

IN THE MATTER of the Gambling Act 2003
AND on an application by **SKYCITY CASINO MANAGEMENT LIMITED**
for approval to vary a licence
condition at each of its four casinos

BEFORE THE GAMBLING COMMISSION

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

Date of Application: 21 March 2017

Date of Decision: 9 June 2017

Date of Notification of Decision: 15 June 2017

**DECISION ON AN APPLICATION BY SKYCITY CASINO MANAGEMENT LIMITED:
FOR APPROVAL TO VARY A LICENCE CONDITION AT EACH OF ITS FOUR CASINOS**

Introduction

1. SKYCITY Casino Management Limited ("**SCML**") has made an application to the Commission for a variation to SCML's licence conditions at each of its four casinos, under section 139(1)(d) of the Gambling Act 2003 (the "**Act**"), to remove the unqualified prohibition on the use of mobile EFTPOS terminals or similar devices in the Gambling Area, but to allow such deployment only if approved by the Commission. This particular application was part of a composite application seeking three separate orders, one of which has already been heard (see decision GC06/17) and the other of which is yet to be heard.
2. Section 140 of the Act requires the Commission to notify the licence holder, the Secretary for Internal Affairs ("**Secretary**"), and other potentially affected persons of the proposed changes. The Commission notified the licence holder, the Secretary, Dunedin Casinos Management Limited, Christchurch Casinos Limited, Problem Gambling Foundation, the Salvation Army ("**SA**") and the Ministry of Health ("**MoH**"). It received submissions from the Secretary, SA and MoH.



Licence conditions

3. The relevant existing licence conditions for Auckland are set out below:

SCML operator's licence (Auckland)

13. The Licence Holder is prohibited from dispensing cash from EFTPOS and like devices in the Gambling Area unless approved by the Commission. The approval of the Commission shall be revocable at the discretion of the Commission and may be subject to such conditions as the Commission may from time to time impose.
14. The Licence Holder is prohibited from using cash-dispensing mobile EFTPOS terminals or similar devices in the Gambling Area. It is prohibited from using non-cash dispensing mobile EFTPOS terminals or similar devices in the Gambling Area, unless approved by the Commission.
15. The Licence Holder is prohibited from dispensing more than \$50 cash per transaction from EFTPOS terminals or like devices outside the Gambling Area and within the Casino Venue and must ensure that any cash withdrawals are contemporaneous with a purchase.

4. The licence conditions with the variations proposed by SCML shown in mark-up are as follows:

SCML Operator's licence – Auckland

14. The Licence Holder is prohibited from using ~~cash dispensing~~ mobile EFTPOS terminals (cash or non-cash dispensing) or ~~like~~ similar devices in the Gambling Area. ~~It is prohibited from using non-cash dispensing mobile EFTPOS terminals or similar devices in the Gambling Area,~~ unless approved by the Commission.

SCML Operator's licence – Hamilton (condition 15), Queenstown (condition 15) and Wharf casino (condition 14)

The Licence Holder is prohibited from using mobile EFTPOS terminals (cash or non-cash dispensing) or like devices in the Gambling Area unless approved by the Commission.

The Act

5. The relevant section of the Act is as follows:

139 Conditions of casino licence

- (1) The Gambling Commission may specify the conditions of a casino licence or vary or revoke the conditions of a casino licence in the following circumstances:
 - (a) on granting a casino operator's licence;
 - (b) on renewing a casino venue licence;
 - (c) on approving a casino venue agreement or an amendment to it;
 - (d) on application by the holder of the casino licence;
 - (e) on its own initiative or on the request of the Secretary.
- (2) A condition of a casino licence specified under subsection (1)—
 - (a) must be consistent with this Act; and
 - (b) must contribute to achieving the purposes of this Act; and
 - (c) must contribute to the efficient and effective administration of this Act; and

- (d) must not permit an increase in the opportunities for casino gambling; and
- (e) may relate to any matter, including the matters specified in Schedule 1, within the confines of paragraphs (a) to (d).

