

**IN THE MATTER** of the Gambling Act 2003

**AND** on a review by the **GAMBLING COMMISSION** of the charitable trust conditions attached to all casino venue licences

**BEFORE THE GAMBLING COMMISSION**

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

Date of Notice: 14 April 2021

Date of Decision: 3 September 2021

Date of Notification of Decision: 23 September 2021

**DECISION ON A REVIEW BY THE GAMBLING COMMISSION OF THE CHARITABLE TRUST CONDITIONS ATTACHED TO ALL CASINO VENUE LICENCES**

**Introduction**

1. In April 2021, the Gambling Commission gave notice of its intention to undertake the preliminary stage of a review of the charitable trust conditions attached to the 6 New Zealand casino venue licences. Notice was given by correspondence to 17 parties who, the Commission considered, were likely to have a particular interest in the review<sup>1</sup> and, more generally, because the conditions relate to community benefit, by notices published online and in selected newspapers in the regions in which the casinos are located.
2. The notices advised that the review would be undertaken in two stages. The initial stage would be exploratory in nature, seeking submissions for a general discussion about the conditions, whether amendment was desirable and, if so, which aspects. If, after the considering the submissions, the Commission formed the view that some amendment of the conditions was appropriate, it indicated that it would formulate specific proposals for amendment on its own initiative, pursuant to sections 139 and 140 of the Gambling Act 2003 (all statutory references are to that Act unless otherwise indicated) and seek submissions on those proposals.

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<sup>1</sup> They included all casino venue licence holders, the Secretary for Internal Affairs, Ministry of Health, several DHBs, gambling harm advocacy bodies, and local authorities.

3. To assist those notified to make submissions, the notices posed the following series of questions which the Commission intended to consider at the first stage of the review:
- (a) As the charitable trust licence conditions appear to have been imposed merely as a result of a competitive process when the venue licences were first issued, should they continue remain in place in 2021 (and beyond)?
  - (b) If they should remain in place, should they be amended to align better with the purpose of the Act, especially section 3(g)?
  - (c) Is consistency in the licence conditions across all six licences desirable or is there a case for each venue having its own bespoke conditions? More specifically:
    - (i) To what extent should conditions differ to reflect differences in the size of individual casinos?
    - (ii) Some licence conditions presently require the contribution to be a percentage of gambling revenue, some require a percentage of net profit and some require a percentage of turnover. Is there a preferable basis for setting percentage based contributions? Specifically, is the "Casino Win" basis, as approved on an interim basis for the Auckland casino, appropriate for other casinos? Would payment based upon Casino Win represent a better alignment with purpose 3(g) of the Act?
    - (iii) If so, what percentage would be appropriate to reflect purpose 3(g) of the Act?
    - (iv) Some licence conditions include a minimum annual contribution irrespective of the percentage calculation. Should such a requirement remain? Should a minimum sum be included in all casino licences?
  - (d) The charitable trusts were established by the casino licence holders. The deeds of trust allow the licence holders to exercise control over significant aspects of the trusts. Should the licence conditions require contribution to new trusts, which are fully independent from the licence holders, in substitution for the current trusts?
4. The Commission received 15 written submissions on the first stage of the review, all from parties to whom the Commission had written directly, or who were associated with them. The public advertising campaign produced numerous views of the notice but no submissions. The notices provided for an opportunity for submitters to lodge submissions in reply. Two submissions in reply were received, both from casino venue licence holders.

## Background to Review

### *Commission's prior decisions*

5. The present review was foreshadowed in several previous Commissions decisions. Some of the background was broadly summarised in two recent decisions involving charitable trust conditions; Decision GC05/19 (**Christchurch Renewal Decision**) which amended the charitable trust conditions in the course of renewing the casino venue licence held by Christchurch Casinos Limited (**CCL**), and Decision GC18/19 (**Auckland Condition Decision**), which varied the charitable trust conditions attached to the casino venue licence held by SKYCITY Auckland Limited (**SCAL**). Both decisions included express references to the continuing intention of the Commission to undertake a nationwide review of the charitable trust conditions and gave notice that the decision in each case should be regarded as interim, pending the result of the planned review.
6. Conditions regarding the funding of a charitable trust were part of all casino venue licences from their initial issue. The original licences, then known as casino premises licences, were issued by the Casino Control Authority ("**CCA**") under the Casino Control Act 1990 (**1990 Act**) between June 1993 (Christchurch) and December 1999 (Hamilton), with the detail of the conditions varying considerably between licences. Much of the role of the CCA was assumed by the Commission on the commencement of the Gambling Act 2003 (**2003 Act**).
7. The Commission's licensing functions under the 2003 Act commenced in July 2004. In 2005, the Commission proposed, on its own initiative under section 139 of the Act, a series of amendments to the casino venue and casino operator licences for the Auckland casino. The licence condition review was intended to update the licences to replace outdated references to the prior legislation and to the Commission's predecessor, the CCA, and to have regard to changed legislative purposes and obligations under the 2003 Act and was consulted on widely.
8. Changes were proposed by the Commission to the Auckland charitable trust conditions in the form of replacement conditions 15, 16 and 17. On 23 December 2005, following receipt of written submissions and an oral hearing, the Commission issued an interim decision on its proposal, setting out a revised set of proposed amendments with reasons<sup>2</sup>. Following receipt of further submissions, the Commission issued a Final Decision on 27 March 2006<sup>3</sup>. In the end, the original condition was replaced by conditions 15 and 16 which remained in that form until amended by the Auckland Condition Decision in 2019. The Commission decided not to alter the basis for calculation of the minimum payment to the trust at that time; the changes made related to publication of successful and unsuccessful applications for grants and some clarification about the operations which were included in the formula.

