
GAMBLING COMMISSION



REPORT OF THE GAMBLING COMMISSION FOR THE YEAR ENDED 30 JUNE 2011

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

CONTENTS

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 2011.

Graeme Reeves
Chief Gambling Commissioner

Page 2	Introduction by the Chief Gambling Commissioner
Page 3	Report on activities
	Establishment of the Commission
	Casinos
	Application by SKYCITY Auckland Limited for approval to construct a smoking balcony capable of deploying gaming machines
	Appeals to the Commission
	Appeal by The Lion Foundation – Kilbirnie Tavern appeal
	Application for costs by The Lion Foundation
	Appeal by New Zealand Community Trust
	Miscellaneous
	Procedures
	Administration
	Commission Meetings
	Future Directions
Page 7	Commission Members
Page 7	Contact details for Commission
Page 8	Appendix 1 Duties and Functions of Commission under the Gambling Act 2003
Page 9	Appendix 2 Decisions of Commission: 2010/2011 (including Delegated Approvals of Commission)

INTRODUCTION

By the Chief Gambling Commissioner

I am pleased to present to you my annual report for the period 1 July 2010 to 30 June 2011, the Commission's seventh full year of operation.

It has been a productive year with the Commission determining 60 applications to amend casino licence conditions or grant approvals under casino licence conditions, and five appeals by gaming machine operators against decisions made by the Department of Internal Affairs (the "Department").

Several of the Commission's decisions have been significant as they have clarified key areas of gambling law. The Commission is pleased to provide this clarification and contribute to the oversight of gambling in New Zealand.

Graeme Reeves

Chief Gambling Commissioner

REPORT ON ACTIVITIES

Establishment of the Commission

The Commission was established in March 2004 by section 220 of the Act. The Act provides that the Commission shall comprise up to five Commissioners, although presently there are three.

The Chief Gambling Commissioner is Graeme Reeves; a barrister and solicitor based in Wellington. Graeme was a Gambling Commissioner from 2004 to December 2010, when he was appointed as the Chief Gambling Commissioner. The other Commissioners are:

- Paul Stanley, who comes from a public health background and has been employed at a senior level in Iwi and Urban Māori Authorities; and
- Lisa Hansen, who is Wellington barrister.

Two founding Commissioners, Peter Chin and Mary Lythe, retired from the Commission in December 2010. They provided outstanding service to the Commission during their tenure, which current Commissioners sincerely thank them for.

The Commission is serviced by an Auckland based Secretariat.

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

Casinos

The Commission is responsible for casino licensing, with the Department being responsible for operating and equipment standards, game rules and compliance. Casinos can appeal the Commission's decisions on licensing matters to the High Court.

In the year ending 30 June 2011, the Commission made 60 decisions on applications by casino licence holders to amend licence conditions, or obtain approvals under licence conditions. Applications related mainly to approval of revised floor layouts and new game mixes, but included more complex issues such as whether smoking and gambling may be permitted together.

New Zealand has six casinos (new ones being prohibited under the Act), varying considerably in size, as shown below:

Casino	No. of tables	No. of gaming machines
Auckland	110	1,647
Christchurch	36	500
Hamilton	23	339
Dunedin	12	180
Queenstown (SKYCITY)	12	86
Queenstown (Lasseters Wharf)	6	74

Application by SKYCITY Auckland Limited for approval to construct a smoking balcony capable of deploying gaming machines

The Commission considered an application by SKYCITY Auckland Limited for approval to develop an outdoor gambling area at the casino where patrons can both smoke and play gaming machines.

In its deliberations, the Commission first considered whether the Smoke-free Environments Act 1990 prohibited the simultaneous participation in smoking and gambling in casinos in New Zealand, and held that it does not. The Smoke-free Environments Act bans smoking in casinos except when it takes place in "open areas". SKYCITY's proposal was to place gaming machines in an open area so the Commission concluded that it was permissible for patrons both to smoke and gamble under this Act.

