

# GAMBLING COMMISSION



## REPORT OF THE GAMBLING COMMISSION FOR THE YEAR ENDED 30 JUNE 2007

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

**G.64**



## CONTENTS

### 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 2007.

*Peter Chin*

Chief Gambling Commissioner

page 4	Introduction by Chief Gambling Commissioner
page 5	Report on activities
	Establishment of the Commission
	Casinos
	Review of casino licence conditions by Commission
	Suspension of Dunedin casino licence
	Appeals to the Commission
	Appeal by Whitehouse Tavern Trust
	Appeal by The Lion Foundation
	SKYCITY Declaration Proceedings
	Dunedin Casinos Limited – Application for declaratory judgment
	Report on Problem Gambling Levy
	Procedures
	Administration
	Commission Meetings
	Future Directions
page 11	Commission Members
page 11	Contact details for Commission
page 12	Appendix 1 Functions of Commission
page 13	Appendix 2 Decisions of Commission

## INTRODUCTION

By Chief Gambling Commissioner

I am pleased to present to you my annual report for the period 1 July 2006 to 30 June 2007, the Commission's third full year of operation.

It has been a busy year, with the Commission determining 27 applications to amend or grant approvals under casino licence conditions, and six appeals by gaming machine operators against decisions made by the Department of Internal Affairs (the "Department").

This year, the Commission also decided, on an application from the Secretary for Internal Affairs (the "Secretary"), to suspend the casino operator's licence for Dunedin casino for two consecutive days. The Commission reported to Ministers in December 2006 on the setting of the proposed Problem Gambling Levy for the period 1 July 2007 – 30 June 2010.

The Gambling Act 2003 (the "Act") has been in place now for over three years. The Commission's aim has been and remains to produce decisions which interpret and apply the key provisions of the Act in a sensible and balanced way. In this way, the Commission is contributing to the stable and fair regulation of gambling activities.

*Peter Chin*

Chief Gambling Commissioner

## REPORT ON ACTIVITIES

### Establishment of 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 (the “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, General Manager; and
- Graeme Reeves, a Wellington barrister and solicitor.

The Commissioners have recently been reappointed for further terms of office of between one and three years.

The Commission is serviced by an Auckland based Secretariat.

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

### Casinos

The Commission is responsible for casino licensing, with the Department being responsible for operating and equipment standards, game rules and compliance. Casinos can appeal the Commission’s decisions on licensing matters to the High Court.

In the year ending 30 June 2007, the Commission made 27 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, casino signage, digital video recording systems, the deployment of automatic shufflers, cashiering arrangements, and construction changes. A number related to SKYCITY Auckland casino, where a major refurbishment project is underway.

The Commission is currently reviewing the draft Host Responsibility Programme for SKYCITY Auckland casino, a first under new licence conditions initiated by the Commission, which require a much closer focus on harm minimisation. A range of stakeholders are involved in the review process, with the Programme intended to set a new benchmark.

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	34	500
Hamilton	23	339
Dunedin	12	180
SKYCITY, Queenstown	12	86
Wharf, Queenstown	6	74

### Review of casino licence conditions by Commission

In previous annual reports, the Commission signaled its intent to review the licence conditions for all six casinos, with the aim of realigning licence conditions to ensure consistency with the Act.

In 2006, the Commission completed a review of licence conditions for SKYCITY’s Auckland casino. SKYCITY Auckland Limited (“SCAL”) and SKYCITY Management Limited (“SCML”), the licence holders for the casino, appealed limited aspects of the decision, pending the outcome of declaration proceedings involving SKYCITY and the Commission, described below.

The Commission is close to completing its review of licence conditions for SKYCITY’s Hamilton and Queenstown casinos, and will initiate and complete reviews of licence conditions for Christchurch, Dunedin and Wharf casinos in 2007/2008. In carrying out these reviews, the Commission consults with a range of stakeholders, including casino operators, the Department, the Ministry of Health (the “Ministry”) and problem gambling service providers.