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<sup>2</sup> See paragraphs 9.1 to 9.12 of the Interim Decision for the relevant parts of the Commission's reasoning. The revised proposal (new conditions 15, 16 and 17) was attached thereto.

<sup>3</sup> See paragraphs 5.1 to 5.6 of the Final Decision for the Commission's final reasoning on the relevant matters..

9. Following the Auckland review, the Commission undertook similar reviews at the other 5 casinos over the following 2 years. Although it noted variations in the minimum contribution formulas specified in each casino venue licence, it decided, as it had in Auckland, to make no change then to the minimum contribution formulas in the decisions relating to the other casinos<sup>4</sup>. Those decisions included indications that the minimum contribution provisions would remain unaltered pending a future nationwide review of those conditions in all casino venue licences.
10. As indicated above, the Commission amended the charitable trust provisions in the course of the Christchurch Renewal Decision<sup>5</sup>. Section 139(1)(b) provides that the Commission's powers of amendment of casino licence conditions may be exercised "on renewing a casino venue licence". The Commission noted that the Christchurch casino venue licence, the first issued by CCA, included an obligation to fund a charitable trust but, unlike all other casino venue licences, contained no minimum funding provision. The historical funding was found to be significantly below that of other casinos (with a single, distinguishable exception). The Commission decided to impose a minimum funding obligation immediately, despite its earlier decision to defer further consideration of charitable trust conditions until it had undertaken a nationwide review. The new obligations (found in conditions 14, 15, 16 and 17 of the Christchurch casino venue licence) were imposed with the agreement of all parties who appeared and were based on the then current Auckland condition 15. In substance, they were to pay to the trust not less than 2.5% of the net profit after tax or \$250,000, whichever is the greater. In addition, if the licence holder failed to pay an additional \$100,000 per annum directly to charitable organisations, the shortfall was required to be paid to the trust as an additional payment. In practical substance, the minimum charitable funding obligation for the Christchurch casino is currently 2.5% of net profit, plus an additional \$100,000.
11. Before the Christchurch Renewal Decision was issued, SCAL applied to amend the Auckland conditions on which the new Christchurch conditions had been based. The amendments proposed that the minimum contribution be based, not on the profits derived from all businesses on the entire casino site, but on a percentage of "casino win" as defined in section 12C of the Gaming Duties Act 1971 (with proposed amendments). The application was intended to allow for the future casino expansion at Auckland, as a result of the New Zealand International Convention Act 2013 (**NZICCA**), and to focus the minimum contribution on money from gambling, rather than non-gambling, activity. In the Auckland Condition Decision, the Commission decided to amend the charitable trust conditions to use a percentage of "casino win" (without amendment), with the imposed percentage calculated to ensure that the contribution would not be reduced from the historical contribution under the former condition.

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<sup>4</sup>Decision GC21/07, 8 October 2007 (Hamilton and Queenstown); Decision GC25/07, 3 December 2007 (Christchurch); Decision GC01/08, 3 March 2008 (Dunedin); Decision GC02/08, 3 March 2008 (Wharf).

<sup>5</sup> Decision GC05/19, 29 March 2019, paras 9.1 to 9.18

It did so on an expressly interim basis<sup>6</sup>, because the present review would potentially include the size of the appropriate future minimum contribution for all casinos.

*Legislative background*

12. In the Auckland Condition Decision, the Commission set out the relevant legislative background that had produced the original charitable trust provisions in each of the 6 casino premises licences in New Zealand and compared it to the 2003 Act.
13. The 1990 Act had different statutory objects from the 2003 Act. They were limited to:
  - (a) promoting tourism, employment and economic development generally;
  - (b) ensuring gaming in casinos was conducted honestly; and
  - (c) ensuring that casino operations remained free from criminal influence or exploitation.

There was no equivalent to the statutory purpose in section 3(g) of the 2003 Act:

“ensure that money from gambling benefits the community”.

14. The CCA was required<sup>7</sup> to consider only the following matters in deciding whether to grant a licence:
  - (a) the standard and nature of the proposed casino and the facilities provided in, or in conjunction, with it;
  - (b) the likely impact on tourism, employment and economic development in the place or region; and
  - (c) the extent to which beneficial ownership will vest in New Zealand citizens or residents.
15. The Authority was authorised<sup>8</sup> to impose conditions, not inconsistent with the provisions of the Act, relating to:
  - (a) completion and operation of the facilities; and
  - (b) approval or supervision of the operating procedures, including the matters set out in the Second Schedule.

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<sup>6</sup> Decision GC18/19, para 4.15.

<sup>7</sup> Section 29 1990 Act. The CCA was also required by section 30 to have regard to a social impact report and to be satisfied that no unduly negative social impacts would result.

<sup>8</sup> Section 32 1990 Act.

A review of the Second Schedule to the 1990 Act indicates that there was no equivalent to item 3 in the equivalent schedule to the 2003 Act (First Schedule), namely:

Arrangements for any contributions to the community

16. The presence of charitable trust provisions in casino venue licences is accordingly not the direct result of any provision of the 1990 Act. As there was no statutory requirement for money from casino gambling to benefit the community, the source of the obligations appears to have been proposals by applicants to secure competitive advantage over other applicants; the original conditions captured one of a number of proposals made in the course of the successful applications.
17. In the course of both the Christchurch Renewal Decision and the Auckland Condition Decision, the Commission compiled, and provided to the parties, comparative tables showing the following significant variations in the different licence conditions:
- (a) one had no minimum contribution (until 2019);
  - (b) the remaining provisions used different percentages of different things;
  - (c) some were based on revenue, others on net profit after tax;
  - (d) most were limited to the casino operation only; Auckland (and now Christchurch) extended to other on-site businesses (until 2019 in the case of Auckland); Dunedin was limited to EGM win turnover (rather than casino win); and
  - (e) some had alternative fixed sum minimums (with Dunedin having a fixed sum maximum as well), while others did not.

