

**NSW Independent
Casino Commission**

NSW Independent Casino Commission Charter

June 2023

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1. Purpose

The purpose of the NICC Charter is to establish a procedural framework to support the effective governance and operations of the NSW Independent Casino Commission (**NICC**) in line with its regulatory objectives and statutory functions. The Charter is intended to assist commissioners of the NICC to perform their regulatory duties and ensure the NICC complies with relevant legal obligations.

2. The NICC's role

The NICC is an independent statutory body constituted under the *Casino Control Act 1992* (**the Act**). The role of the NICC is to promote fair and transparent decision making under this Act. The NICC comprises of its appointed commissioners and employs its own office staff (**the Office of the NICC**, or **ONICC**).

The NICC was established to address the risks and harms arising from casino operations and will play a vital role in maintaining public confidence in the NSW casino industry through visible and robust supervision.

The NICC has powers and functions under the following Acts and the regulations, including instruments made under those Acts:

- *Casino Control Act 1992*
- *Gaming and Liquor Administration Act 2007*

3. Regulatory objectives

The NICC's regulatory objectives are to lift standards in casino operations to ensure NSW casinos are safe, compliant, and responsible.

The NICC aims to uphold community expectations by overseeing NSW casinos, so they are resistant to criminal infiltration and equipped to minimise gaming-related harms.

In meeting these objectives, the NICC's priorities are to:

- Establish and maintain the NICC’s independence and demonstrate accountability and transparency in interactions with casinos, stakeholders, and the public.
- Establish and maintain regulatory controls to ensure compliance with the Act, prevent money laundering and criminal activity, and minimise gambling harms.
- Supervise NSW casinos and strengthen their capability to meet regulatory and community expectations.
- Identify and respond to emerging risks in modern casino operating environments and intersecting industries.

The NICC refers to these regulatory objectives as ‘focus areas’ in its strategic plan, which details a pathway to achieve its vision and mission.

4. Statutory functions

The NICC collaborates with regulators, industry, and other stakeholders to perform its statutory functions effectively. This includes managing delegations to specialist Liquor & Gaming NSW (**L&GNSW**) staff as well as sharing information with other regulators and collaborating with law enforcement.

The NICC’s relationships with delegated staff, independent advisors, and government agencies assist the NICC to supervise casino operations, develop insights into risks, and build expertise.

4.1 Statutory functions

The NICC’s statutory functions under the Act include:

- carrying out investigations of a casino, its operations, and operators
- reviewing the suitability of casino operators and close associates
- monitoring compliance with the Act and legally binding mechanisms such as the regulations and internal control manuals
- establishing the Gambling Harm Minimisation Advisory Committee
- determining casino and casino special employee licensing matters and proposals for new games
- determining disciplinary action against licensees and close associates
- reviewing certain delegated decisions made on its behalf by L&GNSW
- membership of the Casino, Liquor and Gaming Coordination Committee.

As outlined in the Act, in exercising its functions the NICC is subject to the direction of the Minister, except in relation to:

- the contents of advice, or a report or recommendation, given to the Minister
- decisions in relation to —
 - granting a casino licence
 - imposing, varying or revoking conditions of a casino licence
 - taking disciplinary action under the Act
 - granting, varying or revoking another approval given under gaming or liquor legislation (as defined in the Act).

4.2 Relationships with L&GNSW delegates

The NICC's L&GNSW delegates work with the NICC to monitor and enforce compliance with the Act. L&GNSW delegates are employed by L&GNSW in roles that are fully or partially funded by the Casino Supervisory Fund.

It is incumbent on the NICC and the Director ONICC to maintain robust frameworks for the provision of delegate advice, open lines of communication, and clear roles and responsibilities underscored by the NICC's regulatory objectives. The relationship with L&GNSW delegates is structured to compliment the NICC's independence insofar as it is necessary for decision-making. When carrying out work and providing advice under delegation, L&GNSW does so in accordance with any limitations and conditions set out in the Instrument of Delegation. L&GNSW provides regular reporting to the NICC on activities carried out under delegation.

5. Powers

The NICC has a range of statutory powers to ensure the management and operation of NSW casinos is free from criminal influence or exploitation, gaming is conducted honestly, and harm to individuals and their families is minimised.

