

**INTRODUCTORY NOTE TO MINISTER OF INTERNAL AFFAIRS  
ON THE GAMBLING COMMISSION  
OCTOBER 2017**

**1. EXECUTIVE SUMMARY**

- 1.1 The Gambling Commission (the “**Commission**”) is an independent decision-making body with the powers of a Commission of Inquiry. It was established under the Gambling Act 2003 and came into operation fully on 1 July 2004.
- 1.2 The purpose of the Act includes controlling gambling growth, preventing and minimising harm caused by gambling, and facilitating responsible gambling. There are six New Zealand casinos. Control of the growth in gambling is achieved by prohibiting any new casinos (giving existing operators exclusivity) and prohibiting increases in gambling opportunities at the existing casinos.
- 1.3 The Commission makes decisions on proposed amendments to casino licence conditions and grants approvals under licence conditions. The Commission is required to ensure that licence conditions are consistent with the Act and can initiate changes to conditions to achieve this.
- 1.4 The Commission also considers appeals from what is known as the “Class 4” sector. This sector comprises (non-casino) gambling that takes place in pubs and clubs (in the form of pokie machines). Under the Act, Class 4 operators can appeal to the Commission licensing and enforcement decisions taken by the Secretary for Internal Affairs.
- 1.5 Over the past 25 years, New Zealand’s gambling sector has changed dramatically and experienced rapid growth.

**2. COMPOSITION OF COMMISSION**

- 2.1 The Commission has five members appointed by the Governor-General, upon the recommendation of the Minister of Internal Affairs:

The Chief Gambling Commissioner is **Graeme Reeves**, who is a Wellington lawyer and former MP. The other Commissioners are:

- Lisa Hansen, a Wellington barrister;
- Russell Bell, an accountant and consultant from Whanganui;
- Donna Matahaere-Atariki, a consultant from Dunedin; and
- Wendie Harvey, a professional director and business consultant from Hawke’s Bay.

- 2.2 Commissioners Reeves, Bell and Harvey have been appointed until August 2018, Commissioner Hansen until December 2019, and Commissioner Matahaere-Atariki until June 2020.
- 2.3 The Commission is supported by an Auckland-based Secretariat comprising two staff.

### **3. ROLE OF THE MINISTER IN RELATION TO THE COMMISSION**

- 3.1 The role of the Minister is limited to making recommendations to the Governor-General on the appointment of Commissioners. The Act specifically requires that the Commission make its decisions independently from the Minister and the Secretary.
- 3.2 The Commission provides advice to the Minister on the Commission's functions and the administration of the Act, either on the Commission's own initiative or at the Minister's request.

### **4. ROLE AND FUNCTIONS OF THE COMMISSION**

- 4.1 The Commission's functions are set out in full in Appendix A to this paper. They include:
- (a) Specifying, varying or revoking casino licence conditions either on an application by the licence holder or Secretary, or at its own initiative. The Commission also decides applications by operators for approvals under licence conditions, for example, for new floor layouts, extensions or changes to the gambling area in the casino, or the addition of new cashiering facilities.
  - (b) Acting as an appeal authority for licensing and enforcement decisions taken by the Department in relation to gaming machine operations and other non-casino gambling. If, for example, a licence holder loses its licence, it can appeal to the Commission, with an appeal acting as a "stay" of the Department's decision.
  - (c) Serving as an investigative and advisory body to the Minister.
- 4.2 The Commission also reports to the Minister of Internal Affairs and the Associate Minister of Health on a Problem Gambling Strategy developed by the Ministry of Health, and the levies to be imposed on industry to pay for implementation of the Strategy.
- 4.3 The Commission's policies and procedures are available on its website, as are copies of all decisions made by the Commission.
- 4.4 Appeal proceedings are run along judicial lines. Procedures involve filing of submissions and affidavit evidence by the appellant, submissions and evidence in response from the

respondent Secretary, and submissions and evidence in reply from the appellant. The Commission follows consultation procedures prescribed in the Act for applications to amend licence conditions, with the casino licence holder, the Secretary and affected persons having party status, and the ability to make submissions. The Commission can, and does, obtain independent legal advice in relation to matters under consideration.

## 5. KEY STAKEHOLDERS

5.1 The key groups which have an interest in the Commission's work are:

- (a) **Government agencies:** Primary involvement is with the Department of Internal Affairs but the Commission also interfaces with the Minister of Internal Affairs, Ministerial advisors and staff.

The Secretary for Internal Affairs has party status in relation to appeals and casino applications before the Commission.

The Commission also works with the Ministry of Health in relation to the approval of its Problem Gambling Strategy, and has an ongoing interest in its effective implementation. The Commission also consults with the Ministry, on a case-by-case basis, when it is an affected party in relation to proposed amendments to casino licence conditions.