An updated comparative table of current conditions was made available to the parties for this review.

**Submissions received**

18. The 15 written submissions received can be conveniently divided into 4 categories – casino venue licence holders, government agencies with some responsibility for gambling regulation, local authorities in the areas where the casinos are located, and gambling harm sector advocates and treatment providers. The submissions received from each category were broadly similar to submissions from others in the same category. The major differences were between the various categories, with the licence holders generally opposed to any change to the minimum contributions, and the other categories seeking changes, albeit with some significant differences between the changes advocated.

*Casino venue licence holders*

19. Submissions were received from SKYCITY Group (**SCG**), which holds 4 of the casino venue licences, and from the casino venue licence holders for the remaining 2 casinos at Christchurch and Dunedin.
20. SCG's submission may be summarised as follows:
- (a) Its casinos contribute to the community in many ways in addition to the contributions required to be made to their charitable trusts, including:
    - (i) As an employer (2800+ employees),
    - (ii) As a customer of around 800 supplier business, who are also employers,
    - (iii) As a developer of NZICC and the Horizon Hotel,
    - (iv) As the owner of an important tourist and leisure destination,
    - (v) Through community sponsorships and charity partnerships,
    - (vi) As a taxpayer, and
    - (vii) As a business which generates earnings for New Zealand resident shareholders.
  - (b) The current conditions should not be removed as they are both adequate and required to satisfy the statutory purpose in section 3(g).
  - (c) While changes are appropriate for Wharf casino, no amendments should be made to the conditions at Auckland, Hamilton and Queenstown casinos. Although the formulas at each casino differ, they were what the original applicants proposed, no proportionality was then required, and the Act does not require proportionality now. There is no justification to depart from the original commitments offered.
  - (d) Casino Win is a sound basis for a minimum contribution requirement but not necessarily the only one. The particular reasons for the change made in Auckland do not apply to Hamilton and Queenstown. Their conditions would only require change if a uniform basis for the same obligation were desirable. However, uniformity would require an unjustified departure from the historical arrangements made on the issue of the licences.
  - (e) Fixed sum minimum contributions should not be imposed invariably and certainly not when no money is being derived from gambling but there is no reason to remove those already in place. Hamilton casino contributions have been substantial without

one. In addition, it expects the level of contribution to vary in accordance with the level of money gambled.

- (f) There is no justification to change the existing charitable trusts. There is nothing to suggest that the current trust deeds have given rise to any problems. While the condition requires that the trusts be “independent”, that term was not defined. It should be sufficient if the trust is a separate legal entity with a majority of the trustees being independent of SCG.
- (g) The licence holders already publish information about the trusts’ distributions and rejected applications.
- (h) The conditions for Wharf casino mean that the minimum contribution requirement has never been triggered in fact but, if the minimum threshold were simply removed, the resulting obligation would be commercially unrealistic. Adoption of the conditions for the other Queenstown casino was suggested in their place.
- (i) Reference was made in reply to the Commission’s adverse comments in the Christchurch Renewal Decision regarding the suggestion that community contributions should be similar for casinos and Class 4 gambling and in Decision GC16/20 to the suggestion that the Act’s purpose in section 3 could be reduced to avoidance of harm and nothing more.
- (j) It supported the publication of enhanced reporting as proposed by the Department for Internal Affairs (**DIA**), noting that greater transparency should adequately address any residual concerns about formal lack of independence,

21. The submissions from Christchurch Casinos Limited (**CCL**) were to the following effect:

- (a) The community benefits of the casino are not limited to money distributed from the proceeds of gambling. They were well summarised in the Casino Impact Report required for the licence renewal application in 2019 and the effect of the renewal decision was to confirm the casino’s “social licence”.
- (b) Consistency of the charitable trust conditions is not required. Individual casino licence conditions should reflect the local community’s views.
- (c) As the casino’s charitable trust conditions were amended 3 years ago on renewal of its licence, the current conditions reflect the community’s views and should be retained without change.
- (d) However, removal of the independent trust (with its attendant costs and delayed distributions) and its replacement with the same discretionary parameters (locally focused with no direct commercial advantage to the casino) applying to the additional

discretionary payments in condition 17 would be justified. The local authority should not be involved in distribution decisions because doing so would add a layer of bureaucracy and cost.

- (e) There is a clear distinction in the Act between casinos and Class 4 gambling; the requirements applying to the latter are neither applicable nor suitable for casinos.
- (f) Submissions which emphasise harm are misfocused.
- (g) Percentage of casino win is not supported as an appropriate basis for the minimum contribution<sup>9</sup>.
- (h) While the casino accepted a fixed sum minimum amount in its revised conditions, there is no need to provide for it to be indexed or periodically reviewed.
- (i) The benefits of independence of the trusts come at too great a cost in the form of administrative cost.
- (j) In reply, it suggested that any change to the conditions should only be made on renewal of the licence<sup>10</sup> and that submitters seeking change had overlooked the requirement to pay Casino Duty and Problem Gambling Levy and it emphasised the differences between casinos and Class 4 gambling.
- (k) The lack of submissions from the general public, in contrast to the public opposition to the proposal to swap table games for EGMs in Hamilton<sup>11</sup>, indicated that there was little public appetite for change.

