

GAMBLING COMMISSION



REPORT OF THE GAMBLING COMMISSION FOR THE YEAR ENDED 30 JUNE 2008

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 2008.

Peter Chin

Chief Gambling Commissioner

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INTRODUCTION

By the Chief Gambling Commissioner

I am pleased to present to you my annual report for the period 1 July 2007 to 30 June 2008, the Commission's fourth full year of operation.

The Commission determined 21 applications to amend casino licence conditions or grant approvals under casino licence conditions, and three appeals by gaming machine operators against decisions made by the Department of Internal Affairs (the "Department").

This year the Commission reviewed and approved a Responsible Gambling Programme for the Auckland casino. The Commission also reviewed and amended licence conditions for the Hamilton, Dunedin and the two Queenstown casinos, to better reflect the emphasis of the Gambling Act 2003 (the "Act"), which has been in place now for over four years.

The Commission has been in existence for over four years and has a substantial body of decisions. The Commission aims to produce decisions which interpret and apply the key provisions of the Act in a sensible and balanced way and to maintain its reputation as an independent and respected judicial body.

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 up to five Commissioners.

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

- Mary Lythe, who comes from a public health background and holds a number of government and voluntary sector board appointments. Commissioner Lythe was formerly a member of the Casino Control Authority;
- Paul Stanley, Operations Manager; and
- Graeme Reeves, Barrister and Solicitor.

Mark Ford, a founding Commissioner, retired in February 2008.

Mary Richardson, a Policy and Research Consultant, was appointed a Commissioner with effect from July 2008.

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 2008, the Commission made 21 decisions on applications by casino licence holders to amend licence conditions, or obtain approvals under licence conditions. Applications received related variously to approval of revised floor layouts and game mixes, the introduction of new table games, the deployment of automatic shufflers, cashiering arrangements, and construction changes.

New Zealand has six casinos (new ones being prohibited under the Act), varying considerably in size, as shown in the table.

Casino	No. Of Tables	No. Of Gaming Machines
Auckland	110	1,647
Christchurch	34	500
Hamilton	23	339
Dunedin	12	180
Queenstown (SKYCITY)	12	86
Queenstown (Lasseters Wharf)	6	74

In previous annual reports, the Commission signalled its intention to review licence conditions for all six casinos, with the aim of realigning licence conditions to ensure consistency with the Act. In the year ending 30 June 2008, the Commission completed reviews of licence conditions for the Hamilton, Dunedin and the two Queenstown casinos. In carrying out these reviews, the Commission consulted with a range of stakeholders, including casino operators, the Department, the Ministry of Health and selected problem gambling service providers.

The Commission is close to completing its review of licence conditions for the Christchurch casino, with one issue outstanding, namely determining the maximum number of gaming tables and gaming machines that can be deployed at the casino. The Commission is presently consulting affected parties on this issue.

The Commission reviewed the Responsible Gambling Programme for the 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 were involved in the review process, with the Programme setting a new host responsibility benchmark in New Zealand, and probably internationally. The Commission will proceed to review the Responsible Gambling Programmes for the Hamilton, Dunedin, Christchurch and two Queenstown casinos.

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 2008, there were 421 licensed class 4 gambling operators, 1,569 gaming machine venues, and 20,018 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 30 June 2008, Divisions of the Commission determined three appeals from gaming machine operators. Other appeals were filed with the Commission but did not proceed to hearing. An appeal is heard on a *de novo* basis, meaning that the Commission considers the matter afresh.

In decision GC17/07, the appellants, the Southern Trust Incorporated and Te Wheke Holdings Limited appealed against a decision by the Secretary refusing to grant a class 4 venue licence for a venue in Rotorua as the application did not include a liquor licence. The Act does not specify that a liquor licence must be provided with applications for class 4 venue licences, rather it requires "evidence that the class 4 venue is not to be used mainly for operating gaming machines". In this case, the application was supported by an

affidavit which contained the necessary information to enable the application to be considered. The Commission allowed the appeal and directed the Secretary to issue a class 4 venue licence.

In decision GC29/07, the appellants, Sand Bar & Restaurant Limited and Robyn Legge-Hunt, appealed unsuccessfully against a decision by the Secretary to cancel the class 4 venue licence for the Sand Bar in Christchurch. The Secretary cancelled the licence as a result of repeated non-compliance, including late banking of gaming machine proceeds, banking insufficient gaming machine proceeds and issuing cheques which were dishonoured. The Secretary filed evidence establishing 77 incidents of non-compliance, which the appellants did not challenge. The Commission cancelled Sand Bar's class 4 venue licence.

