

IN THE MATTER of the Gambling Act 2003


AND on an application by **DUNEDIN CASINOS MANAGEMENT LIMITED** to vary condition 15 of its operator's licence

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Chief Gambling Commissioner)
P J Stanley
L M Hansen

Date of Application: 12 April 2011

Date of Decision: 17 June 2011

Date of Notification of Decision:  July 2011

DECISION ON AN APPLICATION BY DUNEDIN CASINOS MANAGEMENT LIMITED TO VARY CONDITION 15 OF ITS OPERATOR'S LICENCE

Introduction

1. Dunedin Casinos Management Limited ("**DCML**") applied, pursuant to section 139(1)(d) of the Gambling Act 2003 (the "**Act**"), to vary condition 15 of DCML's operator's licence. The amendment would allow the Commission to approve the deployment of non-cash-dispensing mobile EFTPOS terminals in the Gambling Area of the Dunedin casino.
2. The proposed variation, in mark-up, is as follows:
 15. The Licence Holder is prohibited from using cash-dispensing mobile EFTPOS terminals (~~cash or non-cash dispensing~~) or similarlike 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.
3. If the Commission amended condition 15, DCML sought approval to deploy two non-cash dispensing mobile EFTPOS devices in the Dunedin casino Gambling Area.
4. The Commission sought submissions on the application from the Secretary and Problem Gambling Foundation ("**PGF**"), receiving submissions only from the Secretary.

DCML's submissions

5. DCML submitted, in summary, that:
 - (a) It has experienced growth in its food and beverage operation, resulting in pressure on its existing fixed EFTPOS terminals. It wants to alleviate this

pressure by deploying two non-cash dispensing mobile EFTPOS devices within the Gambling Area. This would eliminate the problems it is experiencing and enhance the experience of its customers.

- (b) The proposed devices would be used only for the purchase of food and beverage and would not be used to dispense cash.
- (c) The proposed wording of the condition would align with the equivalent condition for the Auckland casino.
- (d) It has not identified any issues of regulatory concern with its proposal.
- (e) Its proposal is consistent with the purposes of the Act in that it would not permit any growth in gambling; it would not create harm or stop it from preventing and minimising the harm caused by gambling, and it would not derogate from the facilitation of responsible gambling.

Secretary's submissions

6. The Secretary submitted, in summary, that:

- (a) He is not concerned with the proposed change to condition 15 if the mobile terminals are used only to purchase food and beverages, and are not used to purchase playing chips or chip vouchers. The Commission could amend the condition to state this precisely.
- (b) DCML has given no consideration to the impact its proposal will have on guests taking breaks from gambling. Currently casino guests must move away from the tables or machines to purchase food and beverages. If there are mobile EFTPOS devices within the Gambling Area, guests are less likely to get the small natural breaks afforded to them through the purchase of refreshments.
- (c) While he has no determinative views on this matter in the context of the Dunedin casino, he notes that the Ministry of Health and Problem Gambling Foundation have previously raised concerns about breaks in play. In the Commission's Final Decision on the review of licence conditions for SKYCITY Auckland, the Commission decided not to negate its discretion to approve these terminals, but noted its expectation that applications for approval "would need to be addressed satisfactorily and that approvals may not be easily obtained." The Commission may like to consider whether this is a matter that should be addressed by DCML prior to any approval being given.

DCML's submissions in reply

7. In reply, DCML submitted, in summary, that:
- (a) It has given consideration to the impact of its proposal on guests taking breaks from gambling and concluded that no harm would arise because, contrary to the Secretary's submission, guests have never been required to move away from the Gambling Area to purchase food and beverages. This is because patrons playing at gaming machines are able to push a button that alerts the food and beverage department, prompting staff to attend and take orders. Payment is either by cash, or added to the patron's "tab", if one exists.
 - (b) Patrons wishing to have a meal are not permitted to eat at a machine and must move away (although snacks are permissible).
 - (c) Patrons cannot eat at gaming tables, only drink.
 - (d) Patrons take natural breaks from gambling in a variety of ways – including going for a walk, talking to friends or sitting at tables away from the Gambling Area. Therefore, it has not identified any issues of regulatory concern.

Analysis

8. DCML wants the Commission to vary condition 15 of its operator's licence and approve the deployment of two non-cash dispensing mobile EFTPOS terminals in the Gambling Area of the Dunedin casino. The Commission considered the deployment of mobile EFTPOS terminals when it reviewed licence conditions for the country's six casinos from 2005-2009. The Commission's position on this issue was clear – it would not approve the deployment of either cash-dispensing or non-cash-dispensing mobile EFTPOS devices in casinos' Gambling Areas. The present application has required the Commission to consider whether this restriction should remain.

