

IN THE MATTER of the Gambling Act 2003

AND on an application by **SKYCITY CASINO MANAGEMENT LIMITED** to amend the 2017 approval for the provision of credit by casino operators

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
L M Hansen
D C Matahaere-Atariki
W N Harvey
S C L Pearson

Date of Application: 17 December 2018

Date of Decision: 15 March 2019

Date of Notification
of Decision: 15 April 2019

**DECISION ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED
TO AMEND THE 2017 APPROVAL FOR THE PROVISION OF CREDIT
BY CASINO OPERATORS**

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") applied to the Commission to amend the Approval issued by the Commission in decision GC03/17. The Approval sets out the circumstances in which casino operators may offer or provide credit for gambling. The 2017 Approval limited the offer or provision of credit to short-term, overseas visitors to New Zealand and defined "short-term overseas visitor" by reference to a stay of no more than 28 days.
2. SCML's application proposed the removal from the Approval of the word "short-term" and the related maximum stay period from the definition in the Approval, and a further minor amendment relating to credit extended to overseas group commission organisers.
3. The Commission sought submissions from the Secretary for Internal Affairs (the "**Secretary**"), Ministry of Health, Problem Gambling Foundation ("**PGF**"), Salvation Army Oasis ("**SA**"), Lifeline, Christchurch Casinos Limited ("**CCL**") and Dunedin Casinos Management Limited. It received submissions from the Secretary, CCL, SA and PGF.
4. SCML filed submissions in reply in which it proposed an alternative maximum stay period of 56 days, rather than removing any stay limit as originally proposed.

5. As SCML's reply materially changed its application, the Commission sought submissions on the reply from the Secretary, PGF and SA, with all parties filing additional submissions. The Commission forwarded the additional submissions to SCML which filed a further submission in response.

Relevant section of the Act

6. The relevant section of the Gambling Act 2003 (the "**Act**") is as follows:

15 Providing credit for gambling prohibited

- (1) A person conducting gambling must not offer or provide credit if the person knows or ought to know that the credit is intended to be used for gambling.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000.
- (3) Subsection (1) does not apply to credit offered or provided by the holder of a casino operator's licence to a person in circumstances that have been approved by—
- (a) the Authority under section 66 of the Casino Control Act 1990; or
- (b) the Gambling Commission under subsection (4).
- (4) The Gambling Commission may approve circumstances in which an offer or provision of credit may be made by the holder of a casino operator's licence to a person.

SCML submissions

7. SCML submitted, in summary, as follows:

- (a) In decision GC03/17 the Gambling Commission revoked the then existing section 15(4) approval and replaced it with a new approval.
- (b) The 2017 Approval permits the provision of credit only to overseas visitors, and in particular, short-term overseas visitors, defined by the Commission as those who enter New Zealand on a foreign passport for no more than 28 days. The Approval also extends credit to organisers of group commission programmes, consisting entirely of short-term overseas visitors, for use by members of that group only.
- (c) The intent of the Approval was to allow the extension of credit to high-value, short-term overseas visitors while maintaining sufficient controls and oversight to address the concerns about potential harm from gambling on credit which underpins the conditional statutory prohibition in this area.
- (d) To enable the Commission to monitor the application of the Credit Approval, casino operators were directed to deliver to the Department of Internal Affairs (DIA) and to the Commission, a report showing the credit extended to individuals and group commission organisers in each quarterly period.
- (e) Of all the persons who have been extended credit over the period in question, only two have yet to repay that credit in full.

- (f) While a number of Gambler of Interest (“GOI”) files have been established, its Host Responsibility team has yet to identify any behaviour related to the provision of credit which would warrant an exclusion from any of its casinos.
- (g) In this sense, the terms of the Commission’s 2017 Approval appear to be working relatively well. In general terms, SCML has been able to compete with international casino operators for the lucrative high-end international market. Local players are denied credit.
- (h) Having said that, the limitations of the 2017 Approval have meant that, on a number of occasions, it has had to refuse credit applications from some international visitors.
- (i) It is not seeking any new approvals but, with the benefit of 18 months experience in extending credit pursuant to the 2017 Approval, it wants to revisit two aspects of the Commission’s 2017 decision, seeking variations to the terms.

28-day criterion

- (j) From time to time, short-term visitors have chosen to vary their travel arrangements and extend their stay beyond 28 days in circumstances where credit has already been issued (meaning they no longer qualify as a short-term visitor under the terms of the Approval). In such cases, it has required each patron to redeem the credit on the 28th day of their visit, and sought repayment of any outstanding funds within the specified 30-day period thereafter. While this course represents a pragmatic approach to satisfying the terms of the Approval in respect of a matter outside of its control, it has not always been well received by international visitors who have had their credit cut off, following their decision to extend their stays.
- (k) There have also been occasions when it has had to refuse credit to international visitors who were unable to satisfy the short-term visitor definition on a particular casino trip. Whilst most international visitors who apply for credit meet the 28-day criterion, the cost to the business of having to refuse even a small number of requests is significant.
- (l) The 28-day criterion appears to be somewhat arbitrary and there is no suggestion in its reading of decision GC03/17 that persons visiting New Zealand for longer periods would be more susceptible to harm if they too were extended casino credit.