Bay Foundation appealed against a decision by the Secretary refusing to renew its class 4 operator's licence. Bay Foundation did not file evidence or submissions and the Commission dismissed the appeal.

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.

Declaration Proceeding by SKYCITY

The Annual Report for the year ended 30 June 2007 noted that SKYCITY had appealed a High Court decision relating to the interpretation of sections 11 and 12 of the Act. The appeal centred on the meaning of the words “increase in opportunities for casino gambling”, prohibited under section 11 of the Act. SKYCITY argued that the phrase should be limited to increases in the number of places at tables or machines, with the Commission having previously adopted a broader interpretation, which had been upheld by the High Court.

The appeal was heard in the Court of Appeal on 27 June 2007, and the judgment was issued on 11 September 2007. The Court of Appeal dismissed SKYCITY’s appeal. The Court stated that it was unable to conclude that Parliament’s intention in outlawing any increase in opportunities for casino gambling could be read down to a freezing of the maximum number of persons permitted to gamble in a casino at any one time. The Court stated that it is for the Commission to assess opportunities for casino gambling on a case by case basis, with any errors in approach being capable of correction on appeal.

Declaration Proceeding by the Secretary

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 challenged 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 in order to minimise harm to problem gamblers and had the effect of prohibiting gambling in areas which were not caught by the smoke-free legislation prohibitions. The Commission held that harm minimisation conditions should only be imposed if they reduced the harm caused by problem gambling, as distinct from merely reducing gambling activity generally, which is a lawful and permitted activity under the Act. The Commission concluded that the potential harm minimisation effects, necessarily limited to persons who smoked, were not sufficiently clear to justify the restriction imposed. Although the intention was to encourage breaks in sustained play, the Commission considered that such an outcome, if desirable, should be imposed directly in conditions, rather than indirectly affecting all smokers who wished to gamble.

Following the Lion Foundation’s application to renew the class 4 venue licence for the Kilbirnie Tavern, the Secretary stated that he was unclear about the correct interpretation and application of the relevant provisions of the Act and sought a court ruling by commencing a declaration proceeding in the High Court at Wellington.

The Commission was named as a fourth defendant. It is abiding by the decision of the Court. The High Court will hear the declaration in October 2008.

Request by the Charity Gaming Association Incorporated and the Hospitality Association of New Zealand Incorporated

The Charity Gaming Association Incorporated and Hospitality Association of New Zealand Incorporated requested the Commission to undertake an inquiry under section 224(1)(p) of the Act into the allowable costs that corporate societies can pay to class 4 venue operators.

The Commission declined to conduct such an inquiry. Section 116 of the Act provides for the Secretary to make determinations on the limits or exclusions in respect of costs that may be incurred by corporate societies that conduct class 4 gambling. The Act provides for appeals to the Commission against various decisions of the Secretary, but there is no such right of appeal from the Secretary's determination under section 116 to the Commission (or anyone else). The Commission did not regard the proposed inquiry as one which was appropriate in all the circumstances.

Miscellaneous

The Commission maintained regular contact with stakeholders throughout the year, including representatives from all six casinos, the class 4 sector, the Department, Ministry of Health, researchers and treatment providers. The Commission also met with gambling regulators in Australian State jurisdictions, and briefed them on the Commission's work.

The Commission continues to keep abreast of relevant gambling issues at both the governance and management levels.

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 2007/2008 was \$1,114,000, which was underspent by \$381,500.

Commission Meetings

The Commission meets monthly, except January, as its workload dictates. The full Commission met ten times during the year under review.

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

Future Directions

The primary focus of the Commission in 2008/2009 will be the following activities:

- the ongoing effective discharge of its licensing and appeal functions
- finalising the review of the casino licence conditions for the Christchurch casino
- commencing reviews of Responsible Gambling Programmes for the Hamilton, Dunedin and two Queenstown 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

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

Paul Joseph Stanley
Operations 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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Blair Cairncross
Acting Executive Director

Website
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info@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: 2007/2008

