

**BRIEFING ON THE GAMBLING COMMISSION**  
**NOVEMBER 2008**

**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 in March 2004 under the Gambling Act 2003 (the "**Act**") and came into operation fully on 1 July 2004.
- 1.2 The Act marks a clear departure from earlier legislation, which provided for the development of casinos in New Zealand (of which there are now six) and growth in gambling machine numbers.
- 1.3 The purpose of the 2003 Act includes controlling gambling growth, preventing and minimising harm caused by gambling, and facilitating responsible gambling. For 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 existing casinos.
- 1.4 The Commission makes decisions on proposed amendments to casino licence conditions and grants approvals under licence conditions (for example for new floor layouts). The Commission is required, in doing so, to ensure that licence conditions are consistent with the Act and its purpose, and can initiate changes to conditions to achieve this.
- 1.5 The Commission also hears appeals by non-casino gaming machine operators against licensing and enforcement decisions taken by the Secretary for Internal Affairs (the "**Secretary**") through staff in the Regulation and Compliance Branch of the Department of Internal Affairs (the "**Department**"). Fourteen appeals have been decided by the Commission so far. The decisions clarify how particular provisions of the Act should be interpreted and have assisted in creating a stable and predictable regulatory environment.
- 1.6 The gambling industry is active in seeking to protect its interests. This is unsurprising given the levels of investment involved, particularly for casino operators. It is expected that the Minister will be contacted by industry groups and casino operators to discuss the regulatory environment as a whole or possibly matters specific to the Commission. Issues that might be raised by stakeholders are summarised in section 9.

**2. BACKGROUND**

- 2.1 Over the past 20 years, New Zealand's gambling sector has changed dramatically and experienced rapid growth.

- 2.2 This growth led to the enactment of the Act, which came into effect on 19 September 2003. The Act repealed the Casino Control Act 1990 and the Gaming and Lotteries Act 1977 and integrated many of their provisions into the new Act.
- 2.3 The Act disestablished the Casino Control Authority ("**CCA**") and transferred its functions to the Commission and the Department. The Commission is responsible for amendments to casino licences and approvals under licence conditions. The Department is responsible for developing and maintaining Minimum Operating Standards, casino game rules, minimum equipment standards and compliance.
- 2.4 In addition to its casino functions, the Commission is also an appeal body for non-casino gaming machine operators. It has no role in relation to the regulation of racing or the Lotteries Commission.

### 3. COMPOSITION OF COMMISSION

- 3.1 The Commission was established in March 2004 by section 220 of the Act. It has five members appointed by the Governor-General, upon the recommendation of the Minister of Internal Affairs.
- 3.2 The Chief Gambling Commissioner is **Peter Chin**, who has over 40 years legal experience and is currently the Mayor of Dunedin.
- 3.3 The Commissioners are:
- **Mary Lythe**, who comes from a public health background and holds a number of government and voluntary sector board appointments. Commissioner Lythe was formerly a member of the CCA;
  - **Paul Stanley**, an operations manager, also with a public health background;
  - **Graeme Reeves**, a barrister and solicitor; and
  - **Mary Richardson**, a policy and research consultant.
- 3.4 Commissioner Stanley has been appointed until February 2009, Commissioner Reeves has been appointed until June 2009, Commissioners Chin and Lythe have been appointed until February 2010 and Commissioner Richardson has been appointed until June 2011.

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

- 4.1 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.
- 4.2 Commission functions include advising 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. The Chief Gambling Commissioner meets with the Minister at least every six months in order to report to him or her.

#### **5. ADMINISTRATIVE ARRANGEMENTS**

- 5.1 The Department services the Commission. To ensure the Commission operates independently, the Act requires that Commission staff are separated both physically and operationally from other staff responsible for gambling policy, licensing and compliance.
- 5.2 This has been achieved through the establishment of a stand-alone office in Auckland in May 2004. Blair Cairncross is the Acting Executive Director, and is assisted by an Executive Assistant. Commission staff are employed by the Department but have no reporting arrangements through the Regulation and Compliance Branch, which carries out the functions of the Secretary.
- 5.3 The Commission is funded through the Department's Vote Internal Affairs allocation. Its budget for the year ending July 2009 is \$1.123 million.
- 5.4 The Commission meets on a monthly basis, except for January.

