

# Geoff Cahill

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21 January, 2002

Mr. Brian Farrell,  
The Chief Executive,  
Casino Control Authority,  
Level 17, 309 Kent Street,  
Sydney NSW 2000.

Dear Mr. Farrell,

**SUBMISSION TO THE CASINO CONTROL AUTHORITY  
IN THE MATTER OF THE REVIEW OF PROGRESS OF STAR CITY  
AS RECOMMENDED BY THE YEAR 2000  
SECTION 31 INVESTIGATIONS**

### **Preamble**

The recent published Notice inviting submissions to the section 31 Star City investigation stems from an alleged “corporate culture” which has proved inappropriate to produce effective procedures to deal with such alleged issues as “prostitution, loan sharking, service of alcohol, money laundering and sexual harassment”.

The Investigation is concerned about media reports that point to:

- \* alleged money laundering activities, by persons who frequent the casino;
- \* alleged attendance at the Casino of criminals or persons of ill repute; and
- \* criminal activity generally, or other activity which may be considered undesirable, which may be associated with the casino.

Having regard to the subject matter , I wish to raise three points with the Investigation. These I have placed below under the headings of **Statutory Bodies, Relevant Information and Compliance Workplace Factors.**

## **Other Statutory Bodies**

The stated issues of concern to the Investigation call attention to the involvement of a variety of State and Federal government departments and agencies. However, for the purposes of this submission, I will concentrate on the State jurisdictional scene.

In New South Wales, the Police Department, the Treasury, WorkCover, the Anti-Discrimination Board, the Liquor Administration Board and the Casino Control Authority (which authority currently conducts this investigation ) are a few State statutory bodies which have a direct interest in the proceedings.

Any one of those State government departments and agencies above could mount their own investigations or inquiries based on the subject matter under their own legislative or regulatory instruments.

It invites consideration of such legislation as the *Crimes Act 1900 (NSW)*, *Taxation Administration Act 1996 (NSW)*, *Occupational Health and Safety Act 2000 (NSW)*, *Anti-Discrimination Act 1977 (NSW)*, *Industrial Relations Act 1996 (NSW)*, *Gaming Machines Act 2001 (NSW)* and the *Casino Control Act 1992 (1992)* [“the Act”], and the associated regulatory requirements (regulations are still to be finalised for the *Gaming Machines Act* ).

For example, any adverse finding as to probity in the matter of a Casino licence may have a corresponding impact on any other gaming licences held by the corporate entity or their associates or parent companies (such as those involving gaming machines or devices or a hotelier’s business). It is also has the potential for issues to arise as to vicarious liability in matters concerning occupation health and safety in such alleged

work place surrounds. Further, that a corporate entity permits an environment where the employees are under risk of sexual harassment invites vicarious liability elements. The alleged money laundering invites taxation concerns to the Treasury , and the frequent consorting and presence of criminals in a Casino must concern the Police Department.

All these intertwining State statutory bodies have a common thread which requires a high standard of probity. However, it is the gaming licence (whether Casino, gaming machine and hotelier's licence ) where a lack of probity in any activity or under any heading can risk the licence. It is not only a risk to the instant corporate holder licence but it can also impinge on any other gaming licence held by the same corporate body, or their associates or related or parent companies any where else in Australia, or world wide.

This global impact can also arise from the cancellation or suspension of a licence because it is not in the public interest (which, as a guideline, *section 3 (1), Casino Control Act 1991 (VIC)* , defines as “ .. having regard to the creation and maintenance of public confidence and trust in the creditability and stability of casino operations.” ). The many community based submissions should assist in providing a sufficient guideline in this regard.

However, essentially, there are a variety of other cogent expert areas requiring compliance if the licensee is to fully satisfy the allegations raised or otherwise comply with the strict regulatory regime under the Act.

### ***Recommendation***

**For a complete investigation, it is my view that it is imperative the Investigation obtains the expert views of all other relevant State statutory bodies. This is particularly important on issues of compliance, and developing a corporate culture which is capable of dealing with the kind of alleged issues asserted as a basis of this Section 31 Investigation.**

## **Relevant Information**

The gaming-related business is one of the most highly regulated enterprises in the State. This applies to all Casino undertakings. It will be appreciated that with the recent amendments to the Act and the Occupational Health and Safety Act, the introduction of the Gaming Machines Act (which is expected to commence on 3 April, 2002) and existing applicable legislation generally (some referred to above), all appear to make ample provision to ensure conditions conducive to proper community standards in the gaming business.

When the primary objectives of the Act [ s. 4 A ] are taken into consideration, it is clear that the fundamental compliance criteria is probity. It is the principal ingredient when assessing the appropriateness (fit and proper standard) of all employees, special employees, senior management, officers and directors and close associates (corporate or otherwise), related or parent companies, suppliers or certain financiers.