- (m) It considered applying to the Commission for approval to extend credit to identified individuals who have previously been unable to meet the 28-day criterion on a particular visit. While such an approval might mitigate the risk of those same visitors having to be refused credit on a subsequent trip, it would not assist other first-time international visitors whose length of stay exceeded the 28-day criterion. In this sense, that is not a particularly effective or efficient solution.
- (n) While most credit applicants are of the short-term visitor type provided for in the Approval, the removal of the 28-day criterion would ensure that all international visitors could secure credit, irrespective of their length of stay. Extending the circumstances in which an international visitor may receive credit would not undermine the purposes of the Act and would continue to be an appropriate exercise of the Commission's discretion in approving circumstances in which an offer or provision of credit may be made. Local players would continue to be subject to the prohibition.

Group Commission Organisers approved by DIA

- (o) The 2017 Approval recognises that a casino operator may offer or provide credit by any means to any person approved by DIA to enter into an agreement with that casino operator to conduct a group commission programme.
- (p) While DIA approves each agreement, strictly speaking, it does not approve the persons who enter into the agreements. The casino operator is responsible for undertaking due diligence on such persons to ensure that they are suitable to enter into an agreement.
- (q) A minor amendment to the wording in this area is proposed to reflect the true nature of the DIA approval.

CCL's submissions

- 8. CCL submitted, in summary, that while the 2017 Approval has not caused any concerns for it operationally, SCML's arguments for the proposed changes are sensible and logical, while preserving the strong visibility that the Commission wishes to have over credit arrangements. As such, it is happy to support the proposed changes.

The Secretary's submissions on SCML's original proposal

9. The Secretary submitted, in summary, as follows:

- (a) SCML is seeking the removal of the 28-day criterion and the words "short term" to ensure that all international visitors can secure credit to gamble, irrespective of their length of stay in New Zealand.
- (b) In determining the circumstances under which casinos may offer and provide credit, the Commission has previously held that the primary purpose of section 15 of the Gambling Act 2003 is to prevent harm. While the Commission may take into consideration the value and requirements of the international customer component of the New Zealand casino business, this is a secondary consideration.
- (c) In decision GC03/17, the Commission noted that "the experience since 2010 is that most credit has been provided to overseas patrons but without apparent detection of harm in that group. Allowing credit to overseas patrons only would thus address the primary and secondary considerations, without putting them in conflict." The Commission therefore decided that credit should be limited to short-term overseas visitors, being those who enter New Zealand on a foreign passport for not more than 28 days.
- (d) In the 18 months that the current rules have been in place, there have apparently been no grounds to issue exclusion orders on persons to whom credit has been extended but that is not a sufficient reason to relax the current requirement. Rather he supports the wisdom of the Commission's original decision (restricting credit to short-term overseas visitors) which is aimed at minimising harm.
- (e) The removal of the 28-day criterion and the words "short-term" would give casinos considerable freedom to determine whether a foreign passport holder is a visitor to New Zealand. The only test would be that a person can establish, to the satisfaction of the casino, that they intend to leave New Zealand at a future date.
- (f) The proposed amendment gives rise to the possibility of persons resident in New Zealand, but holding a foreign passport, receiving credit and suffering harm.
- (g) There are also a significant number of overseas visitors who are in New Zealand on work visas, or to attend educational institutions, who are able to show their visit to New Zealand is time-bound, even if their departure is years in the future. These people should be regarded as "local players".

- (h) As SCML's proposal is open-ended, it would be a departure from the Commission's decision in decision GC03/17, which limited the availability of credit to short-term overseas visitors.
- (i) DIA is one of the supervisors under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ("**AML/CFT Act**"). A change to the 2017 Approval may affect casinos under this Act.
- (j) The provision of credit is currently confined to a particular type of individual for a short and limited timeframe. The removal of that timeframe would extend to whom casinos may offer credit; credit could be provided to all overseas visitors, regardless of how long they may be present in New Zealand, or what kind of visa they entered on. This potential for offering credit is more in line with a broader financial service that may be offered by a financial institution under the AML/CFT Act.
- (k) Casinos are included under the AML/CFT Act as reporting entities in their own right, and their inclusion under that Act was based on sector-specific risks. Those risks includes junkets and international VIP customers at casinos, who are identified as high risk for money laundering and financing of terrorism. These groups are likely to be affected by any change to the credit policy.
- (l) Financial institutions are also reporting entities under the AML/CFT Act which have different sector-specific money laundering and terrorism financing risks. The expansion of the service may mean that DIA needs to review its supervision of casinos, in light of the changed AML/CFT risk and how it would effectively supervise the new risk under the Act. DIA would also expect to see a thorough examination by casinos, if any change to the 2017 Approval were made, of the consequent effect on their AML/CFT risk assessments and the adequacy of their current processes, procedures and systems.
- (m) SCML has raised the fact that DIA no longer approves the persons with whom SCML enters agreements in conducting a group commission programme. DIA has recognised that casinos assume responsibility for undertaking appropriate customer due diligence, with the result that it approves the agreement, not the person(s) entering into the agreement.
- (n) To reflect the position, SCML has applied to remove any reference to DIA from the Approval. The following amendments to the Credit Approval requirements are suggested instead, to reflect the approval process correctly:

1. A casino operator may offer or provide credit by any means to:
 - (a) Any short-term overseas visitor to New Zealand; or
 - (b) Any person ~~who approved by the Department of Internal Affairs to~~ enters into an agreement, ~~approved by the Department of Internal Affairs,~~ with the casino operator to conduct a group commission programme ("**Organiser**") where that Organiser represents an identified group of people, every one of whom is a short-term overseas visitor to New Zealand, to enable that person or group to participate in a programme where one or more such people participate in commission play under agreement between that Organiser and casino operator ("**Overseas Group Commission Programme**").

SCML's submissions in reply to the Secretary's submissions

10. In response to the Secretary's submissions, SCML submitted, in summary, as follows:
 - (a) The Secretary addressed a suggested redrafting of clause 1(b) of the Credit Policy to reflect, more accurately, the Secretary's involvement in approving agreements between the casino operator and the persons conducting group commission programmes. It supports the Secretary's proposed redrafting.

28-day criterion

- (b) In relation to the proposed removal of the 28-day criterion, the Secretary is concerned about giving casinos too much freedom to determine if a foreign passport holder is a visitor to New Zealand.
- (c) While there may be many persons who fall into the category, being able to extend credit to persons who are effectively long-term residents of New Zealand was never the intention of the proposed amendments. Rather, the proposal is designed to enable it to extend credit to:
 - (i) short-term visitors who change their travel plans during the course of a trip and extend their stay in New Zealand beyond 28 days; and
 - (ii) short-term visitors whose original travel plans do not satisfy the arbitrary definition of "short-term".
- (d) In framing its proposed amendments, it wanted to avoid replacing one arbitrary short-term rule with another. However, without any specific limitation on the duration of visits, it acknowledges the Secretary's concerns that it would be possible to extend credit to persons who might more properly be classified as "local" persons. If the only way to mitigate the risk is by the imposition of an arbitrary maximum visit length, extending the current short-term limit of 28 days may reduce the number of occasions where credit has to be refused to genuine international visitors who remain for a longer period. If the Commission shares

the Secretary's concerns, it invites the Commission to consider the introduction of a new arbitrary short-term limit of 56 days.

- (e) There is no stronger underlying rationale for a 56 day stay limitation than for any other fixed visitation period. Specifying a visitation period simply represents a mechanism for distinguishing short-term international visitors from those who hold foreign passports and reside in New Zealand or intend living in this country for extended periods.
- (f) There will inevitably be occasions where any maximum visitation period would mean that some international visitors will be denied credit or have a credit line closed during the course of a visit. Nonetheless, a 56-day period would address the concerns raised by the Secretary, while giving casino operators more flexibility to accommodate genuine international visitors who wish to be provided with credit for gambling.
- (g) The Secretary indicates that a change to the 2017 Approval may have an impact for casinos under the AML/CFT Act, although it is unclear from the Secretary's comments what that impact would be.
- (h) The Secretary's submission suggests that the removal of the short-term criterion would represent an expanded service, more in line with a broader financial service that may be offered by a financial institution under the Act.
- (i) To the extent that the proposal may have AML supervisory implications under the Act, it is not for it to comment; if the products or services provided by a particular reporting entity are covered by more than one AML/CFT supervisor, it is for the supervisors concerned to agree who will be the reporting entity's AML/CFT supervisor for the purposes of the Act. That is established by section 130(2)(a) of the AML/CFT Act and it has no jurisdiction on that issue.
- (j) Removal of the 28-day criterion would not in any way increase the AML/CTF risk posed by international visitors. The same position would apply if the short-term visitation rule were relaxed, rather than being removed altogether.
- (k) In fact, issuing credit to international customers poses a reduced AML/CTF risk, as it limits the opportunity for illicit funds to be brought into New Zealand from offshore and then cycled through financial institution(s) and/or other reporting entities before being returned offshore as clean funds. The provision of gambling credit means that the only funds received locally would be to settle a gambling debt. Funds would never be legitimised in the manner traditionally associated with money laundering.

- (l) Even if the provision of credit were considered to pose an AML/CTF financing risk, it is difficult to see how that risk would increase by virtue of the length of time that the credit recipient was physically present in New Zealand.

