
GAMBLING COMMISSION



REPORT OF THE GAMBLING COMMISSION FOR THE YEAR ENDED 30 JUNE 2010

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 2010.

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 2009 to 30 June 2010, the Commission's sixth full year of operation.

This year the Commission determined 31 applications to amend casino licence conditions or grant approvals under casino licence conditions, and five appeals by gaming machine operators against decisions made by the Department of Internal Affairs (the "Department"). Two of these appeal decisions were arguably the most important that the Commission has ever released, addressing the *raison d'être* of Class 4 gambling in New Zealand. The Commission is immensely proud of these decisions for the clarity they have provided to the entire Class 4 sector in New Zealand.

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, who comes from a public health background and has been employed at a senior level in Iwi and Urban Authorities; and
- Graeme Reeves, a Barrister and Solicitor.

Mary Richardson was a Commissioner until she retired from that role in December 2009. The Commission has been operating with four Commissioners since that time.

Peter Chin and Mary Lythe completed their second term as Commissioners during this year. They continue as Commissioners on a month to month basis pending their reappointment or replacement.

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 2010, the Commission made 31 decisions on applications by casino licence holders to amend licence conditions, or obtain approvals under licence conditions. Applications related mainly to approval of revised floor layouts and new game mixes.

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

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 2010, there were 370 licensed Class 4 gambling operators, 1,455 gaming machine venues, and 18,944 gaming machines in New Zealand (down from 384; 1,501 and 19,479 respectively in 2009, and down significantly from the 25,221 gaming machines in place in June 2003).

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 2010, Divisions of the Commission determined five appeals from gaming machine operators, and one application for name suppression by a gaming machine operator with an appeal before the Commission.

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.

The Gambling Commission released decisions on appeals by The Southern Trust and The Trusts Charitable Foundation. Both decisions concerned actions taken by Class 4 societies in the course of competing with one another to secure agreements with desirable venues. The competition was the result of the limited number of Class 4 venues in existence, in particular lucrative 18 machine venues – a situation which arises from the Class 4 licensing regime and the policies of numerous local authorities not to allow new Class 4 sites.

The two decisions addressed very important issues with significant implications for Class 4 operators.

Appeal by The Southern Trust

The appeal by The Southern Trust concerned expenditure by the society on capital improvements on venues with which the society had venue agreements. The Secretary for Internal Affairs suspended the society's licence for five days for expenditure of approximately \$190,000 on four venues on the basis that the expenditure exceeded limits imposed under regulations and were otherwise in excess of what was reasonable and necessary, involving a failure to maximise net proceeds and minimise operating costs; for paying \$40,000 in brokerage fees for securing agreements with a venue operator covering two venues and for failing to take sufficient steps to disconnect machines upon becoming aware of late banking.

The Commission did not uphold the ground related to late banking but found the expenditure on venue upgrades was both a breach of limits set by regulation and a failure to limit expenditure to what was reasonable and necessary and to minimise costs. It upheld the suspension imposed and dismissed the appeal.

The key points of the Commission's decision were as follows:

- The statutory requirement that net proceeds be applied or distributed only for authorised purposes, and the statutory definition of net proceeds as excluding only actual, reasonable and necessary costs incurred in conducting the gambling and related legal compliance, impose a significant limitation on expenditure of gaming machine proceeds by societies.
- Limitations on the incurring of costs by societies also arise from the obligation to maximise net proceeds and minimise costs, the costs specified in approved venue agreements and regulations made under section 116. The restrictions are cumulative and the setting of limits under section 116 does not mean that the other statutory restrictions do not continue to control expenditure under those limits.
- Using gaming machine proceeds to carry out capital expenditure on venues owned by others confers a cash flow or interest benefit on venue operators at the expense of the community, even if the expenditure is recoverable over time. If it is not recoverable, they represent a loss to the community for the benefit of venue operators. Even in the former case, such expenditure will never be easy to justify.
- The expenditure in this case exceeded the limits set by the regulations, what had been approved in venue agreements and what was reasonable and necessary. It showed a failure to maximise net proceeds and minimise costs. It was driven by the pressure of competition from other societies to retain those venues.
- The brokerage fee in this case was not reasonable and the Commission has doubts about the extent to which such payments are permitted at all.
- Substantial recovery of excessive spending should result in a reduction in the suspension which would otherwise be imposed.