The NICC's powers include:

- conducting periodic reviews of casino licences as public inquiries with Royal Commission-like powers
- cancelling or suspending a casino licence
- consequent upon cancellation or suspension of a casino licence, appointing an independent manager

- fining casino operators up to \$100 million
- taking direct disciplinary action against individual board members and executives and fining them up to \$1 million
- imposing retrospective penalties and taking retrospective disciplinary action for serious breaches
- directing casino operators to provide full and frank disclosures of requested information and notifying the NICC of any breach or likely breach of the law
- compelling casinos to give regulators continuous and remote access to gaming data.

6. Responsibilities

In undertaking its statutory functions, the NICC must promote fair and transparent decision making, guided by the objects of the Act. It must put in place robust yet efficient internal processes and build public confidence in its activities and the conduct of its commissioners.

6.1 Individual responsibilities of NICC commissioners

All commissioners of the NICC will:

- Act in good faith having due regard to the objects of the legislation under which the NICC has functions.
- Use due care and diligence in the execution of their role and powers.
- Comply with the ethical framework for the public sector set out in the *Government Sector Employment Act 2013*.
- Comply with the NICC's Code of Conduct.
- Prepare for and attend scheduled and extraordinary meetings of the NICC and relevant committees by undertaking consultation or research to support and promote discussion of the agenda items.
- Actively participate in the decision-making processes of the NICC.
- Provide feedback in a timely fashion on documents relating to actions and decisions of the NICC.
- Disclose pecuniary interests and non-pecuniary interests as soon as they arise.
- Where an actual or perceived conflict of interest is identified, comply with the NICC's decision on the management of the conflict, which may entail the member's non-participation in relevant discussions and/or decisions.

- Not disclose official information or documents acquired through their membership, other than as required by law, or when the member has been given authority by the NICC to do so.
- Not seek, offer or receive money or gifts in order to obtain an actual or perceived benefit or favour.

6.2 Responsibilities of the Chief Commissioner

The Chief Commissioner provides leadership and direction to members and ensures the effective functioning of the NICC. The Chief Commissioner is responsible for:

- Ensuring that the NICC performs its functions, acting within any relevant statutory powers, legal obligations and complying with relevant liquor and gaming policies.
- Approving the agenda for meetings and ensuring that meeting minutes properly reflect NICC decisions.
- Presiding over NICC meetings and ensuring meetings are focused and effectively run, allowing frank and open discussion between all members.
- Ensuring individual commissioners make an effective contribution and reviewing their performance.
- Ensuring commissioner roles and responsibilities are clear and developing the capability of the board and its members.
- Facilitating the flow of information to commissioners and stakeholders.
- Liaising closely with L&GNSW and other relevant stakeholders, including the Minister and the Secretary of the relevant department.
- Ensuring appropriate administrative, operational and legal support is provided by the ONICC.
- Where required, providing input into the nomination, selection and recruitment process for new commissioners and providing appropriate induction.

6.3 Responsibilities of the ONICC

The ONICC supports the operation of the NICC, providing administrative, operational and legal support to commissioners and assisting to facilitate NICC meetings. The key responsibilities include:

- Preparing a range of documents to support the operation of the NICC including stakeholder correspondence and drafting guidelines and documents relating to decisions made by the NICC.

- Managing relationships with a range of stakeholders such as casino operators, law enforcement agencies, and departmental and ministerial staff in a way that is appropriate and leads to effective regulation.
- Developing meeting agendas, assisting the Chief Commissioner to assign committees to consider matters and developing a run sheet for each meeting.
- Liaising with L&GNSW for the submission of papers to the NICC and formatting papers, uploading papers to Diligent Boards in accordance with the requirements of commissioners.
- Circulating papers to NICC commissioners in advance of meetings.
- Taking accurate minutes for NICC meetings and effectively documenting decisions, action items and other relevant information.
- Organising meeting facilities and other meeting logistics.
- Liaising with and supporting NICC members, as required.
- Providing legal counsel and advice and preparing legally binding documents, instruments and authorisations.
- Managing media and communications, developing strategies to establish and maintain the NICC's presence and reputation, and drafting material to support and advance the NICC's activities and objectives.