Submissions by the Secretary in response to SCML's amended proposal

11. In response to SCML's amended proposal, the Secretary submitted, in summary, as follows:

Visitor period rule

- (a) He supports the newly proposed change (amending the 28-day criterion by providing for a 56 day period), as it still provides a fixed visitation period for qualifying overseas visitors.
- (b) A finite period of 56 days instead of 28 days is somewhat arbitrary, and the Secretary would support a period of 90 days, as that would align with the period of the standard visa granted on arrival to overseas visitors to New Zealand.
- (c) Extending the class of visitors by allowing a visitation period of 90 days would not increase the risk of gambling harm to overseas travellers and would not significantly increase the risk in terms of casinos' AML/CFT responsibilities.

AML/CFT Act

- (d) While he considered that changing the qualification for credit from visitors staying up to 28 days to an undefined period could affect the way DIA monitors casinos under the AML/CFT Act, the most recent proposed changes (extending the present 28-day definition to 56 (or even 90) days) was unlikely to change how casinos would be monitored under the AML/CFT Act.

Group Commission Organisers Approval Form

- (e) Considering his initial submission, and SCML's response to it, he recommends the following changes to the approval requirements. He recommends that the term "short-term" remain within the credit approval requirements (including in the opening paragraph and paragraph 3). The specific wording of paragraphs 1 and 2 recommended is as follows:

1. A casino operator may offer or provide credit by any means to:
 - (a) Any short-term overseas visitor to New Zealand; or
 - (b) Any person who approved by the Department of Internal Affairs to enters into an agreement, approved by the Department of Internal Affairs, with the casino operator to conduct a group commission programme ("Organiser") where that Organiser represents an

identified group of people, every one of whom is a short-term overseas visitor to New Zealand, to enable that person or group to participate in a programme where one or more such people participate in commission play under agreement between that Organiser and casino operator ("**Overseas Group Commission Programme**").

2. A short-term overseas visitor to New Zealand is defined as someone who has in-bound and out-bound travel arrangements showing a total expected duration of stay in New Zealand of no more than 90 days, and is travelling on a foreign passport.

Submissions in reply by SCML to the Secretary's additional submissions

12. In response to the Secretary's additional submissions, SCML submitted, in summary, as follows:
 - (a) Since its earlier response, the Commission had sought additional comments from the Secretary on the alternative proposal and the Secretary responded, supporting the change for a fixed period and suggesting that a period of 90 days might be more appropriate. For the reasons advanced by the Secretary, it supports the Secretary's suggestion of an extension of the visitor qualifying period to 90 days, in preference to the 56 days that it previously proposed.
 - (b) It also supports the Secretary's revised wording to paragraphs 1 and 2 of the 2017 Approval to give effect to these arrangements.
 - (c) The Commission asked it to provide more detail on the problems which caused it to seek the proposed amendment to the short-term period. While its response assumed the 56-day period put forward in its alternative proposal, the response would have equal application to the Secretary's proposed period of 90 days (which it now prefers).
 - (d) Since May 2017, when the Commission's approval took effect, there have been three occasions on which the recipients of credit, who had supplied evidence that the duration of their trip to New Zealand was within the maximum 28-day visitation period, changed their travel plans while in New Zealand and extended their stay beyond 28 days. In those circumstances, rather than allowing the customer to redeem the credit extended at the end of their visit, it has required the customer to redeem the credit at the end of the 28-day period.
 - (e) It cannot predict what would have happened if those persons been allowed to continue gambling using the credit that had been extended to them. The persons in question were high-value customers, and curtailing credit during the course of their visit negatively affected their experience. The cost to its business was a loss of goodwill arising from a negative experience, something which is difficult to measure but nonetheless real. A negative experience can discourage a customer

from return visits and the loss of a single international VIP customer, particularly a repeat visitor, can have a significant impact on its business.

- (f) Instances where international visitors have been refused credit as a result of the short-term visitor definition are more difficult to identify. No record is maintained of persons who are refused credit based on the proposed length of their stay; these issues confront overseas sales staff well before the customer visits its casinos. Unlike the three occasions where visitors extended their travel plans beyond 28 days during the course of a trip, it cannot identify specific instances where credit has been refused based on the short-term visitor rule.

PGF's submissions on SCML's proposals

13. PGF submitted, in summary, as follows:

- (a) It is opposed to the extension of credit to short term non-New Zealand gamblers, and to representatives of groups of such gamblers who have been approved by DIA. Its position now differs from its earlier position of support for allowing credit to overseas visitors.
- (b) It now holds the view that, if harm arises from providing credit to non-New Zealanders, New Zealand should follow the ACC philosophy that harm suffered by individuals while in New Zealand should be the responsibility of New Zealand, no matter where those people are from.
- (c) The logic of the Act's prohibition on the provision of credit by casinos to enable gambling at casinos is quite clear.
- (d) Credit by casinos is not provided as a commercial advance, for which the rules of the Consumer Guarantees Act or the Financial Markets Authority would offer protection to the consumer. Rather credit is provided in the expectation that the casino will win a sizeable proportion of the bets placed with credit, thus benefiting the casino twice - winnings on gambling, and interest/facility payments on the credit provided. As the casino is an "interested party", it should not be permitted to be a source of credit.
- (e) SCML has provided insufficient evidence to support its claims. The Commission should ask SCML:
- (i) to specify the number of foreign customers refused credit for exceeding the 28-day limit;

- (ii) to reveal how much each customer had won or lost in the previous 28 days;
- (iii) to quantify the financial loss suffered; and
- (iv) to indicate how the 2017 Approval differs from the position in other jurisdictions.