Appeal by The Trusts Charitable Foundation

The Trusts Charitable Foundation appeal principally concerned expenditure by the Foundation in the form of fees paid to a company operated by one of the trustees for the services of the trustee. The trustee was engaged to approach operators of desirable venues and to persuade them to sign agreements with the Foundation rather than with other societies. The fees amounted to approximately \$425,000 over three years (plus expenses of a further \$43,000). The fees were in addition to the trustee's annual honorarium of \$20,250 per annum.

The foregoing expenditure, together with expenditure on entertainment by trustees of \$18,000 over less than two years, had resulted in the Secretary suspending the Foundation's licence for four days, later reducing to two days.

The key points of the Commission's decision were as follows:

- The provision for reducing the period of suspension if the society deals with certain specified matters does not restrict suspension only to remedial purposes, excluding punitive considerations. The provision only applies when suitable matters exist and, even then, the expected consequence is not reduction of the period of suspension to nil.
- Expenditure by societies is restricted by the obligation that net proceeds may only be applied or distributed for authorised purposes and by the statutory definition of net proceeds.
- Net proceeds comprise all gaming machine proceeds less **only** actual, reasonable and necessary costs incurred in conducting the gambling and related legal compliance
- Expenditure which has the purpose simply of securing new venues from other societies does not fall within what is excluded from net proceeds. As a result, expenditure on competition for venues between societies cannot be funded by gambling machine proceeds and the scope of competitive activity by all societies is accordingly constrained.
- Entertainment expenditure is subject to the same restrictions (and to the obligation to maximise net proceeds and minimise costs). In this case, the Foundation had wrongly proceeded on the basis that its spending was largely a matter of its own commercial discretion.
- The period of suspension imposed could not be reconciled with suspensions imposed in other cases involving considerably smaller amounts. In order to achieve an acceptable degree of parity with suspensions previously imposed on other societies and as a guide to what was appropriate in the future, a suspension of six days was imposed.

The appeals were the first arising from a series of investigations and audits undertaken by the Secretary. It was common ground in both appeals that the conduct complained of by the Secretary was widespread in the Class 4 sector. The Commission emphasised its expectation that the Secretary will diligently investigate similar breaches by other societies and impose proportional punitive consequences. Consistency of enforcement and treatment is necessary both to do justice between societies and to bring the use of improper practices in a competitive environment to an end.

Appeal by Kiwi Community Trust

Kiwi Community Trust appealed against a decision by the Secretary refusing to renew its Class 4 operator's licence. The Secretary's primary concern was that the Trust's gambling operation was not financially viable. This was the first appeal before the Commission on financial viability – a significant issue in the Class 4 sector. Initially the dispute underlying the appeal appeared to be factual, requiring detailed financial evidence, but on examination, the factual background was largely common and the real issue turned on the legal constraints on societies in their use of gaming proceeds. The Commission's starting point for its analysis was the primacy of the legal requirements for operators to distribute gambling proceeds promptly and only for authorised purposes, as the purpose of regulated Class 4 gambling is to raise and return money to the community.

Class 4 operators are required to return at least 37.12% of net proceeds generated in a financial year to community purposes and are also required to make distributions promptly. The society in question appeared to have treated these requirements as if they were merely a target, something to aim for, but of no real concern if missed. The society was trying to ensure that it remained financially viable by making distributions of what it could afford, being less than the required proportion, instead using the funds to meet its expenses and to build financial reserves to ensure its future financial viability. The Commission held that it was not entitled to use community funds to ensure its financial survival, noting that the minimum distribution requirement should be a first, not a last, priority.