6.4 Responsibilities of the Director ONICC

The Director ONICC's role is comparable with a Chief Executive Officer and has responsibility for:

- Ensuring the NICC's strategic and regulatory objectives are established and implemented in all work undertaken by the ONICC and the NICC's delegates.
- Maintaining the NICC's authority and independence in connection with departmental and ministerial activities and engagement.
- Identifying and liaising with key stakeholders and maintaining the NICC's relationship with the Department of Enterprise Investment and Trade (DEIT).
- Managing and advising the NICC on matters related to its governance, structure and budget and directing expenditure for the provision of specialist legal or external advice.
- Keeping informed of relevant government policy and developing tailored internal policies that allow the NICC to meet its obligations as a separate government agency.
- Ensuring the ONICC has the capacity and resourcing to provide appropriate advice and support to commissioners and that commissioners are apprised of the information needed to make transparent and accountable decisions.

- Reviewing and considering the human resources and structural design needed for the NICC to monitor and ensure casino compliance with the Act.

7. NICC constitution, membership and appointment

Appointments to the NICC occur in line with the Appointment Standards Boards and Committees in the NSW Public Sector. The *Government Sector Employment Act 2013* does not apply to commissioners.

7.1 Membership and appointment

The Chief Commissioner must be a judge, former judge, or a lawyer of at least seven years' standing. The other members (commissioners) must have expertise or experience in either regulation of financial crime, law enforcement relating to financial crime, accounting, or corporate governance. A person is not eligible to be appointed as a commissioner of the NICC if the person has, within the previous seven years, been employed by or worked in another capacity for a casino operator.

7.2 Acting Chief Commissioner

The Chief Commissioner can appoint an Acting Chief Commissioner. If this is not possible, a majority of commissioners can appoint an Acting Chief Commissioner who can make decisions and exercise the functions:

- of the Chief Commissioner as set out in the NICC Delegations Manual
- as per the NICC Employment Delegation Instrument
- as per the Instrument of Delegation under the *Government Sector Finance Act 2018*.

7.3 Constitution

A commissioner can hold office for up to two consecutive terms of up to four years per term. The Chief Commissioner is appointed full time and commissioners can be appointed either full or part time. Remuneration for members is determined by the *Statutory and Other Offices Remuneration Act 1975*, however commissioners receiving a salary as a judge cannot be remunerated in their position with the NICC.

8. NICC meetings

The NICC is responsible for ensuring casino operators prevent gambling harm, money laundering and terrorism financing activities. The NICC is tasked with monitoring and enforcing casino compliance and is authorised to conduct periodic reviews of casino licences with Royal Commission-like powers. The NICC makes decisions independently of government.

NICC meetings will be held at least monthly to allow consideration of relevant matters in a timely manner. Under the Act the frequency of NICC meetings is determined by the NICC. The dates of NICC meetings will be planned annually and published on the NICC website along with meeting notices and outcomes.

8.1 Meeting agenda and minutes

The Chief Commissioner, with the support of the ONICC, will determine the agenda for each meeting. As far as is practicable, the agenda and majority of NICC papers will be circulated to members at least three working days before the meeting. Distribution will occur using Diligent Boards. The ONICC will prepare the draft meeting minutes after each meeting and as far as is practicable, will submit to members for approval within three working days of the meeting.

8.2 Quorum

The quorum for a meeting of the NICC is a majority of its members.

8.3 Control of meetings

The Chief Commissioner of the NICC will preside at meetings. In the absence of the Chief Commissioner, the Acting Chief Commissioner (if one is appointed) will preside over the meeting. If an Acting Chief Commissioner is not appointed, the commissioners in attendance can elect another commissioner to preside over the meeting.

8.4 Decision making

As far as is practicable the Chief Commissioner or presiding commissioner will seek to reach decisions of the NICC by consensus. If consensus cannot be reached, the decision supported by a majority vote of members at the meeting is the decision of the NICC. The person presiding at any meeting of the NICC has a deliberative vote and, in the event of equal votes, has a second or casting vote. NICC decisions will be reflected in the minutes and put to the NICC for approval at the following meeting. Significant decisions, decisions which require notice to be given to

another person under the Act and other decisions that require clear and precise articulation or are likely to attract significant public interest will be recorded in notices drafted by the ONICC and sent to relevant members for final consideration and approval.