## Suspension of Dunedin casino licence

On 17 October 2006, the Commission suspended the licence of Dunedin Casinos Management Limited (“DCML”) for two consecutive days. The Secretary applied for a seven day suspension, after investigating DCML’s actions in relation to Christine Keenan. Ms Keenan gambled at Dunedin casino over a three and a half year period from April 2001 until August 2004, losing over \$500,000. In August 2004, she was arrested for dishonesty.

It was considered important in this case that the operator of Dunedin casino in 2001 was Aspinall (NZ) Limited (“Aspinall”), with the operator changing to DCML on 1 April 2004.

The Commission decided that Aspinall identified Ms Keenan as an actual or potential problem gambler in early 2003, possibly earlier. When it took over on 1 April 2004, DCML continued to identify her as an actual or potential problem gambler.

This being the case, the Commission found DCML to be in breach of section 309(1) of the Act and condition 12.4 of its licence by failing to offer Ms Keenan information or advice about problem gambling, including a description of the self-exclusion procedure available to her.

The Commission considered that these breaches were material failures to comply with important obligations, and that the exercise of its discretion to suspend DCML’s licence was desirable for this reason.

The Commission decided to suspend the licence for a period of two days, rather than the seven days requested by the Secretary, for the following reasons:

- The Commission was only able to take into account the breaches of DCML, arising after 1 April 2004. Most of the harm done to Ms Keenan occurred while Aspinall, the prior operator, was the licence holder. Aspinall’s failure to take the required action to assist Ms Keenan was outside the scope of the application and the Commission’s ability to rule under the Act.
- The operative provisions of the Act, and its emphasis on harm minimisation, came into effect on 1 July 2004. DCML was in breach of the Act for a relatively short period of seven weeks from 1 July 2004 until Ms Keenan’s arrest and exclusion from the casino on 20 August 2004.

## Appeals to the Commission

The Department exercises primary licensing and enforcement functions in relation to non-casino gambling (gaming machines and large-scale lotteries). As at 31 March 2007, there were 444 licensed class 4 gambling operators, 1,607 gaming machine venues, and 20,302 gaming machines in New Zealand. Operators have rights of appeal to the Commission against decisions made by the Department in circumstances including loss of licence, enforcement action, and in relation to the imposition of licence conditions by the Department.

In the year ending June 2007, Divisions of the Commission determined six appeals from gaming machine operators. (Many more were filed with the Commission but did not ultimately proceed to hearing.) Appeals are heard on a de novo basis, meaning that the Commission considers the matter afresh.

Summarised below are two of the more important appeal decisions made by the Commission in the last year, namely the Commission’s decision to suspend the licence for the Whitehouse Tavern, and its decision on an appeal brought by the Lion Foundation relating to the Kilbirnie Tavern in Wellington. Class 4 gambling relates to non-casino gaming machine operations.

Further decisions by the Commission included determination of appeals by:

- Southern Trust, relating to conditions imposed on a class 4 licence;
- Unison Trust, relating to conditions regulating access to a class 4 venue;
- Eureka Trust, relating to a condition limiting the services which could be undertaken by a contractor for a class 4 operator; and
- First Sovereign Trust, relating to the refusal by the Secretary to renew the licence for a class 4 venue.

The Commission also struck out an appeal by Infinity Foundation. The sole purpose of lodging the appeal was to obtain the benefit of an automatic stay on the Secretary’s decision to cancel Infinity’s class 4 licence for a venue in Hastings. The Commission concluded that this was not a legitimate use of the appeal process, and struck out the appeal as constituting an abuse of process.

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.

### Appeal by Whitehouse Tavern Trust

In decision GC38/06, the Commission decided to suspend the class 4 operator's licence held by the Whitehouse Tavern Trust for four days because certain payments made by the Trust using gaming machine money were in breach of the Act and licence conditions. The purpose of class 4 gambling is to raise money for authorised purposes.