22. The submissions by Dunedin Casino Management Limited (**DCML**) were broadly as follows:

- (a) The charitable trust conditions should remain as they are, and no amendments are required. There is no need for consistency in the conditions between casinos. They reflect differing circumstances at each casino when they were originally imposed. The status quo is appropriate and there is no need to move to contributions based on casino win.

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<sup>9</sup> No supporting reasoning was given.

<sup>10</sup> In its case, that would mean no sooner than in 12 years' time. Other casinos would be renewed over the next 5 years.

<sup>11</sup> Decision GC16/20, 4 June 2020. But see the Commission's conclusions concerning lack of response in the Christchurch Renewal Decision (GC05/19) at paras 6.47, 6.49 and 6.65.

- (b) There should be no change to the current percentages. The appropriate percentage was fully debated during the Christchurch renewal hearing and, apart from a new additional fund provision, the conditions remained the same<sup>12</sup>.
- (c) It is appropriate that the conditions require distributions only to community and sports funding in Dunedin and the Otago region.
- (d) The current Dunedin condition uses a percentage of EGM only turnover (later clarified by the CCA as the “win”, not “drop” amount) with a maximum of \$110,000. No minimum contribution sums should be set<sup>13</sup>. The current conditions satisfy section 3(g) and have resulted in “enormous benefit” to the community.
- (e) There is no need to update fixed minimum sums because minimum sums should not be required.
- (f) There is no need to increase the current extent of independence. The power to remove and appoint trustees does not give the casino control.
- (g) The Dunedin casino makes other charitable contributions beyond the payments to its charitable trust.

#### *Government Agencies*

23. The department with the primary responsibility for the Act, DIA, submitted as follows:

- (a) The charitable trust contribution conditions should continue. Their purpose is to support the local community because the local community contributes to the casino’s financial returns so is deserving of receiving a portion back<sup>14</sup>. As a result, like those in Christchurch and Dunedin, the conditions should specify the particular “community” which is to benefit by specifying a local catchment area.
- (b) A single formula should be applied across all casinos in order to link the contributions to the scale of gambling activity. Fixed monetary contributions fail to do so and are not supported.
- (c) Casino win is the most suitable basis for the minimum contribution formula.

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<sup>12</sup> This is not an accurate description of the Christchurch Renewal Decision. The Christchurch casino had no minimum contribution prior to renewal. On an interim basis, the Commission imposed the then Auckland conditions (since changed to a casino win basis) plus an additional discretionary charitable donation sum.

<sup>13</sup> The submission did not acknowledge that the Dunedin casino currently has a separate \$52,000 minimum fixed payment provision.

<sup>14</sup> The submission offered no evidential support for the latter contention (which tends to suggest that casinos are not primarily destination venues for national or international tourism).

- (d) Minimum contributions should be required (but with an exception if the casino does not operate) but, as they are expected to apply only exceptionally, there is no need to include an updating mechanism.
- (e) The proportion should be one which ensures that the present contributions are not reduced.
- (f) No issue is taken with the fact that the current trusts were settled by the casino licence holder who holds the power of appointment of trustees because there is nothing to indicate any issue in practice with the governance or operation of the current trusts.
- (g) Several conditions include express preferences for treatment of gambling disorders or the effects of problem gambling. As all conditions predate the Gambling Act and the current statutory requirement for the gambling sector to fund fully the integrated problem gambling strategy developed by the Ministry of Health, such express references are no longer apt.
- (h) In the interests of improved transparency and accountability, licence conditions should impose an obligation to publish on the casino's website, information similar to that required by section 110 of the Act and regulation 13 of the Gambling (Class 4 Net Proceeds) Regulation 2004 in the case of mainly distributing class 4 societies.

24. The Ministry of Health (**MoH**), which has statutory responsibility for the statutory public health programme for problem gambling, also made submissions as follows:

- (a) Despite concern that a significant proportion of gambling expenditure is derived from persons harmed by gambling, the charitable contribution conditions should be retained. They are consistent with section 3(g).
- (b) The conditions should provide a consistent definition of the applicable community (although no particular form or principle for definition was advanced).
- (c) Conditions should require greater consistency and transparency about where grants are distributed, and casinos should be required to publish similar information to what is required of distributing Class 4 societies.
- (d) There should be consistency in the conditions across the country, with conditions requiring a common percentage of the same measure, namely casino win. Doing so would ensure that the contributions scale appropriately for different casinos.
- (e) No specific percentage is suggested (because of the lack of access to casino financial information) but, at a minimum, the percentage should ensure that there is no reduction in the contributions.

- (f) If contributions are set as a percentage of casino win, fixed amount minimum contributions would not be required.
- (g) While independence of the trusts is desirable in theory, there is no evidence of any lack of independence in their operation in the past.