8.5 Out of session decisions

Where appropriate, the NICC may consider matters by the circulation of papers to relevant members through Diligent Boards or by email, in which case a written resolution approved in writing by a majority of members is taken to be a decision of the NICC. The NICC may also conduct a meeting and make decisions via telephone or other electronic communication, but only if any member who speaks on a matter can be heard by the other members. Any out of session decisions will be noted in the minutes of the next NICC meeting.

8.6 Independent advice

The NICC may obtain independent legal and/or professional advice (for example forensic accountants or independent monitors) to assist it in the proper exercise of its powers and responsibilities and to provide advice to assist it with decision making.

Where legal advice constitutes core legal work, the NICC will comply with Premier's Memorandum M2016-04-NSW. If legal advice is obtained outside of this scope, the NICC will adhere to relevant legislation and government policies and guidelines concerning procurement requirements.

8.7 Ensuring recommendations to the NICC comply with the legislation

Many of the NICC's decisions are based on evidence and recommendations received from its L&GNSW delegates, which are put to the NICC in the form of board papers. Board papers include checklists for L&GNSW officers as evidence that all relevant legislative provisions have been considered at the assessment stage, ahead of a recommendation to the NICC.

8.7 Publication of NICC decisions

Decisions made by the NICC may be published on the NICC website, at the discretion of the Chief Commissioner, in circumstances where it is in the public interest to publicise them. Publication will occur as soon as practicable following the NICC's decision and notification to the relevant parties.

9. Delegations

As prescribed in the Act, the NICC may delegate the exercise of its functions to an authorised person or body, including a:

- commissioner of the NICC
- public service employee
- committee of the NICC
- person of a class prescribed in the regulations.

Routine casino supervisory and administrative functions are delegated to staff in L&GNSW such as licensing, inspections, and probity/background checks. The full list of the NICC's decision making functions, including delegated functions, are contained in the NICC Delegations Manual published on its website.

10. Code of conduct

The NICC publishes a Code of Conduct and Ethics which must be adhered to by all NICC members and ONICC members. It is reviewed annually and may be amended from time to time.

11. Committees

The NICC can establish committees to assist it to exercise its functions, including by way of delegation. For example, the NICC may establish a committee to:

- streamline full NICC board meetings, enabling the NICC to function more efficiently
- focus attention on specific NICC matters that are not feasible in a full meeting
- divide the workload among NICC members
- address potential conflicts of interest.

In accordance with the Act, a committee does not need to include a commissioner. The procedure for calling committee meetings and for the conduct of business at those meetings is to be determined by the NICC or (if agreed by the NICC) by the committee. Each committee has an obligation to report on its meetings to the NICC. NICC meetings will include a standard agenda item to allow committee updates to occur.

11.1 Review of committee decisions

The NICC may review and, in accordance with normal processes, vary any decision of a committee. The NICC can also direct that a decision of a committee be remitted to the committee for further consideration. Unless reviewed and varied by the NICC, decisions made under delegation by a committee are decisions of the NICC for which the entire NICC takes responsibility.

11.2 Advisory committee on harm minimisation measures

The Act requires the NICC to establish an advisory committee that will provide advice about harm minimisation measures in relation to casinos. The committee will be chaired by the Chief Commissioner and have up to five members who have appropriate skills or experience, including lived experience of gambling harm. The Chief Commissioner will determine the procedures and frequency of meetings of the committee.

12. Audit and risk management

The NICC manages risks to its operational abilities through strategic planning and governance, and a comprehensive risk framework which is monitored by an independent audit and risk committee.

The NICC's audit and risk committee is established under a shared arrangement agreement with the Department of Enterprise Investment and Trade (DEIT) internal audit and risk management services. This committee meets for the purpose of complying with the requirements of the TPP15-03 Internal Audit and Risk Management Policy for the NSW Public Sector and TPP16-02 Guidance on Shared Arrangements and Subcommittees for Audit and Risk Committees.

DEIT provides services relating to the:

- Audit and Risk Committee and Office
- Chief Audit Executive
- internal audit function
- risk management system.

