

**DECISION ON A REFERENCE BY THE SECRETARY OF INTERNAL AFFAIRS  
TO THE GAMBLING COMMISSION**

**1. INTRODUCTION**

1.1 SKYCITY Auckland Limited (“**SCAL**”) made two applications to the Secretary for Internal Affairs (the “**Secretary**”) to amend the Rules for Casino Table Games. The amendments seek to introduce additional wagering options to Baccarat and Pontoon in the form of:

- (a) a “perfect pairs” wagering option to Baccarat;
- (b) a “Pontoon Pandemonium” wagering option for Pontoon.

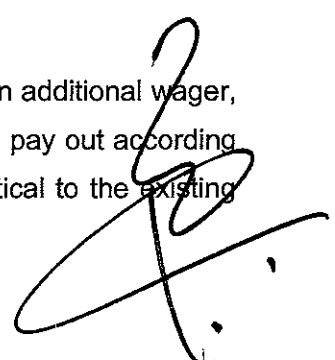
1.2 Prior to initiating consultation on the proposed amendments, the Secretary sought the Commission’s views on whether the amendments proposed would constitute an increase in the opportunities for casino gambling in terms of section 12 of the Gambling Act 2003 (the “**Act**”).

1.3 The Secretary has the power to make, amend and revoke game rules pursuant to section 367(1). In the case of these applications, the Secretary was concerned about the effect of section 11 of the Act, which provides that “a person must not increase the opportunities for casino gambling”. The Act provides, in sections 12(1) and 224(1)(q) that it is a function and power of the Gambling Commission to determine “what constitutes an increase in the opportunities for casino gambling”. The Commission has treated the Secretary’s request as a reference to it under section 12(1), seeking a determination of whether the proposed changes to game rules will increase the opportunities for casino gambling. This is the first time that the Commission has been required to exercise this function outside of the exercise of its own powers under section 139 of the Act.

**2. BACKGROUND**

2.1 To assist it in making its determination, the Commission was briefed by a casino inspector on the rules for Baccarat and Pontoon, and the Perfect Pairs and Pontoon Pandemonium wagering options. It observed simulated play of both games, with and without the proposed wagering options.

2.2 If the “Perfect Pairs” option is available, all Baccarat players can, as an additional wager, bet on the first two cards to be drawn to create a pair. The house will pay out according to the nature of the pair drawn. The option is understood to be identical to the existing



Perfect Pairs wagering option for Black Jack, and would be in addition to the existing Baccarat wagering options of Banker's Hand, Player's Hand and Tie Bet.

- 2.3 "Pontoon Pandemonium" is an additional wagering option available to Pontoon players at the outset of a round, involving a non-progressive jackpot that is triggered when a participant makes a Pontoon. If the Pandemonium wager wins, the winning player may activate a jackpot prize button to determine the randomly selected prize money. It is understood that the wagering option is almost identical to the existing option of "Madness 21" in the game of Black Jack. It would be additional to existing Pontoon wagering options of Insurance, Double Down and Split Pairs.
- 2.4 It is understood that special table layouts are required before Perfect Pairs and Pontoon Pandemonium options can be played in casinos. Pontoon is not currently played at SKYCITY Auckland casino, but provision is made in approved floor plans for 46 Black Jack or Pontoon table games to be played.

