

GAMBLING COMMISSION



REPORT OF THE GAMBLING COMMISSION FOR THE YEAR ENDED 30 JUNE 2005

Presented to the House of Representatives pursuant to section 229 of the Gambling Act 2003

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The Minister of Internal Affairs

I have the honour to forward the report of the Gambling Commission (the “Commission”) for the year ended 30 June 2005.

Peter Chin
Chief Gambling Commissioner

INTRODUCTION

By Chief Gambling Commissioner

I am pleased to present to you my second annual report as Chief Gambling Commissioner for the period 1 July 2004 to 30 June 2005.

This report covers the Commission’s first full year of operations. The Commission takes its mandate from the Gambling Act 2003 (the “Act”) and on 1 July 2004, commenced its core licensing and appeal functions. Over the last year, the Commission has dealt with a broad range of applications from casino licence holders, in particular, and appeals from gaming machine operators. It has been required, in exercising its jurisdiction, to interpret and apply key provisions of the Act for the first time.

The effective delivery of its functions, and forging the reputation of the Commission as an independent and respected judicial body, have been central to the work of the Commission.

Peter Chin
Chief Gambling Commissioner

REPORT ON ACTIVITIES

Establishment of Commission

The Commission was established by section 220 of the Act. The Act provides that the Commission shall comprise of up to five Commissioners, including the Chief Gambling Commissioner.

In March 2004, four Commissioners were appointed, being Paul Stanley, Mary Lythe, Mark Ford and Peter Chin, as Chief Gambling Commissioner. The fifth Commissioner, Graeme Reeves, joined the Commission in June 2004.

The duties and functions of the Commission are set out in Appendix 1 to this report.

2004/05 Year in Review

The Commission assumed its core casino licensing and appeal functions on 1 July 2004. In support of its functions, the Commission has finalised policies and procedures relating to its operations and hearing procedures. These are available on the Commission’s website, established in the year under review.

In the period 1 July 2004 - 30 June 2005, the Commission made 19 decisions on applications by casino licence holders to amend licence conditions and obtain approvals under licence conditions. It has also determined a reference by the Secretary of Internal Affairs, in which the advice of the Commission was sought as to whether a proposed change to game rules for Pontoon and Baccarat would constitute an increase in opportunities for casino gambling, which is prohibited under section 11 of the Act.

The Commission, sitting as a Division, decided two appeals from gaming machine operators. The Commission is required to sit as a Division, comprising three Commissioners (including the Chief Gambling Commissioner), to determine appeals.

Under section 139 of the Act, the Commission can, on its own initiative, specify, vary and revoke licence conditions. The Commission has initiated a general review of licence conditions for all casinos, with the aim of updating and amending conditions to ensure they better reflect the new Act. The Commission has consulted informally with a range of stakeholders in developing proposed amendments, including casino operators, the Department of Internal Affairs, the Ministry of Health and problem gambling service providers.

Following on from this informal consultation process, the Commission will, in 2005/2006, formally initiate amendments to the licence conditions for SKYCITY Auckland casino under section 139 of the Act, with affected parties having the opportunity to make submissions on the Commission’s proposals. The Commission will then proceed to review the licence conditions for the other five casinos.

Applications by Casino Licence Holders

Casino operations in New Zealand vary considerably in size and scope:

CASINO	No. of tables	No. of gaming machines
Auckland	110	1,647
Christchurch	35	506
Hamilton	23	339
Dunedin	12	180
SKYCITY, Queenstown	12	86
Wharf, Queenstown	6	74

SKYCITY Auckland dominated in terms of the number and complexity of applications put before the Commission, reflecting the fact that Auckland is the largest casino, and has undertaken substantial alterations to its premises (and associated changes to floor layouts) in recent years, requiring Commission approvals. Applications received related variously to the designation of new gambling areas, approval of revised floor layouts and game mixes, the construction of smoking decks and new facilities, establishment of cashiering facilities, and applications relating to the relocation of ATMs and the installation of additional EFTPOS terminals.

Other applications received from Queenstown Casinos Limited, Dunedin Casinos Limited and SKYCITY Hamilton Limited related variously to approval for smoking decks, revised floor layouts, and designation of the gambling area at Queenstown.

Appeals to the Commission

The Commission determined two appeals from gambling operators. The first appeal was against a decision of the Secretary of Internal Affairs not to amend an operator’s licence. The second appeal was against a decision of the Secretary to cancel a venue licence. The Divisions of the Commission hearing the appeals allowed both.

In the first decision GC06/05, the Commission found that a gambling operator that “mainly distributes” profits from its gaming machines to the community can seek to amend its licence so that it can also “apply” profits. The terms “apply” and “distribute” equate with licence holders using proceeds for their own approved purposes on the one hand, and giving them away to others to use for approved purposes, on the other. While the Commission found that the operator in question could apply, as well as distribute, the Commission noted that the operator must still distribute at least 37.12% of its GST exclusive gross profits. If it applies any profits, they must be in addition to the 37.12% distributed.