These arrangements are detailed in the DEIT Shared Arrangement Agreement and the and DEIT Memorandum of Understanding.

13. Indemnity for NICC members

The NICC and ONICC are indemnified by insurance provided through the Treasury Managed Fund (TMF).

The TMF policy covers the NICC and ONICC in respect of the following activities:

- Legal liability, including, but not limited to public liability, liability for claimed misleading representations, professional indemnity and director's and officer's liability
- Statutory liability

- Workers' compensation liabilities under NSW legislation
- Other miscellaneous covers including, but not limited to, employee dishonesty and personal accidents

The TMF policy only applies to activities of the NICC and ONICC which are undertaken in the course of their duties.

14. Work health and safety obligations

NICC and ONICC members must identify and satisfy their work health and safety obligations as officers under the work health and safety laws and ensure workplace safety matters are addressed on a regular basis. Work health and safety risk assessments will be undertaken in respect of any off-site activities facilitated by the NICC.

The ONICC will elect a health and safety representative (HSR) in accordance with the *Work Health and Safety Act 2011*, however in order to meet the other requirements of that Act, the NICC and ONICC are supported by the DEIT Work Health and Safety Policy, as contained in the DEIT Memorandum of Understanding.

15. Financial management

NICC members must ensure the efficient and responsible use of the casino supervisory levy and any other form of funding in accordance with the NICC's regulatory objectives and statutory functions.

Budget planning and expenditure must adhere to relevant legislation and government policies and guidelines concerning financial, asset management and procurement requirements.

15.1 Casino supervisory fund

A casino supervisory fund was established to receive casino supervisory levy payments. This fund is under the control and management of the NICC.

15.2 NICC budget and reporting

The NICC is responsible for managing and allocating money in the casino supervisory fund to exercise the functions of the NICC, as well as for financial reporting. NICC members will be responsible for reviewing, approving, and monitoring the NICC budget and financial reports. Any money not allocated to the NICC's budget will be paid to the Secretary of the department.

15.4 Reimbursement of reasonable expenses

Members can make a claim for any reasonable travel, accommodation or out of pocket expenses incurred when attending any duly authorised NICC-related meetings, however not in connection with attendance at 11 York Street Sydney or any other Sydney-based location, for regular scheduled NICC board meetings. All such claims will need to be approved by the NICC Chief Commissioner.

16. Reporting

The NICC routinely monitors casino compliance and can conduct periodic reviews of casino licences with Royal Commission-like powers. The NICC publishes these reports where it is in the public interest and can also be directed by the Minister to investigate and report on its activities.

16.1 Performance monitoring

The NICC will conduct a formal review of its performance at a minimum of every five years. The review will consider whether the board is fulfilling its functions and objectives and highlight successes and outcomes in respect of its strategic plan. Further it will consider:

- cost effectiveness of its approach
- financial audits
- appropriate number of members for the functions being performed
- appropriate mix of skills, experience, and diversity
- individual members are fulfilling their responsibilities.

The NICC receives regular operational and financial reports from its subcommittees and from staff in L&GNSW. The NICC will inform the Minister, the Secretary of DEIT, and the CEO of L&GNSW of significant issues and events such as emerging or existing risks.

16.2 Annual reporting

The NICC falls within the definition of a statutory body in Schedule 2 of the *Public Finance and Audit Act 1983*. As a statutory body the NICC must submit an annual report to the responsible Minister and the Minister must table the annual report in Parliament. The NICC's annual reports will then be published on OpenGov and the NICC website.

The NICC will prepare the annual report in accordance with the *Annual Reports (Statutory Bodies) Act 1984* and the *Public Finance and Audit Act 1983*. This will include:

- relevant information to fulfil financial reporting requirements
- how the NICC is delivering on its regulatory objectives and statutory functions
- key activities undertaken during the period
- outcomes achieved and key results for the period
- relevant decisions made by the NICC in line with its functions
- current membership and any changes that have occurred during the period
- risk management strategies
- results of any reviews undertaken
- the meetings the NICC held during the period and meeting attendance.