The Commission next considered whether the proposal was consistent with the Act and its purpose, with the key consideration being the likely effect of the proposal on the potential for harm. The Commission concluded that the proposal would not increase the potential for harm.

As part of this application, SKYCITY also sought Commission approval for gambling activity at the new smoking area to be visible from public areas outside the casino. The Commission declined the application, and saw no reason to depart from the longstanding rule that gambling activity should not be visible from anywhere outside the casino.

Appeals to the Commission

The Department exercises primary licensing and enforcement functions in relation to non-casino gambling (gaming machines and large-scale lotteries). As at 30 June 2011, there were 364 licensed Class 4 gambling operators, 1,421 gaming machine venues, and 18,309 gaming machines in New Zealand (down from 370; 1,455 and 18,944 respectively in 2009, and down significantly from the 25,221 gaming machines that were in place in June 2003).

Operators have rights of appeal to the Commission against decisions made by the Department in circumstances including loss of licence, enforcement action, and in relation to the imposition of licence conditions by the Department.

In the year ending 30 June 2011, Divisions of the Commission determined five appeals from gaming machine operators, one application for costs against the Secretary for Internal Affairs (the "Secretary") by The Lion Foundation, and one application for an oral hearing of an appeal by the New Zealand Community Trust.

Many other appeals were filed with the Commission, but did not proceed to hearing.

An appeal is heard on a *de novo* basis, meaning that the Commission considers the matter afresh. Notable decisions are discussed below.

Appeal by The Lion Foundation

In March 2010, the Secretary added a licence condition to the Class 4 venue licence for the Kilbirnie Tavern in Wellington. The condition provided that "gaming machines must not be capable of being played by people who are in areas where smoking is permitted." The Lion Foundation, which holds the Class 4 venue licence for the Kilbirnie Tavern, appealed against the imposition of this condition to Gambling Commission.

The Commission considered a similar appeal involving the same appellant and the same venue in 2007. As with the earlier matter, the Commission allowed the current appeal, concluding that the abovementioned condition was not appropriately imposed by the Secretary. The Commission, with the benefit of a declaratory judgment from the High Court following the earlier appeal, reconfirmed that the imposition of a condition for one purpose needs to be balanced by a consideration of negative consequences for other interests under the Act. Harm minimisation measures often require a balanced assessment because the minimisation of harm conflicts with the statutory authorisation of Class 4 gambling. The Commission was therefore required to assess the potential benefit of the condition against the potential negative consequences of a permitted and legal activity. It concluded that the condition would be unlikely to have any material beneficial effect but its imposition would materially detract from the enjoyment of the venue's clientele, with a consequent negative effect on the operator and the community. The condition was therefore removed.

Application for costs by The Lion Foundation

Following its successful appeal against the imposition of the abovementioned licence condition, The Lion Foundation applied for costs against the Secretary on the basis that the Secretary was re-litigating a matter that had already been considered by the Commission and the High Court.

The Commission does not normally award costs, but it can do so when, for example, a party has demonstrated bad faith or procedural misconduct. The Commission did not award costs in this case, although it considered the factors in favour of and against an award of costs were finely balanced. On the one hand, the Commission had serious concerns about both the Secretary's decision and his arguments and evidence in support of his decision on appeal – his submissions appeared to be an almost wilful misinterpretation of an earlier High Court decision; he put before the Commission a considerable volume of evidence, most of which was irrelevant and poorly directed; his overall approach was misguided; and the Commission was concerned that in a case in which it and the High Court had provided guidance as to the appropriate statutory test for satisfaction, which differed from the Secretary's preferred interpretation, there was a danger that the Secretary's preference for his own interpretation would continue to dominate his decisions in future.

However, the Commission determined that there were several important factors that weighed against an award of costs; namely that although the Secretary's approach was in error, the Commission did not consider that it was clear that the Secretary had acted in bad faith or that his approach amounted to misconduct; although the Secretary's approach was misguided, it was not in defiance of the Commission's first appeal decision; the Secretary was acting on legal advice which indicated that his actions were considered and not in bad faith; and it was not the case that the Secretary was precluded by the Commission's earlier appeal decision from considering the imposition of a similar condition.