### 3. SUBMISSIONS BY SCAL

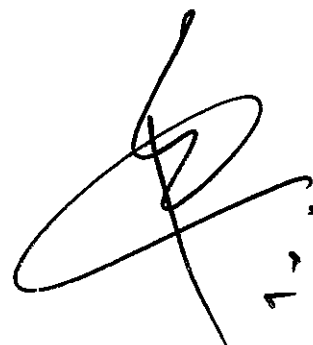
- 3.1 The Commission received two sets of legal submissions from counsel for SCAL dated 25 May 2005 and 14 June 2005, and separate submissions by SCAL dated 9 June 2005.
- 3.2 Counsel for SCAL submitted that changes to game rules cannot ever, as a matter of law, increase the opportunities for casino gambling as follows:
- (a) The purpose of sections 11 and 12 is to prohibit a net increase in gambling activities offered in existing casinos. An amendment to game rules to increase the wagering options that may be offered by a casino "falls outside that category". Counsel stated further "there is nothing in the statutory wording or legislative history to suggest that Parliament intended to prohibit any further amendment to game rules to increase wagering options".
  - (b) Amendment of game rules is a matter for the Secretary exclusively (and not the Commission) under section 367. Counsel submitted that sections 11 and 12 have no application on the basis that "general provisions (viz the section 11 prohibition) do not derogate from express provisions dealing with specific subject matter (viz the specific rule making power in section 367)". It was stated that express language would have been required if section 11 was to apply to rule-making.
  - (c) The Secretary (and, for that matter, the Commission) is not a "person" within the meaning of section 11 so the section has no application to the Secretary (or the Commission).

- (d) Even if the Commission does have jurisdiction to determine this matter, counsel submitted that changes to gaming rules cannot, of themselves, increase opportunities for casino gambling. This is because section 11 prohibits net increases in particular casinos. Game rules have general application to all casinos, and cannot of themselves increase opportunities for casino gambling. Whether an increase arises can only be determined when a game is introduced, taking into account any accompanying reduction in other opportunities.

3.3 Counsel for SCAL went on to submit that the proposed amendments do not constitute an increase in opportunities for casino gambling for the following reasons:

- the amendments do not create an additional game; they merely permit additional wagering options within existing games;
- the new wagering options will not increase the number of players in either game;
- the additional options merely add variety and interest to existing games and it is unlikely that players will be attracted to the games purely because these options are available;
- increases in opportunity arise from participation in a game not wagering opportunities (notwithstanding, the Commission notes, that the staking of consideration is the essence of the game);
- SCAL's experience is that the additional options will not necessarily result in an overall increase in player spending;
- the addition of further wagering options slows down the speed of the game because of the need for greater player/dealer interface.

3.4 The Commission asked SCAL for further evidence of the reduced speed of game play effect described immediately above. In response, SCAL advised that it had conducted a trial to assess the impact of the new wagering variations on game speed for Black Jack (Black Jack being similar to Pontoon). SCAL conducted games of Black Jack with and without the Perfect Pairs option. The same seven players were used in each game and as much as possible, SCAL endeavoured to simulate a "live" environment. Results of this trial were:

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a vertical line and a horizontal line, with some smaller scribbles below.

	<b>Black Jack (with Perfect Pairs) Minutes per Shoe</b>	<b>Black Jack (without Perfect Pairs) Minutes per Shoe</b>
<b>Experienced dealer</b>		
Shoe 1	14.50	11.30
Shoe 2	21.00	13.30
<b>Trainee dealer</b>		
Shoe 1	28.07	25.18
No second shoe		

- 3.5 SCAL concluded that the three shoes incorporating the Perfect Pairs options took longer to complete than those games which did not. A shoe is understood to be between 4-8 decks – SCAL did not clarify the number of decks involved. SCAL submitted that, on the basis of this trial, the changes in the speed of game play brought about by the proposed rule amendments will have the effect of cancelling out the additional wagering options of Perfect Pairs.

#### **4. SUBMISSIONS BY THE SECRETARY**

- 4.1 The Secretary initially submitted that the Commission should defer a decision pending the outcome of declaration proceedings by SCAL relating to the interpretation of sections 11 and 12. Having considered other views expressed to the Commission, the Secretary agreed that the reference was appropriately determined now.
- 4.2 The Secretary submitted that, on its face, the introduction of additional wagering options in the form of Perfect Pairs and Pontoon Pandemonium fell within the scope of section 12 and would constitute an increase in opportunities for casino gambling. The Secretary considered increased wagering options to be analogous to an increased number of player spaces, and stated that:

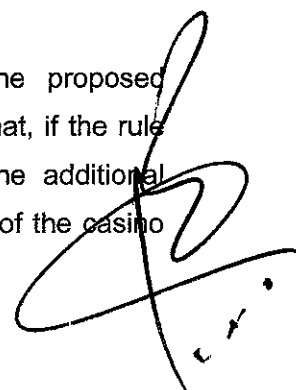
Gambling involves the staking of consideration against an outcome. A discrete wagering option, separate or concurrent with another wagering option, affords this opportunity. On a plain reading, an increase in the number of wagering options is an increase in the gambling opportunity.