Following the consideration of submissions and evidence, the Commission held that Kiwi Community Trust was not financially viable when proper regard was had to its legal obligations and the Trust's licences should not be renewed. The Trust had a consistent history of not returning at least 37.12% to the community, with as little as 6.69% and 12.88% being returned in some years.

In reaching its decision, the Commission provided clarification on key sections of the Act and regulations to guide the Class 4 community in their future assessments of financial viability.

Judicial Review Proceeding

First Sovereign Trust appealed to the Commission against a decision made by the Department refusing to renew the Trust's Class 4 operator's licence. The Trust requested that the Commission defer its consideration of the appeal until after the completion of related criminal proceedings against the Trust and its CEO. The application was made on the basis that unless the appeal was adjourned the Trust and its CEO would not be able to receive a fair trial in the criminal proceedings. The Commission followed an earlier decision of the High Court in declining the adjournment. While there were factual differences, they did not seem to the Commission to detract from the principles set out in that earlier decision. The Trust sought a judicial review of the Commission's decision which was heard in the Wellington High Court on 7 July 2010.

The High Court held that the Commission should defer the hearing of the Trust's appeal until after the verdicts of the criminal proceedings are known. The Court was of the view that the issues and allegations in the appeal replicate those in the criminal proceedings, meaning that if the appeal is held first, it will inappropriately replicate and pre-empt the criminal inquiry, when this may yield an acquittal.

Report on Problem Gambling Levy

On 26 November 2009, the Commission made recommendations to the Minister of Internal Affairs and the Associate Minister of Health on the total amount of the proposed Problem Gambling Levy for the three-year period, 1 July 2010 – 30 June 2013, and the proposed levy rate for each gambling sector. The Commission convened a consultation meeting on 12 November 2009 as part of its process to make recommendations and obtained expert, independent, advice on the Ministry's funding plan.

The Commission's main recommendation was to amend the formula weighting for 2010-2013, with a 70 percent weighting to be placed on the number of people presenting to problem gambling providers and a 30 percent weighting be placed on the amount of money lost gambling.

Cabinet decided not to adopt the Commission's recommendation and retained the weighting employed for the previous levy periods, namely 90:10, on the basis that "Class 4 operators should continue to pay the highest share of the levy as this is where most problem gambling is associated."

Regulations specifying the levy rate, the Gambling (Problem Gambling Levy) Regulations 2010, commenced on 1 July 2010.

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 2009/2010 was \$1,132,904, which was underspent by \$185,164.

Commission Meetings

The Commission met 11 times during the year under review: 17 July, 14 August, 11 September, 16 October, 13 November, 4 December, 19 February, 19 March, 17 April, 14 May and 18 June. It also met on 12 November for the hearing of submissions on the Problem Gambling Levy.

Divisions of the Commission met on 17 July, 14 August, 19 February, 19 March and 17 April.

Commissioners Reeves and Stanley attended forums of Australasian Gambling Regulators in November 2009 and June 2010.

Future Directions

The primary focus of the Commission in 2010/2011 will be the following activities:

- the ongoing effective discharge of its licensing and appeal functions
- 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 March 2004
Term expired February 2010

Mary Manson Lythe

Clinical Services Manager
Auckland
Appointed March 2004
Term expired 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

CONTACT DETAILS FOR COMMISSION

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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:

- specifying, varying and revoking casino licence conditions
- 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
- 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 the Minister for 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
- advising Ministers and facilitating consultation on the setting of the problem gambling levy.