Appeal by New Zealand Community Trust ("NZCT")

NZCT appealed against a decision by the Secretary to suspend its venue licence for Tomo's Sports Bar for three days. The Secretary suspended the licence as he was not satisfied that the risk of problem gambling at the venue was minimised because of an incident in which an excluded gambler gambled at the venue in breach of his exclusion order.

NZCT applied for its appeal to be heard by way of oral hearing, submitting that the differences between the affidavit evidence of the witnesses for the Secretary and the witnesses for NZCT could only be resolved by the Commission making findings as to credibility. NZCT submitted that this required an oral hearing with the witnesses being available for questioning. The Secretary opposed the application.

The contested application for the oral hearing came before the Chief Gambling Commissioner as a pre-hearing issue. The Chief Gambling Commissioner took the view that if the differences in the factual accounts given by the witnesses were material to the outcome of the appeal, an oral hearing would be required. However rather than simply granting the application for an oral hearing, he gave initial consideration to the materiality of the disputed evidence to the potential outcome of the appeal. He reached the tentative conclusion that the factual dispute would not materially affect the outcome and referred his conclusion to the Division hearing the appeal.

The Division decided that the evidential matters in the dispute were not material to the ultimate decision on the appeal, and that the substantive appeal could be decided on the material available to the Division. The application for the oral hearing was declined, and the appeal was allowed.

Miscellaneous

The Commission maintained regular contact with stakeholders throughout the year, including representatives from all six casinos, the Class 4 sector, the Department, Ministry of Health, researchers and treatment providers. The Commission also met with gambling regulators in Australian State jurisdictions, and briefed them on the Commission's work.

The Commission continues to keep abreast of relevant gambling issues at both the governance and management levels.

Procedures

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, and the decisions which it makes, are all published on its website.

Appeal proceedings are run along judicial lines. Procedures involve filing of submissions and affidavit evidence by the appellant, submissions and evidence in response by the respondent Secretary, and submissions and evidence in reply from the appellant.

The Commission consults on applications to amend licence conditions with the casino licence holder, the Secretary and affected persons.

The Commission can, and does, obtain independent legal advice in relation to matters under consideration – both casino applications and appeals.

Apart from its decisions, the Commission (mainly through the Commission Secretariat) communicates on an ongoing basis with stakeholders, to ensure that the Commission's decisions are well understood, and to assist the Commission's understanding of the operation of the sector.

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 to service the Commission, by arranging the administrative services necessary for the Commission to perform its functions.

The Act also requires the Commission to make decisions independently of the Minister and the Secretary, and to have stand-alone offices. These are located in Auckland.

The Commission is funded from the Department's vote, but, as noted above, is functionally independent. The Commission's annual budget for 2010/2011 was \$1,149,000, which was under-spent by \$115,188.

Commission Meetings

The Commission met 11 times during the year under review: 16 July, 13 August, 17 September, 15 October, 12 November, 10 December, 18 February, 18 March, 15 April, 13 May and 17 June.

Divisions of the Commission met on 17 September, 12 November, 10 December and 18 March.

Commissioners Chin, Reeves and Stanley attended the annual Australasian Gambling Regulators' Forum in November 2010, and Commissioners Reeves, Stanley and Hansen attended the annual Australasian Gaming Regulators' Conference in March 2011.

Future Directions

The primary focus of the Commission in 2011/2012 will be the following activities:

- the ongoing effective discharge of its licensing and appeal functions
- continuing to meet with the sector to ensure that the role of the Commission and its decisions are well understood
- keeping the Minister informed of developments relating to the Commission's functions
- advising Ministers and facilitating consultation on the setting of the Problem Gambling Levy.