SCAL's submissions

6. SCAL submitted, in summary, as follows:

Application for vary licence conditions

- (a) Pursuant to condition 15 of SCML's operator's licence for the Hamilton casino, the Licence Holder is prohibited from using mobile EFTPOS terminals (cash or non-cash dispensing) or like devices in the Gambling Area. A similar condition applies to all other casinos with the exception of Auckland, where only the prohibition from using cash-dispensing mobile EFTPOS terminals in the Gambling Area is absolute. However a similar prohibition on using non-cash dispensing EFTPOS terminals in the Gambling Area is qualified on the basis that the Commission may approve otherwise.
- (b) The absolute prohibition on the use of cash-dispensing mobile EFTPOS terminals goes further than is necessary, if its principal purpose is to ensure customers do not access cash from such devices whilst continuing to gamble. Similarly, there are legitimate occasions where a casino operator may wish to use a non-cash dispensing mobile EFTPOS terminal in food and beverage areas without creating any risks that such an arrangement will discourage breaks in play. Rather than endeavour to specify the circumstances in which mobile EFTPOS terminals should be permitted, SCML is proposing an amendment to the licence conditions which would enable the Gambling Commission to approve the use of such devices where it considers that appropriate, based on the merits of individual applications.
- (c) Unlike the licence conditions at other casinos, SCML's licence conditions in respect of the operation of Auckland Casino already allow the Commission to approve the use of non-cash dispensing mobile EFTPOS terminals and in decision GC23/15 it granted such approval in the circumstances relevant to that application.
- (d) The proposed variations to the conditions would not only allow the Commission to approve the use of non-cash dispensing mobile EFTPOS at all SCML operated casinos (subject to the merits of individual applications) but would also allow the Commission the discretion to approve the use of cash-dispensing mobile EFTPOS. SCML believes that there are circumstances in which cash dispensing



mobile EFTPOS could be used without compromising the rationale for the current prohibition and the variation would enable the Commission to assess the merits of individual cases.

The Secretary's submissions

7. The Secretary submitted, in summary, as follows:
- (a) The inability of players to access EFTPOS services while they continue to gamble ensures that there are desirable breaks in play and helps to prevent unplanned player expenditure. EFTPOS terminals are considered more positively than ATMs because they provide human contact when obtaining cash, enabling staff the opportunity to assess whether a player is showing gambling harm indicators. This opportunity to interact with a player is the same for mobile EFTPOS as for a fixed terminal.
 - (b) SCML has stated that the purpose of introducing mobile terminals is not designed to enable to customers to pay for food and beverages or to access cash from terminals whilst continuing to gamble. SCML also states a willingness to accept conditions on the approval of mobile terminals that would limit their use to approved areas or specifying particular conditions associated with their use.
 - (c) To ensure players cannot access mobile EFTPOS facilities while gambling, the Commission should define areas on the floor plan of each casino where they may be used and, as in decision GC23/15, define the purpose that they may be used for (ie only to pay for meals and drinks served in that designated area).
 - (d) An additional clause of each casino licence allows the Commission to grant approvals for cash-dispensing EFTPOS terminals subject to conditions as it may from time to time impose. The Commission should make it a condition of any such approval that cash-dispensing mobile EFTPOS terminals be limited to the Main Cage cashiering area within each casino.

SA's submissions

8. SA submitted, in summary, as follows:
- (a) To some extent, it acknowledges and agrees with the approved changes in licence conditions granted in decision GC23/15. However it is particularly concerned with potential detrimental effects of the new proposed changes, specifically relating to cash-dispensing mobile EFTPOS terminals in gaming areas. The proposed amendment carries a risk of increasing harm to casino



gamblers, and by extension, a risk of harm to gamblers' whanau and communities. Under section 139(2)(b) of the Act, any amendments to casino licence conditions should contribute towards achieving the purposes of the Act. However the proposed changes are inconsistent with the harm minimisation purpose of the Act.