In the second decision, GC10/05, the Commission determined that the “place” in respect of which a gambling venue licence had been issued was the mall in which the venue was located, rather than being location specific. As a consequence, when the venue moved to a different part of the mall, it was able to take the benefit of “grandfathering” rights, avoiding the need to obtain the consent of the territorial authority for a new venue.

A list of all the decisions made by the Commission in the year under review is attached as Appendix 2.

SKYCITY Auckland Limited Declaration Proceedings

In deciding the applications put before it by casino licence holders, the Commission had to interpret and apply new provisions of the Act for the first time. In particular, the Commission was required to consider closely the purposes of the Act, and sections 11 and 12, which prohibit increases in opportunities for casino gambling. It is the Commission’s view that the purposes of the Act and these provisions signal a fundamental departure from the regulatory regime which previously applied to casinos under the Casino Control Act 1990. That Act centred on ensuring that casinos were properly and fairly run, and delivered economic and tourism benefits to New Zealand. Under the new Act, gambling activity itself is the focus of attention, with key drivers being to ensure that opportunities for gambling are not increased, harm is minimised, and benefits are delivered back to the community.

The Commission’s approach to sections 11 and 12 is to consider the potential for increase, and all relevant factors, on a case-by-case basis, and to make a judgement, in the round, as to whether an increase arises. Using this approach, the Commission did not find in any proposal put before it that an increase would arise.

The Commission rejected arguments presented by SKYCITY that Parliament intended sections 11 and 12 to be interpreted restrictively, with the Commission’s consideration being limited to increases in the number of gaming tables, machines, or places at gaming tables. Other factors may also be relevant in determining whether there is an increase in opportunities for casino gambling, for example, changes in the mix of table games and the introduction of electronic versions of table games may increase the level of wagering opportunities available to patrons, potentially requiring an offset.

SKYCITY Auckland Limited has sought a declaration from the High Court as to the appropriate legal interpretation and scope of sections 11 and 12. The Commission is, at the request of the High Court, participating in these proceedings. The Commission takes the view that there are benefits in having the High Court consider and resolve at this early stage the interpretation of sections 11 and 12, which are key provisions for the Commission in the exercise of its functions. It is anticipated that the proceedings will be completed within the 2005/2006 year.

Appeal of Commission Decision

SKYCITY Auckland Limited has also appealed a decision of the Commission GC02/05, relating to floor layouts at the SKYCITY Auckland casino. The appeal is limited to the Commission’s decision that Touchbet Roulette and Rapid Roulette (which are electronic versions of roulette) are “gaming machines” as defined in the Act. The Secretary of Internal Affairs has replaced the Commission as respondent in the appeal, given his central interest in the outcome of the proceedings, and the Commission has a watching brief only.

Problem Gambling Strategy

In July 2004, the Commission reported to Ministers on the Integrated Problem Gambling Strategy and the proposed Levy (one of the Commission’s functions). Commissioners have kept abreast of the development of the Strategy since that time. In March 2005, the Commission was updated by the Ministry of Health on changes to the Strategy and Ministry’s funding plan.

Future Directions

The primary focus of the Commission in 2005/2006 will be the following activities:

- the effective discharge of its licensing and appeal functions;
- completing the review of the casino licence conditions for SKYCITY Auckland casino and initiating a review of licence conditions for one or two other casinos;
- completion of the declaration and appeal proceedings relating to the Commission; and
- keeping the Minister informed of developments relating to the Commission’s functions.

Administration

Under the Act, the Commission has no power to acquire, hold or alienate property, or to employ people. Instead, the Act requires the Department of Internal Affairs to service the Commission, by arranging the administrative services necessary for the Commission to perform its functions. The Commission is funded from the Department’s vote, but is functionally independent. The Commission’s annual budget for 2004/2005 was \$925,325. This figure was under-spent for the year by \$70,000.

The Act requires the Commission to make decisions independently of the Minister and the Secretary. Staff allocated to perform administrative services for the Commission are, for this reason, required to be separated, physically and operationally from other staff responsible for policy, licensing and compliance concerning gambling.

The Department established a stand-alone office in Auckland in May 2004 and (in consultation with Commissioners) appointed an Executive Director of the Commission. The offices are up and running, and two additional staff have been employed.

Commission Meetings

The Gambling Commission met 12 times during the year under review: 19 July, 20 August, 13 September, 22 October, 19 November, 15 December 2004, 24 January, 11 February, 9 March, 8 April, 18 May and 17 June 2005. Divisions of the Commission met on 9 March and 8 April 2005 to determine appeals before the Commission. Commissioners Lythe, Stanley and Reeves attended a forum of Australasian Gambling Regulators on 20 April 2005 in Wellington.