The weakness in the system is not so much the fulsome legislative provisions or regulatory requirements. There are certain weaknesses which hinder proper compliance (excluding incomplete compliance programs for licensees and the fact that management is unwilling or unable to produce effective measures at the workplace). The problem often lies with the inability of the licensee to realistically comply with certain of these strict obligations.

For example, when dealing with this issue at an employee level, it is first recognised that an obligation is placed on the licensee to employ staff who exercise their functions in accordance with the objectives of the Act. . These functions can be interpreted to require that all employees of a casino are “fit and Proper” persons. Certainly, the requirements for “special employees” [ s. 43 ] are more demanding for holding a licence [ s. 44 ] with the Authority being given certain powers to “require” that the applicant provides relevant information [ s. 49 & 62 ] and allows the Authority to investigate [ s. 50 ].

However, the Licensee does not possess an entitlement to access criminal records or personnel files or credit ratings or financial documents or auditors reports or offences committed under corporation law or fair trading or industrial offences or other sources of relevant information which are debarred as a matter of privilege or privacy (either by law or practice). This is all the more regrettable in relation to a complete probity investigation of the more senior management and special employee functions or close associates. It seems insufficient for the investigation to be hampered or relatively limited to an employee's or close associate's own confirmation or warranty or from their own preferred referees as to fitness.

I appreciate that in some situations an employee or close associate may be able to voluntarily obtain a letter of certification from the Police Department or other authority confirming that at the date of search no conviction or breach of regulation or fair practice was recorded against such person or corporate entity. However, a demand (in the sense of a coercion which threatens a detriment to the employee, expressly or inferentially ) by the licensee requiring the employee (or close associate) to "voluntarily" access such relevant information may, in itself, be conduct that transgresses the law of privacy ( or industrial law). In any event, the information obtained in this way can be limiting as to scope and relevance.

There is also some uncertainty as to the extent that a licensee must go to reasonably satisfy a proper and complete probity investigation of an employee or close associate. While a precise definition may not be sufficient for all circumstances, it would be useful for licensees to have Authority guidelines or even, at the least, check headings' list

It is possible by inter-departmental agreements and certain legislative or regulatory measures for complete compliance to be achieved within the jurisdiction of the State. It will require reciprocal arrangements with other States and the Commonwealth for a complete overall compliance in the attainment of relevant information in Australia. The most immediate access will mainly involve the search for criminal records. Finally, the

fact of access being available to a licensee may be all that is required to resolve an employment or close associate probity issue.

*Recommendation*

- (a) **measures be taken in the New South Wales Jurisdiction (by way of statutory or regulatory or departmental administrative agreement) for the access of all relevant information to be made available to a licensee as may be required by a licensee prior to the appointment of a casino employee or an association with or appointment of a close associate for the compliance purposes of a licensee;**

**relevant information shall mean any information which is proper, sufficient and necessary to comply with the standard of probity expected in the gaming industry of employees or close associates;**

**before any relevant information is sought from any source, which information may have been asserted as privileged (for any reason) or debarred by law or practice generally, that an application setting out the nature, purpose and extent of the information to be discovered be made by the licensee to the Authority for the Authority's Certificate of Confirmation stating the nature and extent of the information permitted to be accessed;**

**that all State government departments, authorities, agencies, courts and tribunals and other adjudicating bodies, shall be required to comply with the Authority's Certificate of Confirmation;**

- (e) **that strict non-disclosure requirements be put in place by the source providing the relevant information, and in relation to the Authority and the licensee;**

- (f) that the employee or close associate concerned is first advised of the nature and extent of the relevant information sought to be discovered before an application is made for a Certificate of Confirmation;

that the employee or close associate concerned is informed of the relevant information discovered which was based on the Authority's letter of Confirmation, before any relevant final determination is made by the licensee, so as to allow the employee or close associate a reasonable opportunity to comment on the information collected;

that reciprocal arrangements be sought with the Commonwealth and all States. This could be extended, as appropriate, to other overseas jurisdictions; and

- (i) that the Authority prepare procedures and draft documents in the matter of applications and Letters of Confirmation, and draft guidelines for what it considers is necessary for a proper probity compliance investigation by a licensee.

## **Compliance Workplace Factors**

The compliance requirements of a licensee are not limited to the Act or *the Gaming Machines Act 2001 (NSW)*. The boundaries for complying with probity, and cover all the happenings which are alleged to have occurred in the instant investigation, are much more expansive of nature.

These compliance factors go to such matters as unlawful discrimination, occupational health and safety risks and directors and officers duties under the Corporations law, for starters. These areas are most relevant to the instant allegations. Each have substantial vicarious liability considerations for the licensee. It is also an area which is often specifically over looked when drafting compliance programs.