In the latter regard, the UK legislation, for instance, does not allow a casino operator to extend credit for gambling in any circumstances and the NSW legislation does not allow credit to be offered in the circumstances for which SCML is seeking approval.

- (f) It supports the SA's submission in its entirety.

14. In response to SCML's submissions in reply, PGF submitted, in summary, as follows:

- (a) Its position has not changed from its earlier submission, for the following reasons:

- (i) SCML has not established either that there has been no growth in gambling (a purpose of the Act being to control the growth), a lack of harm or no increase in harm (another statutory purpose).
- (ii) While the alignment of 90 days with the standard visitor visa length has bureaucratic attraction, connection to growth in gambling and impact on harm has not been addressed.

- (b) *A New Paper of Singapore* article about High Value customers on 11 March 2019 reported as follows:

The trade war may have sent ripples of uncertainty through the world's second largest economy, but one corner of China has so far remained steadfastly buoyant – the gambling enclave of Macau. In the past few weeks, Macau's four casino giants ... have all reported a bumper year of gaming revenues and profits. There was once a time when the casino giants paid little attention to the mass-market players. Instead, they courted the VIPs and high rollers to fill their coffers. But a corruption crackdown by Chinese President Xi Jinping saw a dramatic decline in VIP fortunate from 2014 as wealthy mainland gamblers – many of them officials with suitcases of illicit cash – tried to avoid attracting attention.

- (c) The implication is that more of the gamblers who come from China (which SCML has claimed is an important part of its market which has been affected adversely by the actions of the Chinese government) are not high value players. The change in the Macau market, and its reflection in the New Zealand market, makes it likely that the players now being offered credit will be people who have problems with gambling, or are developing problems with gambling.

- (d) The Commission should wait to see the full implications of these changes. In the meantime, SCML should collect hard information about its credit customers and bring the information to its joint agency consultation meetings for discussion and analysis.

SA's submissions on SCML's proposals

15. SA submitted, in summary, as follows:

- (a) In principle, it opposes the provision of credit to gamblers because it can encourage people to gamble excessively and beyond their means, to chase losses, and to abandon pre-commitment or limit-setting strategies. The credit prohibition imposed by section 15 recognises these risks.
- (b) While section 15(4) enables the Commission to approve circumstances in which credit may be provided by casino operators, the legislation clearly intends any approval to be confined to circumstances which would not increase the risk of harm, and which align with the purposes of the Act.
- (c) The 2017 Approval provides for credit to be available only to "high value, short-term overseas visitors". SA has reservations about the present Approval, namely that wealth and financial security do not necessarily preclude people from experiencing gambling harm. It is also concerned about how it is established that such financial security exists, prior to extending credit.
- (d) It is concerned about the kinds of debt recovery strategies that may be used against customers who are unable to repay the credit extended. Incidences of bankruptcy and re-mortgaging of properties uncovered by the earlier DIA investigation, outlined in decision GC03/17, are examples of the provision of credit ultimately causing harm.

28-day criterion

- (e) It does not support SCML's proposal to relax the requirement that credit be provided only to short-term visitors. In principle, it is opposed to any expansion of the range of circumstances in which credit can be offered. The 28-day criterion is a suitable boundary to limit the intended recipients of casino credit to short-term visitors.
- (f) All current requirements for reporting and harm monitoring of credit recipients assume a short-term visitor profile. Monitoring would need to be undertaken differently if the provision of credit were extended to longer term visitors. SCML has not recognised that there may be behavioural differences between long and

short term visitors which might necessitate different approaches to reporting, monitoring, and host responsibility.

- (g) SCML's main argument in support of removing the 28-day criterion is that the rule is negatively affecting its business. This is not a sufficient reason to amend the Approval. The primary aim of section 15 of the Act is to minimise harm, not enhance casinos' business interests.
- (h) Relaxing the 28-day criterion for the reasons outlined by SCML would set an unfortunate precedent, encouraging casinos to seek further liberalisation of the credit restrictions to enhance their business interests.
- (i) The ability to offer credit is a privilege, and one which SCML has not always honoured, as indicated by the DIA investigation detailed in decision GC03/17. Although SCML has been diligent in reporting its credit arrangements to the Gambling Commission since 2017, it is not convinced that this demonstration of good behaviour is adequate to warrant such a dramatic amendment to a credit policy which has been in place for less than 2 years.

Group Commission Organisers Approved by the DIA

- (j) It does not take issue with this wording being amended to reflect better the intended nature of this arrangement. However, it does not support removing the DIA from this section altogether. Instead, it suggests alternative wording, such as:

... any person who ~~approved by the Department of Internal Affairs to~~ enters into an agreement, approved by the Department of Internal Affairs, with the casino operator to conduct a group commission programme ...