APPENDIX 2

Decisions of the Commission: 2009/2010

Decision		Status
GC15/09 19 July 2009	Appeals by Eureka Trust	Dismissed
GC16/09 14 August 2009	Application by Christchurch Casinos Limited ("CCL") for approval of new game mixes	Approved
GC17/09 14 August 2009	Application by SKYCITY Casino Management Limited ("SCML") for approval of two new game mixes for the Auckland casino	Approved
GC18/09 14 August 2009	Application by CCL for a series of approvals relating to the refurbishment of the Main Gaming Floor	Approved
GC19/09 14 August 2009	Appeal by Kiwi Community Trust	Dismissed
GC20/09 11 September 2009	Decision on a proposal by Gambling Commission to revoke condition 9 of the venue licence held by CCL and specify a new condition in substitution	
GC21/09 16 October 2009	Application by CCL for approval of a new floor plan	Approved
GC22/09 16 October 2009	Application by SCML for approval of a new floor plan for the Hamilton casino	Approved
GC23/09 16 October 2009	Application by SCML to vary licence condition 12 of its operator's licence for the Auckland casino	Approved
GC24/09 13 November 2009	Application by Dunedin Casinos Management Limited ("DCML") for approval of a new floor plan for the Dunedin casino	Approved
GC25/09 13 November 2009	Applications by SKYCITY Auckland Limited ("SCAL") and SCML for a series of approvals relating to the redesignation of the Gambling Area at the Auckland casino	Approved
GC26/09 4 December 2009	Application by SCML for approvals relating to the Queenstown casino	Approved
GC27/09 4 December 2009	Applications by SCML for approval of new game mixes for the Auckland casino	Approved
GC29/09 4 December 2009	Applications by CCL for a number of approvals at the Christchurch casino	Approved
GC30/09 4 December 2009	Application by SCML for approval of a new floor plan for the Auckland casino	Approved
GC31/09 22 December 2009	Application by the Southern Trust for name suppression	Declined
GC01/10 19 February 2010	Application by CCL for approval of new game mixes	Approved

Decision		Status
GC02/10 19 February 2010	Applications by CCL relating to the Christchurch casino	Approved
GC03/10 13 November 2009 and 19 February 2010	Application by DCML for approval of three new game mixes	Approved
GC04/10 19 July 2009, 16 October 2009, 4 December 2009 and 19 February 2010	Application by DCML for approval of a new Credit Policy	Approved
GC05/10 19 March 2010	Application by CCL for approval of new game mixes	Approved
GC06/10 19 March 2010	Appeal by Caversham Foundation Limited	Dismissed
GC07/10 19 March 2010	Application by CCL to amend condition 9 of its venue licence and condition 12 of its operator's licence	Approved
GC08/10 16 April 2010	Application by SCAL for a series of approvals relating to the re-designation of the Gambling Area at the Auckland casino	Approved
GC09/10 16 April 2010	Application by SCAL and SCML for approval to open overseas bank accounts	Approved
GC10/10 19 February 2010	Appeal by The Southern Trust	Dismissed
GC11/10 19 February 2010	Appeal by The Trusts Charitable Foundation	Dismissed
GC12/10 16 April 2010 and 14 May 2010	Proposal by the Gambling Commission to vary condition 16 of the venue licence for SKYCITY Hamilton Limited ("SHL")	
GC13/10 14 May 2010	Application by DCML for approval of new floor plans and game mixes	Approved
GC14/10 18 June 2010	Application by CCL for approval to introduce an automatic shuffler on its Mini Baccarat table	Approved
GC15/10 18 June 2010	Application by SCML and SCAL for approval to remove two cashiering facilities, and to construct one new cashiering facility	Approved
GC16/10 18 June 2010	Application by Otago Casinos Limited for approval of construction and design changes, and a new floor plan	Approved
GC17/10	Application by SCML for approval of new game mixes for the Auckland casino	Approved

**Delegated Approvals of the Commission:
2009/2010**

18 September 2009	Application by SCML for approval of new floor plans for the Auckland casino
12 October 2009	Application by SCML for approval of new floor plans for the Auckland casino
21 June 2010	Application by SHL for approval of construction and design changes at the Hamilton casino
21 June 2010	Application by SCML for approval of new floor plans for the Auckland casino