Wrongful payments included funding of a political candidate for his 2004 Papakura Mayoral election campaign and a much larger grant to the Ardmore Tenants Association, to assist with legal fees to challenge in the Environment Court noise restrictions imposed by Council on the Ardmore Aerodrome. Both payments were outside what was lawful under the Act and authorised under licence conditions.

Illegal payments were also made by the Trust to the venue manager at the Whitehouse Tavern in wages and to attend a gaming expo in Australia, when that manager had no proprietary interest in the gaming machines. While gaming machine operators are entitled to actual, reasonable and necessary costs incurred in conducting gambling, the payments made by the Trust did not come within this compass.

### Appeal by The Lion Foundation

In decision GC03/07, the Commission allowed an appeal by the Lion Foundation against a decision by the Secretary to impose a condition on the venue licence for the Kilbirnie Tavern.

The appealed condition provided that class 4 gambling must not be conducted in areas where smoking is permitted, and would have required the venue operator to remove five gaming machines from the courtyard area at the Kilbirnie Tavern, where smoking is permitted.

The condition was imposed by the Secretary to minimise harm to problem gamblers. The Commission decided that harm minimisation conditions can only properly be imposed if they reduce the harm caused by problem gambling, as distinct from reducing gambling activity generally, which is a lawful and permitted activity under the Act.

The Secretary reasoned that, since a majority of problem gamblers are smokers, preventing smoking while gambling has the effect of encouraging a majority of problem gamblers to take regular breaks. Furthermore, when problem gamblers take breaks, they reflect on their gambling and are more likely to control their behaviour.

While expert witnesses for the Secretary were generally supportive of this latter theory, the Commission found a lack of research into the apparent relationship between breaks in play and harm reduction. It was not clearly established first, that further restricting smoking would compel problem gamblers to take breaks, and secondly whether and to what extent breaks would benefit problem gamblers.

The Commission concluded that, overall, the potential harm minimisation benefits, which would always be limited to smoking problem gamblers, were not sufficiently established to justify the restriction proposed, and the consequent detriment to others. Adopting the reasonableness test, the Commission decided to allow the appeal and reverse the Secretary's decision.

## SKYCITY Declaration Proceedings

In the Commission's first decision (GC01/04), it was required to consider whether a change to the gambling area at SKYCITY Auckland would constitute an increase in opportunities for casino gambling, prohibited under the Act. SKYCITY argued that the increase in opportunities should be limited to increases in the number of places at tables or machines, with the Commission taking a broader interpretation.

As the decision was not adverse to SKYCITY they did not appeal it, instead bringing declaration proceedings in the High Court relating to the interpretation of sections 11 and 12 of the Act. At the request of the Court, the Commission participated in those proceedings, which were heard at the end of April 2006. The High Court refused to grant the declaration sought by SKYCITY, confirming that the Commission's construction of sections 11 and 12 of the Act accords with the wording and purpose.

SKYCITY appealed the judgment of Justice Cooper in the High Court to the Court of Appeal. The matter was heard by the Court of Appeal on 27 June 2007. A decision is awaited.

The meaning of the words "increase in opportunities for casino gambling" is fundamental to the Commission's licensing jurisdiction for casinos. The Commission is expressly prohibited from amending licence conditions so as to permit increases in opportunities for casino gambling and must accordingly reach a conclusion whether the proposed change would have that effect before approving it. It is also fundamental to the statutory constraints on the growth of casino gambling: is it only increases in available player spaces which are prohibited or do the constraints extend to what players may do?

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.

The Commission is, however, practical in its approach. On only one occasion (in decision GC20/05) in the last three years has it declined an application on the basis that it would increase opportunities by increasing player space numbers, in the absence of any offsetting decrease in opportunity. The Commission looks forward with interest to the release of the Court of Appeal's decision.