For example, do the licensee's management and staff understand, and are they able to recognise the ingredients, of sexual harassment, or what is meant by unlawful discrimination in the provision of goods and services or the wide ranging circumstances for contravening the *Anti-Discrimination Act 1977 (NSW)* (the Federal Acts are similar in content) ? Are they aware and are they able to apply the comprehensive requirements under the recent *Occupational Health and Safety Act 2001(NSW) & Regulations* ? Do the directors, senior management (and at all levels of supervisory management) appreciate what their liabilities are under the *Corporations Law* (or under the *Anti-Discrimination Act* or the *Occupational Health and Safety Act* or the *Workers Compensation Act 1988 (NSW)* ) ?

Further, does the licensee know what the elements of the offences are under these legislative instruments above which draw down such heavy fines and/or imprisonment ? And if there is such an awareness, is the licensee able or have the capacity to draft satisfactory compliance programs, apply those programs to all levels of management and employees generally, develop appropriate on-going procedures to prevent transgressions, have appropriate complaint's officers to receive and independently deal with grievances, and provide regular up-dates and compliance reviews ?

These laws are within the realm of essential workplace statutory obligations. It will be appreciated that a licensee risks irreparable harm to the licensee's reputation by not being considered a "fit and proper" person if convicted of any offence under the above laws. Such a conviction will certainly evoke the spectre of "not being in the public interest".

***Recommendation***

- (a) That a licensee shall produce for consideration of the Authority a compliance program which shall include a section specifically dealing with “workplace” compliance factors including , but not limited to, such legislation as the *Industrial Relations Act 1996 (NSW)*, *Anti-Discrimination Act 1977 (NSW)*, *Occupational Health and Safety Act 2001(NSW)*, *Workers’ Compensation Act 1988 (NSW)* and the *Corporations Law (directors’ and officers’ duties)*.
- (b) That a licensee shall produce a plan for applying the compliance program and draft procedural guidelines for their introduction into the licensee’s business for consideration of the Authority prior to the renewal or granting of a licence.

**In conclusion**

I produce these recommendations as a professional involved in the gaming industry. I believe that they are recommendations which will assist in making a more complete and improved workplace compliance in relation to probity issues and better able to satisfy public interest considerations. The views expressed in this submission are the author’s absolutely. Confidentiality is not requested.

Yours Sincerely,



**GEOFF CAHILL, SOLICITOR & ATTORNEY**

*(The author was a former inaugural NSW Commissioner for Equal Opportunity, and Chairman, Government and Related Employees Appeal Tribunal. He is currently a lawyer in private practice).*

**Enclosed: (disk)**

# GAMBLERS HELP LINE.

Hon Sec Jim Hickson  
5 Nannawilli Street  
BERKELEY N.S.W. 2506  
Phone 4271 2297.

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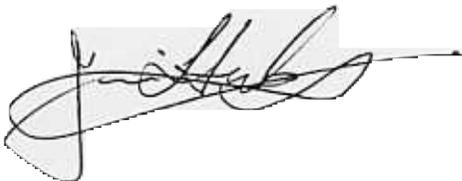
Chief Executive  
Mr Brian Farrell  
New South Wales  
Casino Control Authority  
GPO Box 3970  
SYDNEY NSW 2001.

Dear Mr Farrell

Please find Gamblers Help Line's submission regarding the Casino Authority's review of progress of the statutory investigation of Star City Casino licence as required under section 31 of the Casino Control Act 1992, and the report recommendation by Mr Peter McClellan QC, that the Authority continue to monitor Star City towards a satisfactory culture and the desired management outcome.

Gamblers Help Line has no reason why this submission should remain confidential.

Yours sincerely



Jim Hickson  
Hon Sec Gamblers Help Line

30th January 2002.



### **Recommendation 1.**

In the Mr McClellan QC 1997 report he concluded that there were appropriate measures in place to discourage undesirable activity. In his Report 2000, the experience of the three years since the opening of the permanent casino tends to suggest that all those concerned with the operation of the casino have not applied the necessary vigilance.

*Following the completion of the 2000 investigation, the Authority has formed the opinion: the casino operator is a suitable person to continue to give effect to the casino licence and the Casino Control Act 1992 : and it is in the public interest that the casino licence **should** continue in force.*

After the 2000 Report by Mr Peter McClellan QC, and the evidence available to the Authority, Gamblers Help Line cannot comprehend the Authority accepting his findings, and conclusions. and endorse his recommendations to the Minister for Gaming and Racing The Hon J. Richard Face, pursuant to s,143 of the Casino Control Act.

### **Recommendation 13.**

The recommendation by Mr McClellan QC that the Authority obtain from Star City at regular intervals the names of all new members of the Endeavour Room. Has the Authority pursued this matter, and advised the relevant law enforcement agencies of all information held by them? If not - why not.