- (b) **Industry:** Stakeholders include all operators who are impacted directly or indirectly by decisions of the Commission. This includes casino operators, operators of gaming machines, and associated industry organisations. Amongst casino operators, SKYCITY Entertainment Group dominates; it owns four of the six casinos in New Zealand (Auckland, Hamilton, and the two Queenstown casinos).

The Class 4 sector is dominated by several large operators, such as The Lion Foundation, the Southern Trust and Pub Charity. There are many smaller operators and even more clubs that operate gaming machines. Many of the clubs are represented by Clubs NZ or the RSA.

- (c) **Problem Gambling Service Providers, Community Groups and researchers:** This group of stakeholders includes persons and organisations involved in the care and support of people adversely affected by gambling, some of whom may also be involved in advocacy to limit further gaming machine numbers. The Commission formally consults with this group in relation to the Strategy, and on a

case-by-case basis, in relation to applications before the Commission where persons or organisations may have affected party status.

## **6. KEY ISSUES**

- 6.1 With the passing of the Act, the industry has had to adjust to a changed regulatory environment and a more rigorous decision-making processes.
- 6.2 One of the initial challenges for the Commission was the untested nature of much of the legislation it applies. This created potential for alleged misinterpretation or misapplication of its mandate. On one hand, the Commission could be the subject of accusations from lobby groups that it is allowing the expansion of gambling, contrary to the content of the Act. On the other, industry may perceive the Commission as being over-zealous in its control of gambling.
- 6.3 There is an inevitable tension between the natural desire of casino operators to maintain and expand current levels of gaming activity and to maximise returns, and the regulatory requirements.
- 6.4 Because of the high levels of investment in the industry by casino operators, the Minister (and all politicians) is contacted by casino operators to discuss matters affecting the industry as a whole, or matters specific to the Commission.
- 6.5 The major piece of work for the Commission over the next year will be to address the application from Christchurch Casino Limited to renew its Venue Licence issued in 1993. This will be the first application for licence renewal of a New Zealand casino. The statutory renewal regime requires a casino impact report, thorough investigation of the suitability and compliance record of the licence holder and a public hearing. There is provision for receiving the views of the community and from local authorities.
- 6.6 For the next year, the Commission will also be focused on:
  - (a) the effective discharge of its licensing and appeal functions through the integrity of its processes and decisions. The Commission wishes to ensure that the Commission and the decisions it makes are well respected, particularly by industry and Government;
  - (b) continuing to review the responsible gambling programmes for the six casinos;
  - (c) keeping the Minister apprised of developments relating to the Commission's functions and the administration of the Act;

- (d) assisting stakeholders in the understanding and implementation of the Act, creating a predictable and stable environment for the gambling industry; and
  - (e) considering how the Commission can advise the Minister based upon the experience it has gained from carrying out its defined functions.
- 6.7 The Commission's reputation for integrity and independence is critical to its success and credibility. The Commission will continue to build a body of decisions under the Act, maintaining its rigorous and balanced approach to decision-making, and its commitment to producing decisions of the highest quality.

**Tim McIvor**

Acting Executive Director Gambling Commission

## **APPENDIX 1: FUNCTIONS OF THE COMMISSION**

- 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 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-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 Gambling Commission's functions and the administration of the Act, either at the Minister's request or on its own initiative.

## APPENDIX 2: BACKGROUND INFORMATION

### 1. CASINOS AND CLASS 4 GAMBLING

- 1.1 There are six casinos in New Zealand – one each in Auckland, Hamilton, Christchurch and Dunedin, and two in Queenstown. SKYCITY Auckland is the largest casino, with 150 gaming tables and 1,877 gaming machines and 240 Fully Automated Gaming Machines. The Auckland casino previously operated up to 110 gaming tables and 1,647 gaming machines but can now deploy additional gambling products up to the abovementioned levels because of the agreement between SKYCITY and the Crown re the New Zealand International Convention Centre.
- 1.2 Christchurch casino is next largest, with 36 tables and 500 machines. The other casinos are very modest in size as follows:
- |            |                         |
|------------|-------------------------|
| Hamilton   | 23 tables, 339 machines |
| Dunedin    | 12 tables, 180 machines |
| Queenstown | 12 tables, 86 machines  |
| Wharf      | 6 tables, 74 machines   |
- 1.3 SKYCITY operates four of the six casinos in New Zealand, with the Christchurch and Dunedin casinos being independent.
- 1.4 Gamblers spent \$586 million on casino gambling in 2015/16, up from \$527 million in 2014/15.
- 1.5 The Gambling Act classifies non-casino gambling into four Classes, with Class 1 gambling involving very small amounts of money (eg office sweepstakes) through to Class 4 gambling, which is gambling on gaming machines outside casinos.
- 1.6 Class 4 gambling takes place in pubs and clubs with a maximum of 18 machines permitted at each venue. New venues may operate only nine machines.
- 1.7 Presently there are approximately 15,858 gaming machines in New Zealand, down from 16,250 in 2016, and down from approximately 25,000 machines when the Gambling Act was enacted in September 2003.
- 1.8 Gamblers spent approximately \$870 million on Class 4 (non-casino) gambling in New Zealand in 2016/17, down from \$1.035 billion in 2004.

