
GAMBLING COMMISSION



REPORT OF THE GAMBLING COMMISSION FOR THE YEAR ENDED 30 JUNE 2009

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 2009.

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 2008 to 30 June 2009, the Commission's fifth full year of operation.

This year the Commission determined 41 applications to amend casino licence conditions or grant approvals under casino licence conditions, and two appeals by gaming machine operators against decisions made by the Department of Internal Affairs (the "Department").

The Commission reviewed and amended licence conditions for the Christchurch casino, to better reflect the emphasis of the Gambling Act 2003 (the "Act"), and continued its review of Responsible Gambling Programmes for New Zealand's casinos.

The Commission has been in existence for over five years and has now established a substantial body of decisions. The Commission believes it has established itself as an independent and respected judicial body, and that its decisions over the last year have enhanced this reputation.

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 45 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, a Company Director;
- Graeme Reeves, a Barrister and Solicitor; and
- Mary Richardson, a Policy and Research Consultant.

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 2009, the Commission made 41 decisions on applications by casino licence holders to amend licence conditions, or obtain approvals under licence conditions. Applications related variously to approval of revised floor layouts and game mixes, the introduction of Fun Play (or mock) table games, and construction changes.

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

Casino	No. of tables	No. of gaming machines
Auckland	110	1,647
Christchurch	36	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 2009, the Commission completed this task by concluding a review of licence conditions for the Christchurch casino.

The Commission has previously signalled its intention to review the Responsible Gambling Programmes for each casino in New Zealand, following its review of the Responsible Gambling Programme for the SKYCITY Auckland casino. The Commission has advanced these reviews and is close to completing this process for the Dunedin casino, and it is well underway in reviewing the Programmes for the Hamilton, SKYCITY Queenstown and Lasseters Wharf casinos.

The Commission will review the Responsible Gambling Programme for the Christchurch casino in the forthcoming year.

Opportunities for casino gambling at Christchurch casino

In February this year, the Commission completed its review of licence conditions for the Christchurch casino.

The Commission had almost completed this review in December 2007, finalising all but two licence conditions, namely those which stipulate the maximum number of gaming machines and gaming tables that Christchurch casino is permitted to operate.

Fixing these conditions turned out to be surprisingly difficult for two reasons:

- (a) It was difficult to establish the ultimate effect as at 19 September 2003 of a series of decisions of the Casino Control Authority, which was not required to limit growth in opportunities for casino gambling, because of the informality of decision-making in relation to what was then a matter of little importance.
- (b) The casino had originally obtained approval to play Keno and the Racing Game, which were not played elsewhere in New Zealand, not easily compared with other games and no longer played in Christchurch (so that it wished to substitute them for more conventional games).

After analysing the Casino Control Authority ("CCA") decisions, the Commission held that the numbers approved by the CCA at the commencement of the current Act were 34 tables and 500 gaming machines. It considered that Keno and the Racing Game offer similar opportunities to a game of Roulette or Tai Sai with the result that the permitted number of tables increased to 36 with the removal of approval for Keno and the Racing Game.

Application by Dunedin casino for a new entrance into the casino

The Commission was required to consider an application for approval of construction changes at the Dunedin casino which involved the expansion of the casino operator's operations in the form of an additional bar and restaurant facility adjacent to the casino.

The application required the Commission to consider whether the proposed facility amounted to an expansion of the casino operation into an area outside the premises defined in the casino venue licence.

As the Commission lacks the power to amend a casino venue licence, the issue for the Commission was whether the proposed changes would produce true conjunct facilities outside the casino premises proper, or a de facto extension of the casino itself, the answer to which the Commission ultimately regarded to be a matter of impression.

The Commission considered that the casino's proposal failed to create sufficient distinction between the new conjunct premises and the casino, so that the average person attending the casino after the proposed changes were effected would be of the view that the new facility was simply part of the casino. The Commission declined the casino's application as submitted.

To provide guidance to Dunedin casino, and other operators for the future, the Commission indicated that, to obtain approval for construction changes, there would need to be a clear delineation between the casino and the new facility, with no gambling being visible from the new facility.

Dunedin casino subsequently submitted a new application with a revised design, which the Commission approved.

Application by SKYCITY Casino Management Limited to introduce Fun Play tables into the Auckland casino

SKYCITY applied to the Commission to specify new licence conditions which would enable it to introduce, on a controlled basis, eight additional gaming tables into the Auckland casino on which only mock table games would be played. The tables would be in addition to the 110 gaming tables already permitted.

The Commission considered that the introduction of additional non-gambling gaming tables was not inconsistent with the Act or its purpose and accordingly the Commission amended the licence conditions to permit eight additional gaming tables, which would be restricted to non-gambling activity, and to introduce additional conditions to control their use.