- 4.3 The Secretary did not quantify the level of additional opportunity created by the proposed additional wagering options or comment on whether any increase in terms of existing opportunities for casino gambling was likely to be significant. The Secretary acknowledged that adding wagering opportunities may result in a reduction in the overall rate of play for the games in question, but considered that rates of play was more appropriately considered in the context of overall game mix.
- 4.4 The Secretary submitted that the Commission also needed to determine, as a matter of policy, what, if any, methodology it might adopt to secure a proportional reduction in other opportunities for casino gambling if a proposed amendment to a game rule was found to give rise to an increase in opportunities. Reference was made to ensuring there was no

overall increase in opportunity through management of game mix (based on rates of play, and including associated player space and positions) and/or management of wagering/gambling positions.

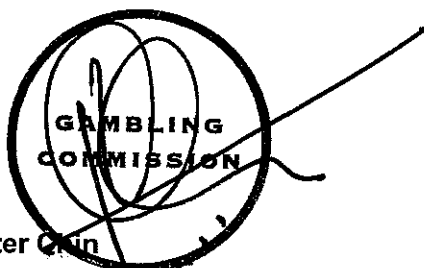
## 5. ANALYSIS

- 5.1 The Commission has set out its approach to the interpretation of sections 11 and 12 on a number of prior occasions. In its first decision GC01/04, it stated that there was no need to reformulate the words used in the Act, and that there was no benefit in attempting to do so. As previously stated, "The words of section 11 of the Act are simple, and the illustrations in section 12 are a helpful guide to Parliament's intentions".
- 5.2 The Commission has previously considered the issue of increased opportunities only in the context of its powers in relation to licence conditions. It has taken the approach of considering the totality of the proposed changes to reach an overall conclusion rather than determining the effect of each change in isolation. It is able to make additional changes to the conditions, from those proposed, to ensure that the overall effect would not result in an increase in casino gambling opportunities. In this case, it can consider only the effects of the proposed rule changes assuming that, if the changes are approved, they will be put into effect (in the same way that it assumes that, if it changes licence conditions, operators will take advantage of the changes and put them into effect). While it still approaches the present reference on the basis of an assessment of the overall effect, on the evidence, the ambit of its consideration is limited to assessing the effects of more wagering options (as the rules would provide) and the effect on the time taken to complete a typical game if the options are offered.
- 5.3 The Commission has, in a number of decisions, indicated its view that section 12(2) provides a non-exhaustive list of matters which may give rise to an increase, and that Parliament had not adopted a prescriptive set of rules, limited to increases in tables, machines and player spaces. There is a clear potential logical relationship between game rules and opportunities for casino gambling, and there is nothing to suggest this aspect was excluded from sections 11 and 12. The Commission is not persuaded by the submissions that any increased casino gambling opportunities arising from a change in rules are not subject to sections 11 and 12 and that game rules changes cannot of themselves ever give rise to increased opportunities for casino gambling.
- 5.4 The Commission considered whether the effect of introduction of the proposed amendments would give rise to an increase in opportunities on the basis that, if the rule changes were approved, casino operators would be entitled to offer the additional wagering options without the need for any other form of approval as none of the casino



licences contain any condition controlling, or requiring prior approval for, the introduction of new game rules for existing games. As earlier indicated, the Commission is limited in this sort of determination to the overall effect of the rule changes themselves, no other changes having been proposed to take effect when the amended game rules are introduced which would otherwise affect overall proportionality of the opportunities for casino gambling.

- 5.5 On balance, a majority of Commissioners did not consider, on the limited evidence before it, that the proposed rule changes would result in an increase in opportunities for casino gambling. In coming to this conclusion, the Commission took into account the effect of likely reductions in game speed if the wagering options were exercised. Two Commissioners were of the view that there was an increase, albeit that it was not substantial.



Peter Chin  
Chief Gambling Commissioner

*HC* July 2005