COMMISSION MEMBERS

Graeme Leonard Reeves
Chief Gambling Commissioner
Barrister and Solicitor
Wellington
Appointed June 2004
Term expiring June 2012

Paul Joseph Stanley
Company Director
Tauranga
Appointed March 2004
Term expiring June 2012

Lisa Mary Hansen
Barrister
Wellington
Appointed March 2011
Term expiring December 2013

CONTACT DETAILS FOR COMMISSION

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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:

- specifying, varying and revoking casino licence conditions
- 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
- 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-casino gaming machine operations
- considering and dealing with complaints about the way the Department has handled complaints in relation to Class 4 gambling
- advising the Minister for 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
- advising Ministers and facilitating consultation on the setting of the problem gambling levy.

APPENDIX 2

Decisions of the Commission: 2010/2011

Decision		Status
GC18/10 16 July 2010	Application by Dunedin Casinos Management Limited ("DCML") to vary licence condition 12 of its operator's licence	Approved
GC19/10 13 August 2010	Application by SKYCITY Auckland Limited ("SCAL") and SKYCITY Casino Management Limited ("SCML") for approval of changes to level 3 of the Auckland casino	Approved
GC20/10 13 August 2010	Application by SCML to redesignate the Gambling Area at the Hamilton casino	Approved
GC21/10 13 August 2010	Application by SCML for approval of a digital video recording system at the Hamilton casino	Approved
GC22/10 17 September 2010	Application for an oral hearing of an appeal by New Zealand Community Trust and on the appeal itself	Allowed
GC23/10 17 September 2010	Application by SCML for approval of new game mixes for the Auckland casino	Approved
GC24/10 17 September 2010	Application by Christchurch Casinos Limited ("CCL") for approval of construction and design changes	Approved
GC25/10 17 September 2010	Application by SCAL for a series of approvals relating to the redesignation of the Gambling Area of the Auckland casino, and the redevelopment of levels 5 and 6 of the casino and hotel	Approved
GC26/10 17 September 2010	Appeal by Air Rescue Services Limited	Allowed
GC27/10 15 October 2010	Application by CCL for approval of construction and design changes	Approved
GC28/10 12 November 2010	Application by SCML for approval to vary its game mixes for the Hamilton casino	Approved
GC29/10 12 November 2010	Applications by SCML for approval of new game mixes for the Auckland casino	Approved
GC30/10 10 December 2010	Application by SCML for approval of a new game mix for the Auckland casino	Approved
GC31/10 10 December 2010	Appeal by The Lion Foundation	Allowed
GC32/10 10 December 2010	Application by DCML for approval of a new floor plan for the Dunedin casino	Approved
GC33/10 10 December 2010	Application by SCAL and SCML for a series of approvals relating to the redesignation of the level 2 Gambling Area at the Auckland casino	Approved
GC34/10 10 December 2010	Appeal by Pub Charity	Declined
GC01/11 18 February 2011	Application by SCML for approval of a new floor plan for the Hamilton casino	Approved
GC02/11 18 February 2011	Application by CCL for approval of a new temporary floor plan and temporary construction and design changes	Approved
GC03/11 18 February 2011	Application by SCAL to redesignate the Gambling Area at the Auckland casino	Approved