16. In relation to SCML's submissions in reply, SA submitted, in summary, as follows:

- (a) Its position, as set out in its original submission, remains unchanged. It opposes the provision of credit to gamblers because it can encourage unhealthy gambling behaviours and lead to harm. SCML's original application to remove completely the "short-term" requirement provided no harm minimisation counterbalance, and was sought purely to enhance SCML's business interests. The 28-day criterion offset the increased risk of harm by appropriately limiting the category (and therefore the number) of people to whom credit could be offered.

- (b) While it prefers the alternative proposal to a complete relaxation of the short-term requirement, such an increase in the maximum allowed stay would inevitably lead to more opportunities for credit-related gambling harm. Accordingly, it prefers a 56-day criterion to a 90-day one.
- (c) In its original application, SCML claimed that absence of evidence of any credit-related behaviour warranting exclusion meant that the provision of credit had been balanced with harm minimisation. The absence of grounds for exclusion does not necessarily mean absence of harm. Many of SCML's indicators of problem gambling depend on the observation of patrons over an extended period of time. Although the indicators listed in SCML's Problem Gambler Identification Policy are non-exhaustive, SCML has not explained how it determines risk of harm to short-term credit customers. Such information should be brought to the casinos' respective community liaison groups for discussion.

Submissions in reply by SCML to SA and PGF submissions

17. In relation to PGF's original submission, SCML responded, in summary, as follows:

- (a) PGF is opposed to the extension of credit to any person, assuming that a casino benefits twice through such arrangements – first by way of player losses, and secondly through interest/facility payments. As the quarterly reports make clear, players do not always lose and SCML does not charge interest or require other payments in respect of any credit it extends.
- (b) Although PGF cites a lack of evidence to support SKYCITY's claim for changes to the Commission's 2017 approval, no variation to the terms of the Commission's approval would be sought unless such a change brought some benefit. However, for the reasons already noted, it is difficult to measure the cost of the current restriction in monetary terms. The proposal is less about addressing an unsatisfied business demand and more about managing the customer experience and perceptions.
- (c) The imposition of restrictions on international customers who are not subject to the same restrictions in the markets in which it competes represents a barrier to business. International customers have a multitude of choices of casinos to visit. Where changes to regulatory requirements can be safely introduced without compromising the purposes of the Act, SCML will seek those changes. It has successfully sought changes to game rules in the past, to align better with international practice.

- (d) It has not reviewed the UK legislation in terms of its credit provisions, as it does not see casinos in that part of the world as competitors. In terms of the NSW legislation, the credit provisions are more extensive than those available in New Zealand; credit is available to both residents and international visitors alike. No short-term visitor rule applies.
18. In relation to SA's original submission, SCML responded, in summary, as follows:
- (a) SCML agreed that its business interests are not a sufficient reason to amend the current credit arrangements and that the primary aim of section 15 is to minimise harm. It took that into account when it made the application and later revised its proposal to address the Secretary's concerns in relation to the potential for harm.
- (b) Its experience of monitoring credit arrangements since May 2017 revealed no harmful behaviour and there is nothing to indicate that persons visiting New Zealand for longer than 28 days would be any more susceptible to harm than those who currently satisfy that rule. The retention of a short-term visitor rule, albeit extended to 56 or 90 days, may well address the concerns of SA in relation to possible behavioural differences between long and short-term visitors. In any event, the transparency of the credit arrangements via the quarterly reporting process and ongoing host responsibility oversight ensures a high level of visibility and scrutiny.
19. In relation to the later additional submissions by PGF and SA, SCML responded, in summary, as follows:
- SA
- (a) SA does not cite any evidence to support its claims that international visitors who are extended credit are exposed to increased risks. There is no suggestion in SCML's reading of decision GC03/17 that persons visiting New Zealand for periods longer than 28 days would be more susceptible to harm if they were to receive credit. It appears the original limitation was an arbitrary means of distinguishing genuine international visitors from local residents. Extending the visitation period as proposed would not undermine that distinction and aligning it with the 90 day visitor visa establishes a clear rationale for the limitation.
- (b) SA is at liberty to raise and discuss operational issues relating to host responsibility at the regular community liaison meetings in accordance with SKYCITY Auckland's HRP.

PGF

- (c) PGF's opposition to any relaxation of the current arrangements rests on a claim that relaxation would be contrary to the purposes of the Act, which include controlling the growth of gambling and preventing and minimising harm. The Act does not prohibit growth in gambling and the approval sought is not contrary to either of these purposes.
- (d) The newspaper article referred to by PGF does not constitute a proper basis for concluding that international visitors who receive credit for gambling in New Zealand are more likely to have problems with gambling on the basis of affordability. The Commission is aware that SKYCITY undertakes its own credit risk assessment before extending credit to any visitor.