*Local Authorities*

- 25. Submissions were received from Christchurch City Council (**CCC**), which had participated actively in the hearing of the Christchurch Renewal Decision, Hamilton City Council (**HCC**), Dunedin City Council (**DCC**) and Queenstown Lakes District Council (**QLDC**).
- 26. CCC submitted as follows:
  - (a) The Commission is right to review all casino charitable trust conditions as a group. It should endeavour to achieve greater consistency across their community contribution obligations.
  - (b) Casino win is the ideal basis for the minimum contribution obligation. It has the intended alignment with gambling activity (as opposed to other activities in the casino site). Using net profit as a basis is less satisfactory.
  - (c) While submitters lack access to sufficient casino financial information to engage directly on the appropriate percentage, generally speaking, casino contributions should reflect their privileged position – lawful ability to conduct a form of harmful activity without competition – and the present levels of contribution are not sufficient to provide a credible social licence or to satisfy section 3(g).
  - (d) New trusts should be created which are fully independent of the contributing casino with greater public disclosure requirements about their decision-making.
- 27. HCC submitted as follows:
  - (a) A general review of all charitable trust conditions on a group basis in order to achieve some consistency is supported. So is casino win as a suitable basis for minimum contributions.
  - (b) There should be complete independence from the casino operators, requiring either a set of new truly independent trusts or decision making by a public organisation, such as a local council or DIA and involvement of community representatives.
  - (c) Clearer criteria for funding decisions are desirable. Funds should be ring-fenced, for example, for expenditure on gambling reduction and research or high-deprivation communities

- (d) Lack of access to casino financial information precludes consideration of the appropriate proportion of casino win but both the current Auckland percentage (0.7%) and the Hamilton percentage (1.5%) appear too low. While there is a large difference between per EGM contribution in casinos (\$859) and class 4 gambling (\$20,000), the Class 4 situation of dependency by community groups on gambling proceeds should not be replicated in the case of casinos.
- (e) Casino contributions should be required to focus on reduction of gambling harm, including research and conference attendance. To avoid dependency, use of funding to pay salaries and frequent applications should not be permitted and single project funding encouraged.

28. DCC and QLDC made broadly similar submissions to the following effect:

- (a) There should be consistency of charitable trust contribution conditions across the country but lack of access to casino financial information precludes identifying an appropriate percentage.
- (b) The trusts should be completely independent of the casino operators.
- (c) Ideally distributions would be well aligned with community well-being but there is concern about reliance by community groups on funding from gambling proceeds.

29. A submission was received from Andrew Whiley, who is both a DCC councillor and the chair of a non-profit organisation. In summary, he submitted as follows:

- (a) The Dunedin casino trust is well managed, and the funds distributed do a lot of good locally.
- (b) Class 4 gambling distributions similarly provide benefits across the city and, although there are some issues with problem gambling, class 4 operators generally adhere strongly to host responsibility. Class 4 gambling is preferable to unregulated online gambling which produces no community benefit.
- (c) The charitable trust conditions should be varied to require:
  - (i) distributions by the trusts twice a year;
  - (ii) contributions based on 2% of gambling turnover;
  - (iii) professional management of the trusts; and
  - (iv) trustees with strong community reputations.

*Gambling Harm Sector*

30. The principal submission from the sector was made by Salvation Army Oasis (**SAO**). Supporting submissions were made by PGF Group, Anglican Action, New Horizons, and Te Ngira Rōpū (which is associated with the first two bodies listed).
31. Much of the SAO submission advanced matters outside the scope of the review, and even outside the jurisdiction of the Commission, as the following summary indicates:
- (a) SAO opposed the practice of using gambling proceeds to fund expenditure on charitable purposes, arguing that the practice was used to “justify” the harm caused by gambling, to allow gambling operators to portray themselves as “morally upright”, to bolster the social licence for legal gambling, and to create a “morally challenged” dependence by community organisations on the proceeds of a harmful activity. Charitable contributions cannot offset the harm caused by gambling.
  - (b) SAO recognised that the foregoing fundamental objection contradicted the provisions of the Act, specifically section 3(g) (“ensure that money from gambling benefits the community”) but argued that the underlying policy of the Act was flawed because the inclusion of section 3(g) created an inherent tension with other elements listed in section 3, the result of which had the unintended effect of weakening the “public health intent”, which was otherwise apparent in the Act.
  - (c) Rather than reviewing the charitable trust conditions, the Commission should review the casino HRP conditions, specifically to include a regular independent evaluation of the HRPs. The current HRPs were inadequate, because they were based on flawed assumptions of responsible gambling<sup>15</sup>, did not contain several passive gambling reduction measures (which SAO outlined) and the regulators showed no interest in evaluating and improving them. 48% of all gambling harm suffered was borne by low-risk gamblers and problem gamblers accounted for only 18.4% of all harm suffered<sup>16</sup>.
  - (d) If the Commission neither abandoned the review nor removed licence conditions which required financial contribution to community benefit:
    - (i) the revised conditions should be consistent across all casinos;

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<sup>15</sup> Unlike the earlier reference to section 3(g), the submission did not recognise the conflict between the submission and section 3(d) (“facilitate responsible gambling”).

<sup>16</sup> Citing *Measuring the Burden of Gambling Harm in New Zealand*, MoH, 2017. However, the Commission notes that the study itself recognised the lack of a universally accepted definition of harm, that it includes socially constructed elements and that gambling harm effects can be difficult to isolate because of the common prevalence of other contemporaneous events.