## Dunedin Casinos Limited – Application for declaratory judgment

The Commission participated as a party (together with the Department) in an application by Dunedin Casinos Limited to the High Court, for a declaration as to the permitted hours of operation there.

When casinos were first established in New Zealand, two casinos (Dunedin and Hamilton) applied to the CCA for licences on the basis that they proposed to operate limited hours.

On 19 December 2006 the High Court issued a judgment allowing the Dunedin casino to operate 24 hours a day, seven days a week. This was on the basis that Regulation 15 of the Casino Control (Applications and Hours) Regulations 1991, which was in place when the casino was licensed, prevailed over licence conditions.

The effect of the High Court decision for Dunedin casino, and Hamilton casino by implication, is that maximum operating hours for both are not currently limited by licence conditions but controlled by section 172 of the Act. This is notwithstanding the fact that more limited operating hours may have been intended by the CCA and expected by the local communities at the time the licences were granted.

## Report on Problem Gambling Levy

On 1 December 2006, the Commission made recommendations to Ministers on the total amount of the proposed Problem Gambling Levy for a three-year period, 1 July 2007 – 30 June 2010, and the proposed levy rate for each sector. The Commission convened a consultation meeting on 17 November 2006 to assist it in making its report and obtained expert, independent, advice on the Ministry's funding plan.

In its report, the Commission identified a number of areas where it believed (based on consultation undertaken and expert advice received by it) that there may be scope for greater cost efficiency. Audit reports of problem gambling treatment providers, undertaken by the Ministry and made publicly available in 2007, also suggest the need for close scrutiny by the Ministry over the next three years of expenditure and delivery.

Cabinet adopted some, but not all, of the recommendations made by the Commission. In particular, it decided to retain the formula for levy payment adopted for 2004-2007, whereby in setting the levy for each class of gambling operator, a 90 percent weighting is placed on the number of people presenting to problem gambling providers and a 10 percent weighting on the amount of money lost gambling. The Commission recommended adjusting this to a 80:20 weighting, in the absence of a convincing rationale for a 90:10 weighting, and to spread costs not directly related to treatment more equitably across gambling sectors.

Regulations specifying the levy rate, the Gambling (Problem Gambling Levy) Regulations 2007, commenced on 1 July 2007.

## 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.

Apart from its decisions, the Commission (mainly through the Commission Secretariat) communicates on an ongoing basis with stakeholders, to ensure that the Commission's decisions are well understood, and to assist the Commission's understanding of the operation of the sector.

## 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 2006/2007 was \$1,013,000, which was slightly underspent.

## Commission Meetings

The Commission meets at least monthly, except January, as its workload dictates. The full Commission met 16 times during the year under review. This included dates for hearing the Secretary's application to suspend the Dunedin casino licence, and the hearing of submissions on the Problem Gambling Levy.

Divisions of the Commission met on five occasions to determine appeals before the Commission.

## Future Directions

The primary focus of the Commission in 2007/2008 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, Christchurch, Dunedin and Wharf casinos;
- completing the review of SKYCITY Auckland's Host Responsibility Programme and possibly Programmes from other casinos;
- continuing to meet with the sector to ensure that the role of the Commission and its decisions are well understood;
- 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 February 2010

Kenneth Mark Ford  
Chief Executive  
Auckland  
Appointed 1 March 2004  
Term expiring February 2008

Mary Manson Lythe  
Clinical Services Manager  
Auckland  
Appointed 1 March 2004  
Term expiring February 2010

Paul Joseph Stanley  
General Manager  
Tauranga  
Appointed 1 March 2004  
Term expiring February 2009

Graeme Leonard Reeves  
Barrister and Solicitor  
Wellington  
Appointed June 2004  
Term expiring June 2009

## CONTACT DETAILS FOR COMMISSION

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Executive Director

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## 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: 2006/2007

Continued...