Decision		Status
GC04/11 18 March 2011	Application by SCML and SCAL for approval of construction and design changes, and to install cash-dispensing EFTPOS terminals	Approved
GC05/11 18 March 2011	Proposal by the Gambling Commission to vary condition 12 of the operator's licences held by SCML (for the Hamilton and Queenstown casinos) and by Otago Casinos Limited ("OCL") (for the Wharf casino)	Approved
GC06/11 15 April 2011	Application by SCML for approval to exceed the ratio of gaming machines to gaming tables at the Auckland casino	Approved
GC07/11 15 April 2011	Application by SCML for approval of new game mixes for the Queenstown casino	Approved
GC08/11 18 March 2011	Appeal by The Brunner Rugby League Club	Allowed
GC09/11 13 May 2011	Application by SCML and SCAL for approval to construct cashiering facilities in the VIP Salons on Level 5	Approved
GC10/11 13 May 2011	Application by SCML for approval to install cash-dispensing EFTPOS terminals	Approved
GC11/11 18 March, 15 April and 13 May 2011	Application by SCML for approval to vary condition 9 of its operator's licence for the Auckland casino	Approved
GC12/11 13 May 2011	Application by SCML for approval of new game mixes for the Auckland casino	Approved
GC13/11 18 February and 13 May 2011	Application by DCML for approval of a new floor plan and game mixes	Approved
GC14/11 18 February and 13 May 2011	Application by CCL for approval of new game mixes	Approved
GC15/11 15 April and 13 May 2011	Application by SCAL for approval of construction and design changes to create a smoking balcony capable of deploying gaming machines	Approved
GC16/11 15 April 2011	Application for costs following an appeal by The Lion Foundation re the Kilbirnie Tavern	Declined
GC17/11 17 June 2011	Application by OCL for approval of a new game mix for the Wharf casino	Approved
GC18/11 17 June 2011	Application by DCML to vary condition 15 of its operator's licence	Declined
GC19/11 17 June 2011	Application by SCAL to vary conditions 9 and 9A of its venue licence	Approved
GC20/11 17 June 2011	Application by SCAL for approval of construction and design changes to level 3 of the Auckland casino	Approved
GC21/11 18 February, 15 April, 13 May and 17 June 2011	Application by DCL and DCML for approval of a new floor plan and for approval of construction and design changes	Approved

**Delegated Approvals of the Commission:
2010/2011**

2 September 2010	Application by SCML for approval of new floor plans for the Auckland casino
15 September 2010	Application by SCML for approval of new floor plans for the Auckland casino
15 September 2010	Application by SCAL for approval of construction and design changes to the Auckland casino
16 September 2010	Application by SCAL for approval of construction and design changes to the Pacific Room at the Auckland casino
16 September 2010	Application by SCAL for approval of construction and design changes to the Auckland casino
20 September 2010	Application by DCML for approval of new floor plans for the Dunedin casino
23 September 2010	Application by SCML for approval of new floor plans for the Auckland casino
4 October 2010	Application by SCML for approval of new floor plans for the Auckland casino
4 October 2010	Application by SCAL for approval of construction and design changes to level 3 of the Auckland casino
18 October 2010	Application by SCAL for approval of construction and design changes to level 3 of the Auckland casino
26 October 2010	Application by SCML for approval of new floor plans for the Auckland casino
18 November 2010	Application by SCAL for approval of a construction and design change to level 6 of the Auckland casino
23 November 2010	Application by DCML for approval of new floor plans for the Dunedin casino
1 December 2010	Application by SCML for approval of new floor plans for the Auckland casino
13 December 2010	Application by SCML for approval of new floor plans for the Auckland casino
23 December 2010	Application by SCML for approval of new floor plans for the Auckland casino
18 January 2011	Application by SCML for approval of new floor plans for the Auckland casino
25 January 2011	Application by SCML for approval of new floor plans for the Auckland casino
1 February 2011	Application by SCAL for approval of construction and design changes to levels 2 and 3 of the Auckland casino

2 February 2011	Application by SCML for approval of new floor plans for the Auckland casino
24 February 2011	Application by SCML for approval of new floor plans for the Auckland casino
4 March 2011	Application by SCML for approval of new floor plans for the Auckland casino
24 March 2011	Application by SCML for approval of new floor plans for the Auckland casino
19 April 2011	Application by SCML for approval of new floor plans for the Auckland casino
3 May 2011	Application by SCML for approval of new floor plans for the Auckland casino
9 May 2011	Application by SCML for approval of new floor plans for the Auckland casino
13 June 2011	Application by OCL for approval of new floor plans for the Wharf casino
13 June 2011	Application by OCL for approval of construction and design changes to the Wharf casino
22 June 2011	Application by SCML for approval of new floor plans for the Auckland casino
27 June 2011	Application by SCML for approval of new floor plans for the Auckland casino
30 June 2011	Application to install a fire door in the new Poker Zone at the Auckland casino