- (b) Given the well-documented link between continuous play and the risk of developing harmful gambling behaviours, there are reasonable grounds to expect that an introduction of mobile cash-dispensing EFTPOS terminals would likely result in increased harm. Research supports the fact that easy access to cash-dispensing terminals is amongst one of the top triggers for regular gamblers to exceed spending limits, and the impact is even greater on high-risk gamblers.
- (c) The Commission should thoroughly evaluate the proposed amendment with a strong emphasis on harm prevention and minimisation.
- (d) While there may be appropriate reasons for non-cash dispensing EFTPOS terminals in the bar or food areas for the convenience of customers, it does not see any appropriate reasons for mobile EFTPOS machines (especially cash-dispensing) to be in the gaming areas in general.
- (e) In the event of the application to change the licence condition being granted, any application received from SCML for approval to install mobile cash-dispensing EFTPOS terminals in the gaming area should be declined owing to the risk of increased harm to gamblers.

MoH's submissions

9. MoH submitted, in summary, as follows:

- (a) It has no concerns with the first part of this application.
- (b) It strongly supports the prohibition on mobile EFTPOS where its availability would allow people seated at gaming tables or machines to continue to gamble without break.
- (c) MoH has a strong interest in any subsequent application to vary a licence condition to allow mobile EFTPOS.

SCML's submissions in reply

10. In reply, SCML submitted, in summary, as follows:



The Secretary's submissions

- (a) SCML has no objection to the Commission defining areas on the floor plan where mobile EFTPOS terminals are permitted to be used (in response to specific applications), nor defining the purpose that they may be used for. However it sees no rationale for including a condition that cash-dispensing EFTPOS terminals be limited to the Main Cage cashiering area within each casino.
- (b) The Secretary advances no rationale for a requirement that the terminals be restricted to Main Cage areas only. The forthcoming application to deploy a cash-dispensing mobile terminal in the Hamilton Main Cage would not be affected by this restriction. However, in the event that SKYCITY wanted to deploy mobile terminals more widely in a site such as Auckland, which has multiple cashiering facilities on different levels, such a restriction would represent an unnecessary impediment to that arrangement.
- (c) As noted in this application, the key regulatory restriction in respect of any application to deploy cash-dispensing mobile EFTPOS terminals must be to ensure customers do not access cash from the terminals whilst continuing to gamble. That restriction would apply irrespective of whether the terminals were located in the Main Cage or a secondary cashiering outlet.
- (d) The merits of individual applications should be considered in the absence of any broad restriction which unnecessarily limits the use of such terminals to a single location in the casino.

SA's submissions

- (e) SA's submission suggests that the installation of mobile cash-dispensing EFTPOS terminals should be resisted due to the risk of increased harm to gamblers. It does not say why the installation of such terminals would likely result in harm but refers to research that easy access to cash-dispensing terminals is amongst one of the top triggers for regular gamblers to exceed spending limits and that the impact is even greater on high risk gamblers.
- (f) The approval of the proposed variations would simply allow the Commission to consider the suitability of the deployment of mobile terminals on their merits. In terms of the application to deploy mobile EFTPOS terminals in Hamilton, the SA has not identified how these installations would be harmful. Notably these installations will not have any bearing on the ease with which cash may be accessed. A customer will still be required to attend the Cage in order to access cash from a terminal. The advantage to SKYCITY in deploying mobile EFTPOS

terminals in this case relates to business continuity (EFTPOS availability by mobile device if the fixed device network fails); not to relaxation of restrictions on cash access.