- (ii) it lacked sufficient financial information about the casino operations to suggest an appropriate level of contribution;
  - (iii) the trusts should be completely independent of the casino operators;
  - (iv) casino branding and sponsorship should not be allowed to be associated with the trusts (to reduce the moral jeopardy);
  - (v) a single national trust would provide efficiency benefits and enhance separation from casinos; and
  - (vi) financial contribution should be directed to funding the independent evaluation of the casino's HRP.
32. PGF Group adopted SAO's submission generally, specifically endorsing the opposition to gambling proceeds funding charities and advocating the application of gambling proceeds to studying gambling harm.
33. Te Ngira Rōpū, which is associated with both SOA and PGF Group, also opposed "charitable gambling", because it created moral misconceptions, because the funding does not undo the harm caused by gambling and because gambling receipts are regressive (as gambling is most prevalent in lower income households); it said the Commission should be focused on harm, not community benefit. However, while saying that the gambling harm workforce does not want to receive any part of the proceeds of gambling and that the full cost of the mitigation of gambling harm should be borne by gambling operators through the problem gambling levy (and not funded by charitable gambling), it recognised that the charitable funding by casinos supported many worthy causes.
34. Anglican Action echoed concern about the dependency of community organisations on contributions from gambling operators which can result in community organisations opposing gambling harm reduction measures. It suggested that the level of contributions should be raised from 1.5% (presumably a reference to the Hamilton casino) to 40% of net proceeds (to match class 4 gambling operators) and the funding should be directed at ameliorating the effects of problem gambling.
35. New Horizons, a trauma counselling organisation, said that the level contribution by Hamilton casino was too low for the harm that it caused<sup>17</sup>.

### *Summary*

36. Apart from the harm sector, which expressed strong ethical opposition to the idea of money from gambling supporting community benefit, all submissions supported continuation of

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<sup>17</sup> As Hamilton casino appears to be the greatest relative contributor among the casinos, its specific mention presumably reflects the organisation's location.

licence conditions requiring financial contribution to the community. However, while the casino sector generally<sup>18</sup> opposed any material change to the current conditions, the submissions from all other sectors, even the harm sector, supported substantive changes. Among those sectors, there was uniform support for consistency of conditions, use of a percentage of casino win as the basis, increased requirements for publication of distribution decisions and at least no reduction in the current levels of contribution.

37. The differences between those advocating change for consistency were in the areas of the need for additional formal independence (supported by the local authorities and the harm sector, not the government agencies) and the priorities for distribution (the local authorities and harm sector supported special preference for gambling harm research and treatment, but the government agencies did not in the light of the statutory public health programme funded by the industry). The local authorities and the harm sector sought higher contributions in substance than were presently required. There was mixed support for a focus on local benefit (DIA and local authorities) or nationally focused distribution (MoH, SAO).

#### **The issues**

38. The following issues for consideration arise from the Commission's notice and the submissions received:
- (a) **Continuation** (whether to retain such conditions at all): The harm sector generally submitted that money from gambling should not be used to benefit the community because the community benefit is used both to justify the authorisation of gambling, an inherently harmful activity, and to allow gambling operators to position themselves as good citizens. Community benefit also creates moral jeopardy for the beneficiaries through growing dependence. Some of those submissions recognised their fundamental inconsistency with the provisions of the Act. However, although such submissions would logically support a minimal level of monetary community benefit, some advocated an increase in the present contribution levels and none directly advocated a reduction. All other sectors supported retention of the conditions as being required by section 3(g).
- (b) **Uniformity**: There was a fundamental division in the submissions whether a degree of uniformity or consistency between the contributions from casinos was desirable. The casinos opposed steps to make the conditions consistent (emphasising that the differences arose as a result of licence applicants being willing to accept different commitments, implicitly without assumption of future revision); all other submitters supported consistency. The casinos generally supported no change at all; the other

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<sup>18</sup> The clear exception was Wharf casino, for which the licence holder proposed substantial change, but others also made submissions inconsistent with current features of their licence conditions.

submitters generally supported change with a view to achieving a degree of uniformity.

- (c) **Basis:** Consistent with their opposition to change to achieve uniformity, the casinos opposed making the basis of minimum contribution a percentage of casino win but did not otherwise raise any specific reason why casino win would be unsuitable. No submitter advanced an alternative basis as preferable (apart from retention of the status quo). While SCG proposed a change for Wharf casino, it suggested adoption of the Queenstown conditions (a profit percentage but modified to remove the minimum sum), rather than the current Auckland provisions (a casino win percentage with minimum fixed sum), but advanced no supporting reasoning for the choice.
- (d) **Amount:** The submissions varied the most in this area, ranging from no condition change (the casinos) to 40% of net gambling proceeds to match class 4 gambling operators (Anglican Action), with the points in between ranging from not less than the present contribution through to 2% of casino win. Casinos generally supported retaining existing fixed sums but opposed introducing new fixed sums. Other submitters generally supported minimum fixed sums but some submitted that, if percentage of casino win were adopted, fixed sums would be unnecessary.
- (e) **Independence:** Local bodies and the harm sector sought changes to require greater formal independence of the trusts, with the casinos and government agencies opposing change as not warranted by experience. It became apparent that there had been little focus on the differences between what the current trust deeds provided and that there were apparent differences between casinos concerning the meaning of “independent” and whether any degree of independence should be required. There was some support, within both casinos and government agencies, for greater transparency as the best means of addressing concerns about lack of formal independence and little specific opposition to enhanced and consistent requirements to provide information publicly on distribution decisions.
- (f) **Distribution:** As the casinos generally did not support any change to conditions, no changes to aspects of the conditions that related to the recipients of distributions were advanced. Dunedin and Christchurch casinos and DIA supported retention of localised benefit. Others suggested a more national perspective was appropriate. There was a major division in preferred distribution requirements between the harm sector who advocated a direction to divert distributions to gambling harm research and treatment (implicitly supporting retention of such conditions in those casinos which had them) and the government agencies which submitted that the latter were now outdated by the statutory problem gambling levy and the public health response to problem gambling which it funds (with some implicit support from the casinos who referred to the problem gambling levy).