Analysis

- 20. SCML applied to amend two aspects of the Approval that was issued by the Commission in decision GC03/17. The second aspect, which clarifies that DIA approves the agreement entered into between a casino operator and the organiser of a group commission programme, rather than approving the organiser individually, is not controversial and, other than submitters suggesting different minor edits, was unopposed.
- 21. The Commission is satisfied that it should amend paragraph 1(b) of the 2017 Credit Approval as proposed by the Secretary, recorded in paragraph 9(n) above and accepted by SCML (as recorded in paragraph 10(a) above).
- 22. The controversial amendment proposed by SCML related to removal of the "short-term" qualification and of the related express stay length criterion to be applied to determine who qualified as a short-term, overseas visitor.
- 23. SCML's initial proposal was advanced on the basis that amendments should be made to allow it to offer credit to all international patrons, irrespective of the length of their stay in New Zealand, because the restrictions in the 2017 Approval negatively affected its business significantly.
- 24. The Secretary, SA and PGF all opposed the proposal, prompting SCML to change its position; rather than removing the "short-term" qualification entirely, SCML sought to extend the qualifying period from 28 days to 56 days. SCML suggested that the 28-day timeframe imposed by the Commission in decision GC03/17 was arbitrary and, although a longer period would be similarly arbitrary, in the light of the opposition, an extended timeframe of 56 days would be appropriate.

25. When the Secretary suggested a 90 day qualification period, by virtue of its alignment with the length of a standard visa granted to visitors to New Zealand, SCML adopted that suggestion as being less arbitrary.
26. Although various proposals for amendment were advanced in the submissions, the fundamental issue for the Commission remained the same; namely whether the Approval should continue to be limited to "short-term visitors" and whether the qualifying period of stay for such visitors should be removed or extended.
27. The current Approval was issued by the Commission in decision GC03/17. The Commission's decision followed almost two years of work on casino credit, commencing with a proposal by the DIA in 2015 to tighten considerably the terms of the 2010 Approval then in place, followed by a number of possible iterations proposed by the Commission itself. The decision reached was not arbitrary but the result of careful consideration and significant input by interested parties over a long period of time.
28. The Commission is not persuaded that it should lightly depart from the position that it reached after such extended input and reflection. SCML's application has apparently failed to grasp adequately the thinking behind the 2017 decision and focused principally on its own business interests in preference to other more relevant concerns.
29. The starting position is that section 15(1) creates a general statutory prohibition on gambling operators offering or providing credit for gambling. Section 15(4) makes provision for the Commission to approve circumstances in which credit may be offered or provided by casino operators but, as the Commission noted in decision GC03/17, an approval under section 15(4) is an exception to the statutory prohibition imposed by section 15(1). The exception that the Commission approved in decision GC03/17 is, in SCML's own words, working relatively well, with SCML being able to compete with international casino operators for the lucrative high-end international market.
30. In GC03/17, the Commission held that harm minimisation is the primary purpose of section 15. For that reason, when approving circumstances under section 15(4), the Commission proceeds on the basis that it should only approve circumstances when it is satisfied that the effect of credit on the risk of harm is truly minimal. It considers that providing credit to gamble does have potential harm effects, as outlined by SA – enabling customers to gamble beyond their immediate means, to chase losses and undermining personal gambling limitation strategies.
31. The Commission's decision to limit availability of casino credit only to short-term overseas visitors was a considered one, carefully balancing the risk of harm with SCML's business interests. Having decided to restrict the possible recipients of credit in that manner, the

Commission produced a definition containing a set of criteria which were intended to be clear, unambiguous and auditable. The period was not chosen arbitrarily but deliberately to reflect its thinking on the nature of the group whom it was prepared to exempt from the prohibition. In its own internal deliberations, it considered but rejected the possibility of alignment with visa periods as inadequately reflecting its assessment of the correct weighting with risk of harm.

32. The approved circumstances were intended to restrict the number of qualifying recipients of credit, having regard to both the risk of harm and the lack of likelihood of detecting harm using currently approved methods, within such a restricted group. For the latter reason, the Commission does not assume that, merely because SCML has not excluded any credit customer, none have been problem gamblers. Absence of evidence is not evidence of absence. The Approval was also not intended to operate such that everyone who might want credit would be able to receive it (as SCML seems to have assumed was the case).
33. SCML has been able to identify only three occasions when recipients of credit, who originally supplied evidence that their trip to New Zealand met the 28 day definition, later changed their travel plans to extend their stay beyond 28 days. Although other international visitors, who intended to stay to New Zealand for longer than 28 days, may have wanted to obtain credit, SCML could not identify them because it keeps no such records. The number of patrons adversely affected by the Approval is insufficient to persuade the Commission that it should accept a higher risk of harm in order to ensure that no overseas visitor is disappointed (although the Commission accepts SCML's submission that any circumstance which requires it to decline casino business may be harmful, both financially and in terms of goodwill).
34. Although it should be self-evident, if SCML wishes to apply again in the future to amend the definition of a "short-term visitor", the application must be supported with sufficient information to persuade the Commission to depart from the current 28-day definition, given the Commission's comments above.
35. The Commission received submissions in relation to the AML/CFT implications of amending the short-term visitor definition. As the Commission has decided not to amend the definition, it is not necessary to address those matters.