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

- 6.1 The Commission sees its role as being to contribute to achieving the purpose of the Act, and the fair application of it. The Commission's functions are set out in full in an Appendix to this paper. Those most regularly exercised by the Commission involve:
- (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 their licence it can appeal to the Commission, with an appeal acting as a “stay”;

(c) serving as an investigative and advisory body to the Minister

- 6.2 The Commission also reports to Ministers on a Problem Gambling Strategy (“**Strategy**”) developed by the Ministry of Health (“**MoH**”), and the levies to be imposed on industry to pay for implementation of the Strategy.
- 6.3 In exercising its functions, the Commission has wide powers to determine its own procedures, to engage experts and to receive evidence. The policies and procedures developed by the Commission are available on its website, as are copies of all decisions made by the Commission.
- 6.4 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.

## 7. KEY STAKEHOLDERS

- 7.1 The Commission has three, diverse, stakeholder groups interested in the Commission’s work – government agencies, industry and problem gambling service providers. The general public also has an interest in gambling, and how it is regulated. There are participants in gambling activity and advocates of it who may draw benefits from gambling proceeds. There are also those who are concerned to maintain controls on gambling.
- 7.2 The interests of the three groups with whom the Commission has a primary interface can be summarised as follows:
- (a) **Government agencies:** Primary involvement is with the Department and the MoH, but the Commission also interfaces with the Minister of Internal Affairs, Ministerial advisors and staff.

The Secretary has party status in relation to appeals and casino applications before the Commission. The Commission works with the MoH in relation to the approval of the latter’s Strategy, and has an ongoing interest in its effective implementation. It also consults with the MoH, on a case-by-case basis, when it

is an affected party in relation to proposed amendments to casino licence conditions, for example where changes relate to future regulation of cash access by the Commission.

- (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 three of six casinos in New Zealand (Auckland, Hamilton and Queenstown), and has an interest in Christchurch Casinos Limited. Through its shareholding in Christchurch Casinos Limited, it also has an indirect interest in Dunedin Casinos Limited.
- (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.

## 8. COMMISSION DECISIONS

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

- 8.1 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 four and a half years since its inception, the Commission has determined 14 appeals.

### *Applications by casino licence holders*

- 8.2 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, and the fact that SKYCITY has recently undertaken major alterations to its premises.
- 8.3 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.

- 8.4 Applications received from Christchurch Casinos Limited, Queenstown Casinos Limited, Dunedin Casinos Limited and SKYCITY Hamilton Limited related variously to approval for smoking decks, revised floor layouts, and designation of gambling areas.
- 8.5 SKYCITY Auckland Limited has filed a number of proceedings in the High Court, the most significant being in relation to the interpretation of key sections of the Act

*Interpretation of the Act*

- 8.6 In deciding the casino licensing applications put before it, the Commission has had to consider the purpose of the Act and interpret, and apply, key provisions of it for the first time, including sections 11, 12 and 139(2)(d). These sections require the Commission to be satisfied that the proposed changes to licence conditions, or the grant of approvals, will not increase opportunities for casino gambling.
- 8.7 SKYCITY has urged the Commission to adopt a restrictive interpretation of what constitutes an increase in opportunities for casino gambling, arguing that the prohibition is limited to increases (which are not offset) in the number of gaming tables, machines, or places at a table or machine, or the introduction of a new form of gambling (neither machines nor tables).
- 8.8 Based on the wording of section 12 of the Act, the Commission has taken the view that Parliament did not intend that the Commission should be limited in this way. Rather, the Commission considers that the wording adopted by Parliament allows for flexibility, and that other factors, apart from those identified by SKYCITY, may be potentially relevant, depending on the circumstances. For example, an increase in the number of wagering options offered within a game may constitute an increase in opportunities for casino gambling, as might the introduction of electronic versions of existing table games.
- 8.9 SKYCITY commenced a declaration proceeding in the High Court at Auckland relating to the interpretation of sections 11 and 12 of the Act. The High Court refused to grant the declarations sought by SKYCITY. SKYCITY appealed that decision to the Court of Appeal, which dismissed the appeal. The Court stated that it was unable to conclude that Parliament's intention in outlawing any increase in opportunities for casino gambling could be read down to a freezing of the maximum number of persons permitted to gamble in a casino at any one time. The Court stated that it is for the Commission to assess opportunities for casino gambling on a case by case basis, with any errors in approach being capable of correction on appeal