Decision		Status
GC10/07 2 July 2007	Interim decision on a proposal by the Gambling Commission to revoke conditions of the venue licences held by SKYCITY Hamilton Limited ("SHL") and Queenstown Casinos Limited ("QCL") and conditions of the operator's licence held by SKYCITY Management Limited ("SCML") and to specify new conditions	Interim
GC11/07 2 July 2007	Application by SCML for approval of Annex A (to remove five game mixes, to include automatic shufflers on its Caribbean Stud Poker tables and its Baccarat tables, and for approval of three new game mixes)	Approved
GC12/07 4 July 2007	Application by Otago Casinos Limited ("OCL") to amend licence conditions, for approval of casino signage and for approval to appoint a person to audit the casino business	Approved
GC13/07 4 July 2007	Application by SHL for approval to replace two approved floor plans with two new floor plans	Approved
GC14/07 29 August 2007	Application by SHL for approval of a new floor plan, and to remove five redundant floor plans	Approved
GC15/07 29 August 2007	Application by QCL for approval to install digital video recorders	Approved
GC16/07 30 August 2007	Applications by SKYCITY Auckland Limited ("SCAL") and SCML for approval of a new permanent floor plan (with new cashiering facility and cash-dispensing EFTPOS terminals) and to extend the dispensation to exceed the gaming machine to table game ratio	Approved
GC17/07 11 September 2007	Appeal by The Southern Trust Incorporated and Te Wheke Holdings Limited	Allowed
GC18/07 24 September 2007	Application by SCML for approval of a new permanent floor plan	Approved
GC19/07 24 September 2007	Application by QCL for approval of an alternative floor plan and game mix	Approved
GC20/07 24 September 2007	Application by OCL for approval of an alternative game mix, and to introduce the Perfect Pairs wagering option to its Black Jack tables	Approved
GC21/07 8 October 2007	Final decision on a proposal by the Gambling Commission to revoke conditions of the venue licences held by SHL and QCL and conditions of the operator's licence held by SCML and to specify new conditions	Approved
GC22/07 29 October 2007	Application by SHL for approval of a new floor plan, and to operate a flip-top table	Approved
GC23/07 29 October 2007	Applications by SCAL and SCML for approval of a new permanent floor plan (with an expanded cashiering facility and additional cash-dispensing EFTPOS terminal)	Approved
GC24/07 3 December 2007	Amendment by the Gambling Commission of the Responsible Gambling Programme of SKYCITY Management Limited	Approved
GC25/07 3 December 2007	Interim Decision on a Proposal by the Gambling Commission to revoke conditions of the venue and operator's licences held by Christchurch Casinos Limited ("CCL") and to specify new conditions	Interim

Decision		Status
GC26/07 20 December 2007	Applications by SCAL and SCML for approval of design changes to the main Action station, and for additional cash-dispensing EFTPOS terminals	Approved
GC27/07 20 December 2007	Application by SCML for approval of Annex A to the Hamilton operator's licence (to include automatic shufflers on its Caribbean Stud Poker tables and to offer Pontoon)	Approved
GC28/07 20 December 2007	Application by CCL for approval of an alternative floor plan and game mixes	Approved
GC29/07 21 December 2007	Appeal by Sand Bar & Restaurant Limited and Robyn Legge-Hunt	Declined
GC01/08 3 March 2008	Interim decision on a proposal by the Gambling Commission to revoke conditions of the venue licence held by Dunedin Casinos Limited ("DCL") and conditions of the operator's licence held by Dunedin Casinos Management Limited ("DCML") and to specify new conditions	Interim
GC02/08 3 March 2008	Interim decision on a proposal by the Gambling Commission to revoke conditions of the venue and operator's licences held by OCL and to specify new conditions	Interim
GC03/08 30 April 2008	Application by SCML for approval of a new floor plan for the Auckland casino	Approved
GC04/08 30 April 2008	Application by SCML for approval of Annex A to the Auckland casino operator's licence (to include a new game mix with Casino War)	Approved
GC05/08 30 April 2008	Application by CCL for approval of an alternative game mix for use during Poker tournaments	Approved
GC06/08 28 May 2008	Application by CCL for approval of floor plans	Approved
GC07/08 30 May 2008	Final decision on a proposal by the Gambling Commission to revoke conditions of the venue licence held by DCL and conditions of the operator's licence held by DCML and to specify new conditions	Approved
GC08/08 30 May 2008	Final decision on a proposal by the Gambling Commission to revoke conditions of the venue and operator's licences held by OCL and to specify new conditions	Approved
GC09/08 4 June 2008	Applications by SCML for approval of Annex A to the Auckland operator's licence (to include two new game mixes) and by SCAL to designate an alternative Gambling Area	Approved
GC10/08 16 June 2008	Application by SCML for approval of new floor plans for the Queenstown casino	Approved
GC11/08 16 June 2008	Application by SCML for approval of a new floor plan for the Auckland casino	Approved