Decision

36. Pursuant to section 15(4) of the Act, the Commission declined SCML's application to amend the 2017 Approval to remove or relax the stay length criterion for qualifying short-term visitors, as set out in decision GC03/17. The Commission amended the Approval to incorporate the uncontroversial drafting amendments outlined in paragraph 21 above.

The updated Approval, with these minor amendments incorporated, is **annexed** to this decision.

Right of appeal

37. Pursuant to section 235 of the Act, a person affected by this decision may appeal that decision to the High Court. An appeal must be made within 15 working days of the date of notice of the Commission's decision, or any longer period that the High Court may allow.



Graeme Reeves
Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

15 April 2019



**APPROVAL OF THE COMMISSION UNDER SECTION 15(4)
OF THE GAMBLING ACT 2003
APRIL 2019**

PURPOSE

This approval covers a limited range of circumstances for the provision of credit by casino operators for use in gambling. The intent of the approval is to allow the extension of credit to high-value, short-term overseas visitors while maintaining sufficient controls and oversight to address the concerns about potential harm from gambling on credit which underpins the conditional statutory prohibition on the provision of credit for casino gambling.

APPROVAL

Pursuant to section 15(4) of the Gambling Act 2003, the Gambling Commission approves the offer and provision by the holder of a casino operator's licence of credit intended to be used for gambling in the following circumstances only:

1. A casino operator may offer or provide credit by any means to:
 - (a) any short-term overseas visitor to New Zealand; or
 - (b) any person who enters into an agreement, approved by the Department of Internal Affairs, with that casino operator to conduct a group commission programme ("**Organiser**") where that Organiser represents an identified group of people, every one of whom is a short-term overseas visitor to New Zealand, to enable that person or group to participate in a programme where one or more such people participate in commission play under an agreement between that Organiser and casino operator ("**Overseas Group Commission Programme**").
2. A short-term overseas visitor to New Zealand is defined as someone who has in-bound and out-bound travel arrangements showing a total expected duration of stay in New Zealand of no more than 28 days, and is travelling on a foreign passport.
3. To ensure that credit is provided appropriately, before providing credit the casino operator must sight, **take** and retain a copy of the foreign passport, and incoming and outgoing travel arrangements:
 - (a) for the applicant for the credit, if it is an individual; or
 - (b) where the applicant for credit is an Organiser, for each of the people participating in the relevant Overseas Group Commission Programme.
4. Except for credit provided to an Organiser, a credit facility may only be provided to an individual for his or her personal gambling use and no credit facility may be "on-lent" or otherwise made available to facilitate gambling by any other individual. Credit provided to an Organiser may only be made available to the short-term overseas visitors who form part of the identified Overseas Group Commission Programme organised by that Organiser.
5. The casino operator must monitor, by opening and maintaining a Gambler of Interest file, the activities of every patron to whom it has extended credit in any of the following circumstances:
 - (a) where the patron has not repaid the amount of any credit arrangement within the time originally agreed for repayment;

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- (b) where the patron remains indebted to the casino operator or to any associated entity in any amount for a period of 30 days or more; or
- (c) where the patron's initial credit arrangement is extended at any time, either in amount or by time to repay.

For the avoidance of doubt, the obligation to monitor by use of a Gambler of Interest file in the above circumstances is additional to monitoring otherwise required by the casino operator's own host responsibility programme.

6. With regard to all monitoring required by clause 5:

- (a) the monitoring by gambler of interest file must continue until the indebtedness to the casino operator or any associated entity is discharged in full;
- (b) the casino operator must comply with all requirements relating to gamblers of interest in its approved host responsibility programme including monitoring, recording of relevant activities and information, ongoing assessment (by the casino operator's host responsibility team), recording of assessments and interventions and reporting to the Commission; and
- (c) for the avoidance of doubt, the obligation to open a Gambler of Interest file applies to all such patrons, without any other reason to suspect them of problem gambling and regardless of credit control assessment; and operational monitoring by the casino operator's staff and management is additional to, and is not a substitute for, formal harm monitoring and assessment by the casino operator's host responsibility team.

7. In order to allow the Commission to keep the ongoing suitability of the terms of this policy under consideration, the casino operator must deliver quarterly to the Department of Internal Affairs and to the Gambling Commission, a table format report in which every individual credit arrangement subject to approval under section 15(4) is shown on a separate line with the following information recorded in separate columns.

- (a) Column 1: a unique customer ID. This may be the patron's name (if sufficiently unique) or may be some other unique identifier from which the patron's personal details can be provided if required.
- (b) Column 2: the casino site.
- (c) Column 3: the amount of credit extended under a single credit arrangement.
- (d) Column 4: the date on which the credit was extended.
- (e) Column 5: the date on which the credit was repaid in full.
- (f) Column 6: an indication whether the credit was extended to an individual or to an intermediary for group use.
- (g) Column 7: an indication whether a GIO file was opened.