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 30 June 2009, there were 384 licensed class 4 gambling operators, 1,501 gaming machine venues, and 19,479 gaming machines in New Zealand (down from 421; 1,569 and 20,018 respectively, in 2008). 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 2009, Divisions of the Commission determined two appeals from gaming machine operators, and one application for costs by a gaming machine operator against the Secretary in an appeal that was withdrawn before Commission determination.

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.

Decisions GC22/08 and GC29/08 were very similar and involved operators appealing against a decision by the Secretary to impose a condition on individual venues licences requiring the closure of external doors into, or immediately adjacent to, the venue's gaming rooms.

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.

In dismissing the appeals, the Commission considered each venue and determined that the conditions imposed by the Secretary were appropriate, as they would assist in minimising the risk of access, and were reasonable in the circumstances.

In decision GC30/08, Caversham Foundation Limited applied for an award of costs against the Secretary in circumstances in which the Secretary made a decision which was appealed to the Commission but, after receiving Caversham's submissions and evidence on the appeal, the Secretary reassessed his previous decision and made a new decision, removing the need for the appeal.

Caversham submitted that the reassessment of his previous decision following the appeal meant that the Secretary had not acted in good faith, or had engaged in procedural misconduct.

In declining to award costs, the Commission stated that it expects the Secretary to reassess his earlier decisions in the light of further information and that he should not be criticised and punished for doing so in the course of appeals. The Commission noted that there was nothing to indicate that the Secretary had conducted himself before the Commission in a way which would justify an award of costs against him.

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

In last year's Annual Report, the Commission noted that the Secretary commenced a declaration proceeding in the High Court at Wellington as he was unclear about the correct interpretation and application of certain provisions of the Act, following Commission decision GC03/07.

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

The 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 a courtyard area at the Kilbirnie Tavern, where smoking is permitted.

The condition was imposed by the Secretary on the basis that it would minimise harm to problem gamblers. If upheld, the Secretary's decision would have had the effect of using licence conditions to prohibit gaming in areas which had not been restricted by the statutory smoke-free legislation prohibitions.

The Commission held that conditions aimed at harm minimisation should only be imposed to reduce 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 conditions were not sufficiently directed at gambling harm minimisation (as opposed to an allegedly co-related activity, smoking) and the supposed benefits were unclear and speculative. 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 by restricting the activities of all customers who smoked.

Subsequent to the Commission's decision, the Lion Foundation applied to the Secretary to renew its licence for the Kilbirnie Tavern. The Secretary stated that, as a result of the Commission's decision, he was unclear about the correct statutory tests that he must apply when considering the Lion Foundation's application, and sought, by way of statutory declarations in the New Zealand High Court, answers to a series of eight questions.

In its decision, the High Court held that seven of the eight questions were not proper questions for a declaration, and issued a declaratory judgment on the eighth question, effectively upholding the approach adopted by the Commission in its original decision; namely that when imposing a licence condition, the Secretary needs to balance the likely benefits of the proposed condition against any inconvenience to the operator and the wider community.

Problem Gambling Strategy

The Ministry of Health 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 last reported to Ministers on the levy in December 2006, and is expected to report on the Ministry's proposed funding plan for 2010-2013 in December 2009. The Commission will convene a meeting of key stakeholders prior to preparing its report, as the Act requires.

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 2008/2009 was \$1,123,000, which was underspent by \$400,196.

Commission Meetings

The Commission met 11 times during the year under review: 18 July, 15 August, 19 September, 17 October, 14 November, 5 December, 13 February, 20 March, 17 April, 22 May and 19 June. Divisions of the Commission met on 17 October and 5 December. Commissioners Reeves and Stanley attended a forum of Australasian Gambling Regulators in May.

Future Directions

The primary focus of the Commission in 2009/2010 will be the following activities:

- the ongoing effective discharge of its licensing and appeal functions
- reviewing the Responsible Gambling Programmes for the Hamilton, Christchurch, Dunedin and the 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
- advising Ministers and facilitating consultation on the setting of the Problem Gambling Levy.

COMMISSION MEMBERS

Peter Wing Ho Chin

Chief Gambling Commissioner

Mayor of Dunedin

Barrister and Solicitor

Appointed March 2004

Term expiring February 2010

Mary Manson Lythe

Clinical Services Manager

Auckland

Appointed March 2004

Term expiring February 2010

Paul Joseph Stanley

Company Director

Tauranga

Appointed March 2004

Term expiring June 2012

Graeme Leonard Reeves

Barrister and Solicitor

Wellington

Appointed June 2004

Term expiring June 2012

Mary Jane Richardson

Policy and Research Consultant

Christchurch

Appointed July 2008

Term expiring July 2011

CONTACT DETAILS FOR COMMISSION

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Acting 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: 2008/2009

