenstown Casinos Limited ("QCL") for approval of floor layout plans | Approved |
| GC26/05: 11 Nov 2005 | Application by SCHL for approval of floor layout plans | Approved |
| GC27/05: 20 Dec 2005 | Application by SCHL for approval of floor layout plans | Approved |
| GC28/05: 20 Dec 2005 | Final Decision on Application by DCL for approval of floor layout plans | Approved |
| GC29/05: 20 Dec 2005 | Application by SCAL for approval of floor layout plans and to deploy automatic shufflers on Poker tables | Approved |
| GC01/06: 10 Feb 2006 | Application by Christchurch Casinos Limited ("CCL") for temporary change to game mix | Approved |
| GC02/06: 16 Mar 2006 | Application by SCHL for approval of floor layout plans | Approved |
| Interim Decision: 23 Dec 2005 | Interim Decision on a proposal by the Commission to revoke conditions of the Venue Licence held by SCAL and the Operator's Licence held by SCML, and to specify new conditions | Interim |
| Final Decision: 27 Mar 2006 | Final Decision on a proposal by the Commission to revoke conditions of the Venue Licence held by SCAL and the Operator's Licence held by SCML, and to specify new conditions | Approved |
| GC03/06: 27 Mar 2006 | Application for costs by First Sovereign Trust and Tauranga Hotels Limited | Declined |
| GC04/06: 12 Apr 2006 | Application by QCL for approval of floor layout plans | Approved |
| GC05/06: 12 Apr 2006 | Application by DCL for approval of construction changes to smoker's balcony | Approved |
| GC06/06: 18 Apr 2006 | Pre-hearing application by Lion Foundation to exclude affidavit evidence and parts of submissions made by the Secretary | Declined |
| GC07/06: 26 Apr 2006 | Application by the Secretary to suspend a casino licence – Decision on preliminary matters | |
| GC08/06: 11 May 2006 | Proposal by the Gambling Commission to revoke condition 22 and amend condition 23 of SCAL's venue licence | Approved |
| GC09/06: 22 June 2006 | Application by QCL for approval of floor layout plans | Approved |
| GC10/06: 21 June 2006 | Application by Otago Casinos Limited for an amendment of a licence condition and approval of an alternative game mix | Approved |
| GC11/06: 22 June 2006 | Application by SCAL to amend conditions 10, 12 and 13 of its casino venue licence, and by SCML to amend conditions 21 and 22 of its casino operator's licence | Approved |
| GC12/06: 23 June 2006 | Application by SCHL for approval of an alternative game mix | Approved |
| GC13/06: 23 June 2006 | Application by SCML for approval of alternative game mixes | Approved |
| GC14/06: 26 June 2006 | Appeal by Perry Foundation | Allowed |
| GC15/06: 26 June 2006 | Appeal by Scottwood Trust | Allowed |
| GC16/06: 30 June 2006 | Appeal by The Lion Foundation | Declined |