## **Analysis of issues**

### *Continuation*

39. The Commission started by addressing the issue of continuation before considering other issues. It quickly concluded that removal of the conditions was not justified.
40. The Act contains nothing capable of supporting the harm sector submissions on the undesirability of money from gambling being used to benefit the community. The submissions raised substantive policy objections to a policy which, in the Commission's view, Parliament must be taken to have adopted in enacting the 2003 Act, a matter which was at least partially recognised by SAO which advanced the most comprehensive objection.
41. A decision to remove all conditions requiring financial benefit to the community from the proceeds of gambling would be inconsistent with the provisions of the Act. Removal would amount to a variation that did not meet the requirements of section 139(2); it would be directly inconsistent with section 3(g) without achieving any other aspect of section 3. The Commission does not intend to advance such a proposal.

### *Uniformity*

42. Whether to retain existing differences between the conditions at each casino or to amend them to produce a degree of national consistency was the most contentious issue between the parties.
43. The casino operators argued that the charitable trust obligations imposed by the CCA on the issue of the licences should be maintained unchanged either in perpetuity (by implication) or possibly until renewal of the licence, the latter position being advanced expressly by CCL (without acknowledging that its own recent licence renewal was on terms expressly reserving the possibility of further change in the light of the outcome of the present review). Despite the generally expressed opposition to change, the Commission noted that the following changes were advocated by licence holders in their submissions:
- (a) A change to the Wharf casino conditions on the basis that the current conditions effectively removed the obligation to contribute and would be unworkable if the immediate constraint were removed (SCG).
  - (b) Removal of minimum fixed payments if the casino were not in operation (SCG).
  - (c) Enhanced reporting was supported as an answer to concerns about independence, the requirements for which seemed to be neither clear nor consistently observed among casinos (SCG).
  - (d) Removal of the need for independent trusts, because of cost concerns, in favour of a discretion for charitable giving decisions being exercised directly by casinos (CCL).

- (e) Removal of all fixed sum minimums (DCL).
44. The casinos generally argued for continuation of the status quo on the following grounds:
- (a) The original conditions reflect what the applicants were willing to offer at the time. The observation implies that it would be wrong to make changes which are inconsistent with the original offers.
  - (b) Neither the 1990 Act nor the 2003 Act expressly require consistency or uniformity between the financial community contribution obligations imposed on casinos.
  - (c) The conditions should reflect community views and the lack of public submissions indicates community satisfaction with the status quo.
45. The Commission noted that, in fact, the original charitable trust conditions have been amended since the 2003 Act came into force. The initial changes between 2005 and 2007 included additional public reporting on distribution decisions (which the casinos generally opposed) and the removal of some oversight controls (which they sought). Major substantive changes were made in 2019 in the Christchurch Renewal Decision. A substantial change was made to the Auckland casino conditions later in 2019 (on SKYCITY's application) and further amendments were made to the CCL conditions on its application in 2021. However, although history demonstrates that the original conditions should not be regarded as immutable, apart from the substantive amendments made on the Christchurch Renewal Decision, the Commission has not changed the effective minimum contribution amount for any casino.
46. It is correct that neither the 1990 Act nor the 2003 Act contain any provision requiring uniformity of charitable trust conditions. The former did not address such conditions at all and although the latter contains no express requirement for uniformity or consistency, it contains nothing to discourage them either.
47. As to the last ground, the Commission remains of the view, expressed in the Christchurch Renewal Decision, that a lack of public submissions should usually be taken to indicate neutral views by members of the general public, not support for the status quo<sup>19</sup>. As matters transpired, the adequacy of the charitable trust conditions was a major issue for the parties to the Christchurch Renewal Decision and it resulted in a substantial amendment to the CCL conditions.
48. Against that background, the Commission next considered whether it should now embark upon a co-ordinated series of proposals to achieve uniformity across all casinos at the same time and concluded that it would not do so for the reasons set out below.

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<sup>19</sup> See the conclusions concerning lack of response in the Christchurch renewal decision (GC05/19) at paras 6.47, 6.49 and 6.65.

49. The original community benefit conditions were the result of substantive hearings conducted by the CCA. The resulting conditions were a product of what the applicant was willing to offer under the pressure created by the individual CCA hearings, which might include competitive applications and public opposition to the grant of a licence.
50. The Commission's experience of the Christchurch Renewal Decision has led it to conclude that renewal applications create an excellent opportunity for public engagement, under the pressure of a renewal decision, on the question of whether the obligation imposed by the original licence continues to be appropriate on renewal and, if not, whether a new condition should take into account a hindsight assessment of the adequacy or otherwise of past contributions. In that case, the result was not only an increased obligation; it was one that was set in part by reference to another casino's existing conditions but involved the imposition of additional obligations over and above those imposed on the other casino. The conditions imposed in the Christchurch Renewal Decision demonstrate that, for comparative historical reasons, present uniformity may not necessarily be appropriate now or in the medium future.
51. For those reasons, the Commission considers that, rather than undertaking a co-ordinated set of uniform amendments to all casino venue licences now, the better course is to address casinos individually and that, as a general rule, the best time to do so is on renewal. Most of the casino venue licences are expected to be the subject of renewal applications over the next few years. The Commission has already given the initial approvals for the production of the Casino Impact Report for the renewal of the Dunedin casino venue licence.
52. To date, only the Christchurch casino venue licence has been renewed and, on renewal, the charitable trust condition was amended to increase the community benefit obligation significantly. However, in doing so, the Commission noted that the present review was anticipated and indicated that the condition then imposed was subject to being revisited in the light of subsequent events. In addition to this review, subsequent events have included a fundamental change in the basis of the Auckland conditions on which the 2019 Christchurch conditions were based.
53. In the circumstances, the Commission intends to issue a proposal to amend the CCL conditions to reflect the subsequent change made in the Auckland Condition Decision. Interested parties will be able to make submissions on that proposal and any other relevant matters, such as CCL's suggestion, generally opposed by other parties to the review, that the requirement for a charitable trust should be disposed of in favour of direct community donations from the casino.