Decision		Status
GC12/08 22 July 2008	Application by Christchurch Casinos Limited ("CCL") for approval of a second computer room	Approved
GC13/08 22 July 2008	Application by CCL for approval of temporary floor plans	Approved
GC14/08 22 July 2008	Application by CCL for approval to temporarily relocate its count room	Approved
GC15/08 20 August 2008	Application by SKYCITY Casino Management Limited ("SCML") for approval of temporary floor plans for the Auckland casino	Approved
GC16/08 23 September 2008	Applications by CCL for approval of new temporary and permanent floor plans, and a new game mix	Approved
GC17/08 23 September 2008	Application by CCL for approval to designate the Gambling Area at the Christchurch casino and for approval of construction changes	Approved
GC18/08 23 September 2008	Application by SCML to exceed the ratio of gaming machines to gaming tables at the Auckland casino	Approved
GC19/08 23 September 2008	Applications by SCML for approval of new game mixes, a new floor plan and to exceed the ratio of gaming machines to gaming tables at the Auckland casino	Approved
GC20/08 9 October 2008	Application by SCML to amend a licence condition	Approved
GC21/08 29 October 2008	Application by SCML for approval of a new floor plan, to remove redundant floor plans, and add new game mixes for the Hamilton casino	Approved
GC22/08 31 October 2008	Appeal by Perry Foundation Limited	Declined
GC23/08 26 November 2008	Application by CCL for approval of construction changes	Approved
GC24/08 26 November 2008	Application by SCML to amend a licence condition attached to the Auckland casino operator's licence	Approved
GC25/08 26 November 2008	Application by SCML to amend a licence condition attached to the Auckland casino operator's licence	Approved
GC26/08 10 December 2008	Application by SCML for approval of a new floor plan for the Hamilton casino	Approved
GC27/08 10 December 2008	Application by SCML for approval of a new game mix for the Auckland casino	Approved

GC28/08 10 December 2008	Application by CCL for approval of new floor plans and new game mixes	Approved
GC29/08 15 December 2008	Appeal by Eureka Trust	Declined
GC30/08 15 December 2008	Application for costs by Caversham Foundation Limited against the Secretary	Declined
GC31/08 19 December 2008	Application by SCML to specify new licence conditions to introduce Fun Play tables to the Auckland casino	Approved
GC01/09 17 February 2009	Application by Dunedin Casinos Management Limited ("DCML") for approval of a digital video recording system	Approved
GC02/09 17 February 2009	Application by SCML and SKYCITY Hamilton Limited ("SHL") for approval of a new floor plan, and construction and design changes for the Hamilton casino	Approved
GC03/09 17 February 2009	Applications by CCL for approval to temporarily re-designate the casino's Gambling Area, of new temporary floor plans, and a new game mix	Approved
GC04/09 18 February 2009	Final Decision on proposals by the Gambling Commission to revoke conditions of the venue and operator's licences held by CCL and to specify new conditions	Final
GC05/09 20 March 2009	Applications by Dunedin Casinos Limited ("DCL") for approval of construction and design changes, and to amend a licence condition	Declined
GC06/09 25 March 2009	Application by SCML for approval of new floor plans and game mixes for the Queenstown casino	Approved
GC07/09 6 April 2009	Application by SCML to amend the Surveillance Standard	Approved
GC08/09 21 April 2009	Application by SCML for approval of a new game mix for the Auckland casino	Approved
GC09/09 21 April 2009	Application by SKYCITY Auckland Limited ("SCAL") for approval of construction and design changes at the Auckland casino	Approved
GC10/09 21 April 2009	Application by SCML for approval of a new floor plan for the Auckland casino	Approved
GC11/09 19 June 2009	Application by CCL for approval of a new floor plan and new game mixes	Approved
GC12/09 9 June 2009	Application by DCML to amend licence conditions to introduce Fun Play tables	Approved
GC13/09 9 June 2009	Application by SCML for approval of a new floor plan and game mix for the Queenstown casino	Approved
GC14/09 9 June 2009	Application by DCML for approval of a new temporary floor plan for the Dunedin casino	Approved

Delegated Approvals of the Commission: 2008/2009

7 August 2008	Application by DCL to join Dunedin casino's chip bank and general cashier facilities
20 October 2008	Application by SHL for approval of design changes
28 November 2008	Application by SCML for approval of a new floor plan for the Auckland casino
9 December 2008	Application by SCML for approval of a new floor plan for the Auckland casino
21 January 2009	Application by SCML for approval of a new floor plan for the Auckland casino
10 February 2009	Application by SCML for approval of a new floor plan for the Auckland casino
20 February 2009	Application by DCL for approval of construction and design changes
20 March 2009	Application by SCML for approval of a new floor plan for the Auckland casino
23 March 2009	Application by SCAL for approval of construction and design changes for the Auckland casino
3 April 2009	Application by CCL for approval of construction and design changes at the Christchurch casino
26 May 2009	Application by SCML for approval of new floor plans for the Auckland casino