16.3 Other reports under the Act

The NICC has additional reporting obligations under the Act which will be met in accordance the requirements of the Act. These include where:

- The Minister has given a direction to the NICC, in relation to the requirements for a casino, in which case the Minister is to ask the NICC to provide a report and then to consider the NICC's report.
- The NICC provides a report to the Minister from time to time and at any time the NICC thinks it desirable, in relation to the general investigations of a casino. If the investigation was made at the direction of the Minister, the NICC must make such a report.
- The NICC, at intervals not exceeding five years, reviews a casino licence by investigating and forming an opinion as to whether the casino operator is a suitable person to give effect to the licence and whether it is in the public interest that the casino licence should remain in force. The NICC is to report its findings and opinion to the Minister.

17. Government information and public access

Under the GIPA Act, it is generally presumed that all government agencies will disclose or release information, unless there is an overriding public interest against doing so.

The NICC is a government agency for the purposes of the *Government Information (Public Access) Act 2009 (GIPA Act)*. It has legal obligations to make government information available.

17.1 The GIPA Act:

- requires the NICC to publish information defined as 'open access information' on its website

- authorises and encourages the NICC to proactively release government information
- allows members of the public to make informal requests to NICC to access government information
- gives members of the public a legally enforceable right to access government information from the NICC by making a formal access application
- ensures that access to government information is restricted only when there is an overriding public interest against releasing that information.

17.2 Open access information – published information

The NICC publishes the following open access information as required under the GIPA Act:

- an agency information guide
- NICC Charter
- NICC Code of Conduct and Ethics
- NICC Strategic Plan
- a register of government contracts and controlled contracts
- documents tabled in Parliament
- policies that affect members of the public
- a disclosure log of information released under a GIPA decision that may be of interest to other members of the public
- a record of any open access information that is not made publicly available due to an overriding public interest against disclosure.

17.3 Proactive release of government information

The NICC proactively publishes the following information under the GIPA Act:

- delegations of statutory functions
- terms of reference, hearing schedules, transcripts, and other information relating to public inquiries
- board meeting notices and outcomes, including disciplinary action taken against casino operators, close associates and casino special employees
- information about casino reviews conducted under section 143 of the Act
- section 142 deeds and agreements
- fact sheets, guidelines, and reports
- NICC publications
- discussion/research papers.

The NICC operates under principles of openness, transparency, and accountability and endeavours to provide access to as much information about its activities as is appropriate, given the legislative framework it operates within and paying regard to the often market-sensitive and commercial-in-confidence nature of information it deals with.

17.4 Requests for information under the GIPA Act

The NICC deals with requests for government information informally where possible. Information is made available in response to an informal request unless there are good reasons for not doing so, such as considerations that must be taken into account before deciding if the information can be released.

Where requests cannot be dealt with informally, a formal application can be made under the GIPA Act. This gives a person a legal right to access the information unless there is an overriding public interest against release. Formal access applications are managed by DEIT's Legal, Information Unit in consultation with the NICC.

18. Review of the Charter

The ONICC will coordinate a review of the NICC Charter will on an annual basis and update as necessary.

19. Related documents

19.1 Related legislation

- *Annual Reports (Statutory Bodies) Act 1984*
- Annual Reports (Departments) Regulation 2015
- *Casino Control Act 1992*
- Casino Control Regulation 2019
- *Gaming and Liquor Administration Act 2007*
- Gaming and Liquor Administration Regulation 2016
- *Government Information (Public Access) Act 2009*
- *Government Sector Employment Act 2013*
- Government Sector Employment Regulation 2014
- *Public Finance and Audit Act 1983*
- Public Finance and Audit Regulation 2015

- *Work Health and Safety Act 2011*
- Work Health and Safety Regulation 2017

19.2 Related policies

- Department of Enterprise Investment and Trade Memorandum of Understanding
- NICC Code of Conduct
- NSW Government Boards and Committees Guidelines
- NICC Regulatory Delegations Manual
- Premier's Memorandum M2016-04-NSW
- TPP15-03 Internal Audit and Risk Management Policy for the NSW Public Sector
- TPP16-02 Guidance on Shared Arrangements and Subcommittees for Audit and Risk Committees

Current versions of these documents are available internally on the Resource Centre in Diligent Boards, the DEIT intranet, and publicly on the NSW legislation website.

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