*Basis and amount*

54. The differences in the submissions on basis and amount reflected the positions taken on uniformity discussed above and, in the light of the decision not to undertake a co-ordinated set

of uniform amendments, but to leave considerations of future basis and amount largely to anticipated renewal applications, the Commission will limit its observations on these subjects.

55. Although percentage of casino win as an appropriate basis was supported by all other submitters, the licence holders' opposition to changing the basis for the minimum appeared to be primarily the result of an objection in principle to any change to the obligations originally opposed. None advanced any particular reason why a percentage of casino win, the basis sought and granted in Auckland in 2019, should not be adopted more widely. No specific submissions were advanced to justify retention of the current provisions which do not use casino win or equivalent. The Commission expects those issues to be addressed in applications or proposals in the future.
56. The Commission noted submissions that, if a proportion of casino win (or another gambling revenue-based amount) were adopted, the case for retaining fixed minimum amounts, to prevent profit minimisation reducing the community benefit, would likely be reduced. If percentage of casino win were adopted, some contribution would always be required if any gambling occurred, but no contribution would be required if no gambling took place (as SCG proposed).
57. The Commission similarly expects submissions on what might broadly be termed amount, whether a percentage of something or fixed minimum or maximum amounts, to be the subject of submissions on applications or proposals in the future.
58. Notwithstanding that decision, the Commission considers that it should address the submission that casinos should pay 40% of net gambling proceeds to match Class 4 gambling. The same proposition has been rejected by the Commission previously<sup>20</sup> for the reasons set out in that decision. It is rejected again as the submission was advanced without reference to its earlier decision and no new or alternative reasoning was advanced in submissions to require reconsideration of that view.

*Independence, disclosure, and distribution*

59. Limited aspects of these issues can be considered separately from the more contentious issues relating to basis and amount, which the Commission prefers, at present, to leave to renewal applications. The Commission has decided that only a co-ordinated proposal regarding publication of information would be appropriate, with other matters better dealt with in the course of anticipated renewal applications. That includes such issues as whether conditions requiring contributions to be applied to funding gambling research or treatment should be retained (or new conditions imposed) despite the problem gambling public health programme which MoH is required to create and operate, and which is fully funded by the licensed gambling sector through the problem gambling levy.

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<sup>20</sup> See Decision GC 05/19, paras 9.17, 9.18.

60. The point was well made by SCG that, while all conditions<sup>21</sup> refer to an independent charitable trust, the conditions neither define, nor provide guidance on what constitutes, “independent” in the context of the conditions. It advanced a view that the description should be regarded as satisfied if the trust were a separate entity from the casino and a majority of the trustees were independent of the casino (arguing that its powers of appointment and removal should not otherwise be a concern). Other casinos did not address the meaning of “independent” directly. In a related vein, DIA and MoH submitted that the conditions should ideally define the relevant community. In the Commission’s view, these matters are best left, for the time being, to future renewal applications.
61. The licence holders and DIA pointed to the lack of any indication that the operation of the existing trusts had given any cause for concern, suggesting that the concerns expressed by the other parties are theoretically based, rather than based in real operational outcomes. In that regard, both DIA and SCG suggested that theoretical concerns about independence might be adequately addressed by increased levels of public disclosure of distribution decision making and operation of the trusts. In essence, they argued that such disclosure might achieve the desired accountability for distribution decisions just as well as more theoretically independent arrangements.
62. While the Commission considers that final decisions on that issue are ultimately best left to future renewal applications, it sees merit in the interim in the proposals advanced by DIA and MoH that the Commission should impose, by amended licence conditions, similar public reporting requirements as are required for mainly distributing Class 4 societies. SCG supported the proposal and no casino raised objection to that level of disclosure. As noted earlier, public disclosure requirements have been amended in the past and it can see no reason not to revisit their adequacy on a collective basis.
63. In the circumstances, the Commission intends to advance a co-ordinated proposal limited to that change on which interested parties may make submissions. If imposed before the renewal applications are heard, the issue of formal independence would be considered against the background of that change.

### **Decision**

64. As indicated at the outset, the initial phase of the review has not resulted in a decision which has the effect of changing any casino venue licence condition. In the course of the review, however, the Commission made the following decisions concerning the steps that will follow:
- (a) Apart from the amendment described in (b) below, it will not propose co-ordinated amendments to the charitable trust licence conditions for the six casinos in order to

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<sup>21</sup> Except for Christchurch which named an existing trust.

achieve uniformity. Instead it intends to address each casino's charitable trust licence conditions individually, initially in the course their venue licence renewal applications.

- (b) It will propose co-ordinated amendments to the charitable trust licence conditions for the six casinos with a view to requiring them to increase the amount of information which they are required to report publicly on the operations and distribution decision making of their associated independent charitable trusts.
- (c) It will propose to amend CCL's charitable trust licence conditions to reflect the changes made by the Commission to the charitable trust licence conditions for the Auckland casino (decision GC18/19).



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Lisa Hansen  
Chief Gambling Commissioner

for and on behalf of the  
Gambling Commission

23 September 2021