Decision		Status
GC17/06 2 August 2006	Application by Christchurch Casinos Limited ("CCL") for approval of a digital video recording system	Approved
GC18/06 2 August 2006	Application by SKYCITY Hamilton Limited ("SCHL") for approval to introduce electronic card shufflers on Poker games and for an additional table mix	Approved
GC19/06 2 August 2006	Application by Dunedin Casinos Limited ("DCML") for approval of floor layout plan	Approved
GC20/06 2 August 2006	Application by SKYCITY Casino Management Limited ("SCML") to amend conditions 23, 24, 26, 27 and 28 of its casino operator's licence	Approved
GC21/06 2 August 2006	Application by SCHL to amend the casino management agreement between SCHL, SCML and SKYCITY Management Limited	Approved
GC22/06 8 August 2006	Appeal by the Southern Trust	Allowed
GC23/06 2 August 2006	Application by SCAL and SCML for approvals relating to the refurbishment of the Auckland casino	Approved
GC24/06 23 August 2006	Application by CCL for approval of refurbishment plans	Approved
GC25/06 20 September 2006	Application by CCL for alternative floor plan and game mix	Approved
GC26/06 19 September 2006	Application by SCHL for approval of floor layout plans	Approved
GC27/06 19 September 2006	Application by SCAL for approval to extend part of Level 2 of the Auckland casino	Approved
GC28/06 19 September 2006	Application by SCML for approval of temporary floor layout plan	Approved
GC29/06 17 October 2006	Application by the Secretary for Internal Affairs to suspend a casino licence	Granted
GC30/06 20 October 2006	Application by Queenstown Casinos Limited ("QCL") for an amendment of a licence condition and approval of casino signage	Approved
GC31/06 20 October 2006	Proposal by the Gambling Commission to vary licence conditions and on an application by Otago Casinos Limited ("OCL") for approval of its Responsible Gambling Programme	Approved
GC32/06 20 October 2006	Application by SCML for approvals relating to the refurbishment of the Auckland casino, and approval of a new game mix	Approved
GC33/06 20 October 2006	Application by SCAL to amend a licence condition and for approval of design changes, and by SCML to amend a licence condition	Approved
GC34/06 20 October 2006	Application by SCAL for approval to open overseas bank accounts	Approved

Decision		Status
GC35/06 1 December 2006	Application by SCAL for approval of design changes to the southern cashiering facility	Approved
GC36/06 1 December 2006	Application by SCAL to designate Gambling Area and for approval of design changes	Approved
GC37/06 11 December 2006	Appeal by Unison Trust	Declined
GC38/06 12 December 2006	Appeal by Whitehouse Tavern Trust	Declined
GC39/06 14 December 2006	Appeal by Eureka Trust	Allowed
GC40/06 21 December 2006	Application by SCHL to designate Gambling Area	Approved
GC41/06 20 December 2006	Application by SCAL and SCML for approvals relating to the refurbishment of the Auckland casino	Approved
GC42/06 21 December 2006	Application by CCL for alternative game mixes	Approved
GC43/06 21 December 2006	Appeal by First Sovereign Trust and Whiskey Jacks Limited	Declined
GC01/07 26 February 2007	Application by SCHL for approval of floor plans and game mixes	Approved
GC02/07 26 February 2007	Application by SCML for approval of a floor plan and game mix	Approved
GC03/07 30 March 2007	Appeal by The Lion Foundation	Allowed
GC04/07 1 May 2007	Application by SCHL for approval of design changes to the Hamilton casino	Approved
GC05/07 1 May 2007	Application by SCML for approval of a floor plan and a game mix	Approved
GC06/07 1 May 2007	Application by OCL to amend a casino licence condition and for approval to open additional bank accounts	Approved
GC07/07 8 May 2007	Pre-hearing application by the Secretary for Internal Affairs to strike out the appeal by Infinity Foundation Limited	Allowed
GC08/07 31 May 2007	Application by SCHL for approval of three additional floor plans	Approved
GC09/07 31 May 2007	Application by DCML to amend a licence condition	Approved