Analysis

11. SCML and submitters are largely in agreement that the rationale behind the licence conditions appears to be related to ensuring there are breaks in play and minimising unplanned expenditure by limiting ease of access to cash.
12. SCML has applied to alter the licence conditions to provide a means for it to apply to the Commission for approval to deploy mobile EFTPOS machines on suitable conditions. Any subsequent application would require consideration by the Commission on its merits and approved, or not, accordingly. A key focus is likely to be on the nature of the conditions to be imposed to restrict the degree of mobility of use of such devices having regard to the concerns summarised in paragraph 11 above.
13. In isolation, this application does not subvert the harm minimisation purpose of the Act. Only future applications for approval under the proposed licence conditions could affect the harm minimisation purpose of the Act, and that purpose would be considered by the Commission in dealing with any application for approval.
14. SCML and the Secretary both agree that, with respect to non-cash dispensing mobile EFTPOS terminals, the Commission could define both the specific areas of the casino in which such terminals would be approved for use, and the purposes of using the terminals (such as being limited to the purchase of food and beverages).
15. SA was opposed to any dispensing of cash by a mobile EFTPOS device in the Gambling Area but it made no comment about the use of EFTPOS terminals for other purposes.
16. The Secretary submitted that cash-dispensing EFTPOS terminals should be limited to the Main Cage only. SA submitted that cash-dispensing EFTPOS terminals would likely result in increased harm, because of the link between continuous play and the risk of developing harmful gambling behaviours.
17. The Commission considers that the current absolute prohibitions of mobile EFTPOS devices (or, in the case of Auckland, cash-dispensing devices) is not necessary to achieve their purpose so long as any deployment of such devices is limited to specific approvals given on suitable conditions. The current licence conditions aim to limit ease of cash access in the Gambling Area and to prevent customers availing themselves of EFTPOS facilities while continuing to gamble, thus avoiding the need to take breaks. If the EFTPOS terminals (whether cash or non-cash dispensing) were limited to defined



areas within the casino and to specific uses, they would neither provide unrestricted access to access to cash nor reduce the need for customers to take a break from gambling.

18. As noted by the Secretary, an EFTPOS transaction requires an interaction with another person and is considered preferable to use of ATMs. ATMs are prohibited from the Gambling Area but are located in close proximity to the gaming area entrance. That is a consideration which the Commission may take into account in dealing with approval applications.
19. However, the proposed amendments to the mobile devices condition omit the additional provisions regarding the imposition of conditions and revocation found in the fixed terminal condition. There is no reason for it to be omitted and omission would carry with it the risk of unintended implication that the conditions and revocation regime differed for fixed and mobile devices. That would be particularly undesirable when approval conditions are likely to be more important for mobile EFTPOS devices than fixed devices. Accordingly, the Commission will amend the proposed conditions by adding express confirmation that any approval by the Commission may be subject to conditions and is revocable at the discretion of the Commission.

Decision

20. The Commission:
 - (a) Approved SCML's application to vary licence conditions at each of its four casinos, under section 139(1)(d) of Act. The licence conditions now read as follows:

Auckland Casino and Wharf Casino operator's licence

14. The Licence Holder is prohibited from using mobile EFTPOS terminals (cash or non-cash dispensing) or like devices in the Gambling Area unless approved by the Commission. The approval of the Commission shall be revocable at the discretion of the Commission and may be subject to such conditions as the Commission may from time to time impose.
15. The Licence Holder is prohibited from dispensing more than \$50 cash per transaction from EFTPOS terminals or like devices within the Casino Venue and must ensure that any cash withdrawals are contemporaneous with a purchase.

Hamilton Casino and Queenstown Casino operator's licence

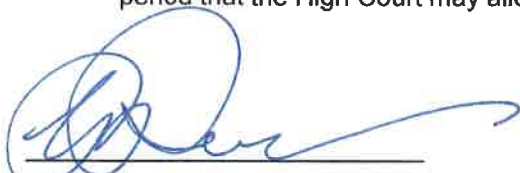
15. The Licence Holder is prohibited from using mobile EFTPOS terminals (cash or non-cash dispensing) or like devices in the Gambling Area unless approved by the Commission. The approval of the Commission shall be revocable at the discretion of the

Commission and may be subject to such conditions as the Commission may from time to time impose.

16. The Licence Holder is prohibited from dispensing more than \$50 cash per transaction from EFTPOS terminals or like devices within the Casino Venue and must ensure that any cash withdrawals are contemporaneous with a purchase.

Right of appeal

21. Pursuant to section 235 of the Act, a person affected by the decision recorded in paragraph 26 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 June 2017 **GAMBLING
COMMISSION**