Background

9. The Commission began by reviewing its interim and final decisions on the review of licence conditions for all six casinos. The first of the interim and final decisions were in respect of SKYCITY Auckland. When it proposed the revocation of existing licence conditions and specification of new licence conditions for SKYCITY Auckland, the Commission initially proposed a licence condition which prohibited the use of any mobile EFTPOS device within the casino's Gambling Area. The proposed licence condition was as follows:

- 15. The Licence Holder is prohibited from using mobile EFTPOS terminals or similar devices in the Gambling Area.

10. In its Interim Decision in respect of SKYCITY Auckland dated 23 December 2005, the Commission amended the proposed condition to allow the Commission to approve the use of mobile EFTPOS devices within the Gambling Area solely for the payment of food and beverages. The amended proposed condition provided as follows:

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.

11. The amendment was opposed by the Ministry of Health and PGF, who both submitted that the introduction of non-cash dispensing EFTPOS terminals was inconsistent with a harm prevention and minimisation approach, and that the requirement to take breaks for food and beverages was beneficial. They stated that the provision of these terminals would encourage continual play and they could not foresee any circumstances where it would be appropriate for the Commission to approve such devices.

12. In its Final Decision on the review of SKYCITY Auckland's licence conditions, dated 27 March 2006, the Commission retained the amended proposed condition as set out at paragraph 10 above, but stated that the Commission would not freely approve the use of such terminals. At paragraph 10.4 of the decision, the Commission stated:

In exercising the discretion which it has retained, the Commission expects that the matters raised by MoH and PGF would need to be addressed satisfactorily and that approvals may not be easily obtained.

13. Following the interim and final decisions on the specification of new licence conditions for SKYCITY Auckland, the Commission proposed the revocation of existing conditions and specification of new licence conditions for the SKYCITY Hamilton and Queenstown casinos. The Commission initially proposed the same condition as it had just approved for the Auckland casino, but ultimately excluded the possibility of mobile EFTPOS terminals being introduced at all. At paragraph 6.12 of its Interim Decision (GC10/07), the Commission stated that:

... In its proposal, the Commission preserved the possibility of future approval of non-cash dispensing terminals. Having considered the submissions made to it, it cannot contemplate circumstances in which it would approve non-cash dispensing EFTPOS terminals, and accordingly has decided to amend condition 14 (now condition 15) to prohibit both the use of cash and non-cash dispensing mobile terminals or like devices in the Gambling Area.

14. The Commission confirmed its position on this issue when it reviewed the licence conditions for the Christchurch casino. At paragraph 3.16 of its Interim Decision (GC25/07) in relation to Christchurch casino, the Commission stated:

... the Commission noted in decision GC10/07 (relating to the Hamilton and Queenstown casinos), that it could not contemplate circumstances in which it would approve the use of cash or non-cash dispensing mobile EFTPOS terminals in the

Gambling Area of the casino. The Commission considers this observation still to be valid, and applicable to the Christchurch casino.

15. The Commission further confirmed its position in its decisions reviewing the Dunedin (GC07/08) and Wharf (GC08/08) conditions, with the licence conditions for those casinos also reflecting a prohibition on any mobile EFTPOS devices with the Gambling Area.

DCML's application

16. In the present application DCML wants the Commission to revisit (and reverse) its position on mobile EFTPOS terminals in the casino's Gambling Area. DCML seeks to have its condition 15 amended to be the same as the equivalent condition for SKYCITY Auckland (as set out at paragraph 10 above). The Commission did not see any reason to depart from its longstanding position. The Commission considered the matter very thoroughly when it reviewed the licence conditions for each casino, and although the Commission was previously unaware that patrons at the casino's gaming machines could order food and beverage by alerting catering staff with the push of a button on the machines, the Commission considered this insufficient to justify a change to its position.
17. As it has declined to vary condition 15, the Commission did not consider DCML's application to deploy two non-cash dispensing mobile EFTPOS terminals.

Decision

18. The Commission declined to amend condition 15 of DCML's operator's licence.

Right of appeal

19. 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.


Paul Stanley
Gambling Commissioner

for and on behalf of the **GAMBLING**
Gambling Commission **COMMISSION**

11 July 2011