### 2. ADMINISTRATIVE ARRANGEMENTS

- 2.1 The Commission is supported through an Auckland-based Secretariat comprising two people.

- 2.2 Tim McIvor is the Acting Executive Director, and is assisted by an Executive Assistant, Carol Stevenson.
- 2.3 The Commission is funded from an allocation of third party revenue derived from renewal and amendment of gambling licences, casino levies, and electronic monitoring fees. Its budget for 2017-18 is \$1,002,814. It varies little from year to year.

### 3. COMMISSION DECISIONS

#### *Appeals on Department licensing and enforcement decisions*

- 3.1 When the Act was passed, it was expected that most of the Commission's work would be in the form of appeals from gaming machine operators. In the 14 years since its inception, the Commission has determined almost 60 appeals.

#### *Applications by casino licence holders*

- 3.2 Most of the Commission's decisions to date have been in relation to applications by casino operators to amend licence conditions or obtain approvals under licence conditions. The most numerous and complex applications have been made by SKYCITY Auckland, reflecting the size of casino.
- 3.3 Applications received by SKYCITY Auckland have 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 the installation of additional EFTPOS terminals.
- 3.4 Applications received from Christchurch Casinos Limited, Queenstown Casinos Limited, Dunedin Casinos Limited and SKYCITY Hamilton Limited have related variously to approval for smoking decks, revised floor layouts, and designation of gambling areas.

#### *Spending and Class 4 gambling*

- 3.5 The competition for Class 4 operators to secure gaming venues is intense. The practice of operators making inappropriate gifts and payments to entice hoteliers to "jump ship" is widespread, as are payments by operators to retain venues.
- 3.6 This culture of inappropriate behaviour was rampant until several Commission decisions – *Kiwi*, *The Southern Trust* and *The Trusts Charitable Foundation*. In these decisions the Commission emphasised several key requirements of the Act, namely:

- that Class 4 societies exist only to raise money for the community. They do not exist to ensure their own continued survival with money being generated to the community as a by-product;
- societies should make payments to the community their first priority, not their last;
- societies must generate as much money as they can for the community – they cannot reach the minimum percentage required (40%) and consider the remaining money to be theirs to spend as they see fit;
- in generating money, societies must limit their expenditure to what is actual, reasonable and necessary to the conduct of Class 4 gambling.

*Amendments to casino licence conditions initiated by the Commission*

- 3.7 Under section 139 of the Act, the Commission can, on its own initiative, specify, vary and revoke casino licence conditions. Consistent with its role of contributing to achieving the purpose of the Act, the Commission initiated a review of licence conditions for all casinos, the objective being to delete out of date references and to realign conditions to be consistent with the Act's requirements. The Commission has completed this task by reviewing the venue and operators' licences for all six casinos.
- 3.8 The Commission consulted with key stakeholders including all casino operators, government agencies, and selected problem gambling service providers, and conducted oral hearings for each casino before finalising licence conditions.

*Review of Host Responsibility Programmes*

- 3.9 Each casino in New Zealand has a Host Responsibility Programme which sets out how the casinos will responsibly oversee their customers in relation to alcohol consumption and gambling. If the casinos fall short of the required standard, serious consequences could follow. For example, Dunedin casino was suspended for two days in 2006 for failing to provide a customer with adequate host responsibility information.
- 3.10 The Commission reviews the Host Responsibility Programme for each casino in New Zealand every two years. A range of stakeholders are involved in the review process, with the Programmes setting host responsibility standards that exceed those almost anywhere in the world.

**4. TRAVEL**

- 4.1 Commissioners periodically travel around New Zealand, particularly to view the six casinos and any recent developments.
- 4.2 Commissioners may also travel to Australia to meet with our Australian equivalents. There is an annual Australasian Casino and Gambling Regulatory Forum which this year will be held in Sydney. There is often an additional Australasian Commissioners meeting held in Adelaide in December.
- 4.3 The Chief Gambling Commissioner and Executive Director also attend an annual conference held by the International Association of Gambling Regulators.

**5. COMMISSION MEETINGS**

- 5.1 The Commission generally meets monthly except for January. The meetings are generally held on a Friday in the middle of the month.
- 5.2 The Commission can, and does, meet on additional days should the need arise.