*Declaration Proceeding by the Secretary*

- 8.10 In decision GC03/07, the Commission allowed an appeal by the Lion Foundation against a decision by the Secretary to impose a condition on the venue licence for the Kilbirnie Tavern
- 8.11 The challenged condition provided that class 4 gambling must not be conducted in areas where smoking is permitted, and would have required the venue operator to remove five gaming machines from the courtyard area at the Kilbirnie Tavern, where smoking is permitted. The condition was imposed by the Secretary in order to minimise harm to problem gamblers and had the effect of prohibiting gambling in areas which were not caught by the smoke-free legislation prohibitions. The Commission held that harm minimisation conditions should only be imposed if they reduced the harm caused by problem gambling, as distinct from merely reducing gambling activity generally, which is a lawful and permitted activity under the Act. The Commission concluded that the potential harm minimisation effects, necessarily limited to persons who smoked, were not sufficiently clear to justify the restriction imposed. Although the intention was to encourage breaks in sustained play, the Commission considered that such an outcome, if desirable, should be imposed directly in conditions, rather than indirectly affecting all smokers who wished to gamble.
- 8.12 Subsequent to the Commission's decision, the Lion Foundation applied to the Secretary to renew its licence for the Kilbirnie Tavern. The Secretary stated that as a result of the Commission's decision, he was unclear about the correct statutory tests that he must apply when considering the Lion Foundation's application, and sought, by way of statutory declarations, answers to a series of eight questions.
- 8.13 In its decision, the High Court held that seven of the eight questions were not proper for a declaration, and issued a declaratory judgment on the eighth question, upholding the approach adopted by the Commission in decision GC03/07; namely that when imposing a licence condition, the Secretary needs to balance the likely benefits of the proposed condition against any inconvenience to the operator and the wider community.

*Amendments to casino licence conditions initiated by the Commission*

- 8.14 Under section 139 of the Act, the Commission can, at 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 has 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 the Auckland, Hamilton, Dunedin and two Queenstown casinos.

- 8.15 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.
- 8.16 The Commission is close to completing its review of licence conditions for the Christchurch casino, with one issue outstanding, namely determining the maximum number of gaming tables and gaming machines that can be deployed at the casino. The Commission is presently consulting affected parties on this issue.

#### *Review of Responsible Gambling Programmes*

- 8.17 The Commission reviewed the Responsible Gambling Programme for the SKYCITY Auckland casino, a first under new licence conditions initiated by the Commission, which require a much closer focus on harm minimisation. A range of stakeholders were involved in the review process, with the Programme setting a new host responsibility benchmark in New Zealand, and probably internationally. The Commission will proceed to review the Responsible Gambling Programmes for the Hamilton, Dunedin, Christchurch and two Queenstown casinos.

## **9. KEY ISSUES AND THEMES**

- 9.1 With the passing of the Act, industry has had to adjust to a changed regulatory environment and a more rigorous decision-making processes.
- 9.2 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.
- 9.3 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 new regulatory requirements.
- 9.4 By producing high quality and legally robust decisions, the Commission has established itself as being both credible and independent. The forward challenge for the Commission is to maintain this position.



- 9.5 Because of the high levels of investment in the industry by casino operators, it is possible that the Minister will be contacted directly by SKYCITY Entertainment Group, or other operators, to discuss matters affecting the industry as a whole, or matters specific to the Commission. The Commission is aware, for example, that SKYCITY has in the past sought meetings with the Minister and opposition spokespeople and has raised issues relating to decisions made by the Commission with which SKYCITY does not agree.

## **10. FUTURE DIRECTIONS**

- 10.1 In 2009/2010 the Commission will 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) completing the review of licence conditions for the Christchurch casino;
- (c) advancing the review and amendment of the host responsibility programmes for Hamilton, Dunedin, Christchurch and the two Queenstown casinos;
- (d) keeping the Minister apprised of developments relating to the Commission's functions and the administration of the Act;
- (e) assisting stakeholders in the understanding and implementation of the Act, creating a predictable and stable environment for the gambling industry; and
- (f) considering how the Commission can advise the Minister based upon the experience it has gained from carrying out its defined functions.

- 10.2 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.

**Peter Chin**

Chief Gambling Commissioner

## 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.