COMMISSION MEMBERS

Peter Wing Ho Chin
Chief Gambling Commissioner
Mayor of Dunedin
Barrister and Solicitor
Appointed 1 March 2004
Term expiring 1 March 2007

Kenneth Mark Ford
Chief Executive
Auckland
Appointed 1 March 2004
Term expiring 1 March 2007

Mary Manson Lythe
Training Manager
Auckland
Appointed 1 March 2004
Term expiring 1 March 2007

Paul Joseph Stanley
Lecturer
Tauranga
Appointed 1 March 2004
Term expiring 1 March 2007

Graeme Leonard Reeves
Barrister and Solicitor
Wellington
Appointed June 2004
Term expiring June 2007

CONTACT DETAILS
FOR THE COMMISSION

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Shortland Street
Auckland
Tel: 09-300 1113
Facsimile: 09-300 1118

Heather Harris
Executive Director

APPENDIX 1

Duties and Functions of the Commission
under the Gambling Act 2003

The Commission is an independent decision-making body with the powers of a Commission of Inquiry. Its functions are wide-ranging, and include the following:

- considering and determining applications for casino operators’ licences and the renewal of casino venue licences (the first of the existing six venue licences expires in 2019)
- approving agreements and changes to agreements between casino operators and casino venue licence holders
- specifying, varying and revoking casino licence conditions
- considering and determining appeals against regulatory and licensing decisions made by the Department of Internal Affairs in respect of class 3 and class 4 gambling. Class 3 gambling involves prizes of more than \$5,000, but does not take place at a casino or involve gaming machines. Class 4 gambling relates to non-casino gaming machine operations
- considering and dealing with complaints about the way the Department has handled complaints in relation to class 4 gambling
- advising Ministers and facilitating consultation on the setting of the Problem Gambling Levy
- advising the Minister of Internal Affairs on matters relating to the performance of the Commission’s functions and the administration of the Act, either at the Minister’s request or on its own initiative.

In exercising these functions, the Commission has wide powers to determine its own procedure, to engage experts and to receive wide evidence. It considers all matters before it – licensing matters or appeals – afresh, and makes independent decisions.

The exercise of the Commission’s functions is guided by the purposes of the Act, which sets a new policy framework distinct from earlier legislation. The purposes of the Act include:

- controlling the growth of gambling
- preventing and minimising the harm caused by gambling including problem gambling
- authorising some gambling and prohibiting the rest
- facilitating responsible gambling
- ensuring the fairness and integrity of games
- limiting opportunities for crime and dishonesty associated with gambling
- ensuring that money from gambling benefits the community
- facilitating community involvement in decisions about the provision of gambling.

APPENDIX 2

Decisions of the Commission: 2004/2005

Decision		Status
GC01/04 22 October 2004	Application by SKYCITY Auckland Limited (“SCAL”) to designate the VIP Members’ Room as gambling area	Approved
GC02/04 22 October 2004	Application by SCAL for the construction of new facilities for the VIP Members’ Room	Approved
GC03/04 22 October 2004	Application by SCAL to establish a cashiering facility on the main gaming floor	Approved
GC04/04 22 October 2004	Application by Queenstown Casinos Limited (“QCL”) for specification and variation of conditions of casino venue licence	Approved
GC05/04 7 December 2004	Application by SCAL to designate gambling area	Approved
GC06/04 2 December 2004	Application by Christchurch Casinos Limited (“CCL”) to approve construction of smoking areas	Approved
GC07/04 22 December 2004	Application by Dunedin Casino Limited (“DCL”) to approve construction of a smoking area	Approved
GC01/05 3 February 2005	Application by QCL relating to a revised floor layout	Approved
GC02/05 8 February 2005	Application by SCAL relating to revised floor layouts	Approved
GC03/05 24 February 2005	Application by SCAL to construct a smoking deck and wind lobby	Approved
GC04/05 9 March 2005	Application by CCL for temporary change to game mix	Approved
GC05/05 15 March 2005	Application by SCAL for approvals for changes to the gambling area	Approved
GC06/05 9 March 2005	Appeal by Prime Community Trust	Allowed
GC07/05 29 April 2005	Application by SKYCITY Casino Management Limited (“SCML”) and SCAL relating to ATMs	Approved
GC08/05 22 April 2005	Application by SCML and QCL relating to an additional EFTPOS terminal	Approved
GC09/05 26 April 2005	Application by SKYCITY Hamilton Limited to revise floor layouts	Approved
GC10/05 26 April 2005	Appeal by New Zealand Community Trust	Allowed
GC11/05 22 April 2005	Application by SCAL to modify cashiering facility at SKYCITY Casino Auckland	Approved
GC15/05 23 May 2005	Application by SCAL to revise floor layouts	Approved
GC16/05 29 June 2005	Application by SCML for approvals relating to EFTPOS terminals	Approved
GC17/05 4 July 2005	Decision on a Reference by the Secretary of Internal Affairs to the Gambling Commission relating to game rules	Approved
GC19/05 29 June 2005	Application by SCAL to extend the period during which Touchbet can be operated as a table game	Approved