### **Recommendation 14.**

All members of the Endeavour Room be issued with a membership card containing their name, date of birth and a photograph of the member. Has the Casino carried out this recommendation, as it is now some thirteen months since this recommendation by Mr McClellan QC and The Authority agreeing to take the necessary action it considers appropriate.

### **Recommendation 15.**

This recommendation is most concise and self - explanatory, and even Star City should not have any problem to determine a method by which this can be achieved.

### **Recommendation 16.**

Is it not the object of the Authority to maintain and administer a system for the licensing, supervision and control of the Casino for the purpose of ensuring the management and operation of the casino remain free from criminal influence or exploitation. If all these steps are in place no problems should emerge on the main gaming floor.

### **Recommendation 17.**

Is Star City not required under the Financial Transactions Reports Act 1988, obliged to report cash transactions over \$10,000 to the federal agency AUSTRAC. If this is the case, the Authority should have no trouble to access this information.

Although I understand AUSTRAC conducted a Joint Study with Star City of the Casino's compliance with this legislation in June 2000, and found that 10% of significant cash transactions were **not** reported, I repeat were **not reported** by Star City. AUSTRAC has advised Star City that it remains concerned as to the level of under reporting. Is this just another breach of their license.

### **Recommendation 21.**

The Authority closely monitor the use of alcohol in the Casino to ensure that staff appropriately satisfy their obligations under the Act concerning the presence of, and gambling by intoxicated persons. As quoted by Mr Peter McClellan QC "It is clear from the evidence before me that Star City has **not** effectively implemented a responsible service of alcohol policy, particularly in the Endeavour Room. Further, it has **failed** to provide staff with a culture which respects legal obligations over matters of revenue. Some patrons have been allowed to gamble notwithstanding staff believed they were intoxicated. The desire to please the patron, particularly the larger player, has outweighed the Casino's and its staff's legal obligations to prevent gamblers playing under the influence of alcohol. I am satisfied that some of the staff and management in the Endeavour Room were prepared to accept or deliberately ignore that patrons were intoxicated in order to maximise the revenue to be obtained from them. This reflects upon the management of the Casino as a whole and indicates serious deficiencies in the culture."

### **Recommendation 22.**

Star City employ an Investigations Manager and an Investigations Officer. Their responsibilities include handling all investigations relating to staff, liaising with law enforcement agencies and conducting investigations as required.

### **Recommendation 23.**

Star City's table games complimentary system based on player's turnover at the tables, providing services or items such as accommodation, airfares and food at either no cost to the patron or at a reduced cost.

VIP Executive Hosts have the authority to issue vouchers for these complimentary vouchers, it must be clear to senior staff that this system can lead to abuses by unscrupulous staff members, a review of this system is imperative, and should be made more transparent.

### **Conclusion:**

The Casino Control Authority's complement of their statutory investigation of the casino licence as required under section 31 of the Casino Control Act 1992. the Authority was assisted by Mr Peter McClellan QC .

This is the same Mr McClellan QC who was appointed by the Authority to conduct the s.143 Inquiry, and assisted the Authority's investigation under s.31 in 1997. In this report he was satisfied with the casino operations, and concluded that criminal activity was not a problem.

Every man and his dog knew that criminal activity was rife in the casino at that period.

What happened in the casino in the following three years is now history, with Mr McClellan's acknowledgement that Star City had developed significant problems in the operation of its private gaming area known as the Endeavour Room, and effective procedures were not in place to deal with prostitution, loan sharking, the service of alcohol, money laundering and sexual harassment. And concluded that it is in the public interest that the casino licence continues in force.

Not even death, suicide's, breakdown of family relationship's, bankruptcy, criminal activities and many associated side effects can slow this monster, who operate with immunity. By the way what is the Authority's role?

What is most bizarre, is the opinion given to the Minister of Gaming and Racing by the Authority :

- \* the casino operator is a suitable person to continue to give effect to the casino licence and the Casino Control Act 1992; and
- \* it is in the public interest that the casino licence should continue in force.

If it was'nt quite so serious, the New South Wales Casino Control Authority the Report of Investigation and it's Conclusion's, pursuant to section 31 of the New South Wales Casino Control Act 1992, would be laughable.

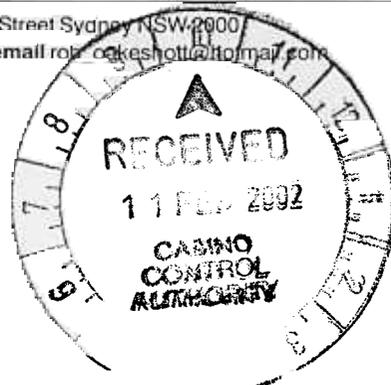


# Robert Oakeshott

MEMBER FOR PORT MACQUARIE

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7<sup>th</sup> February 2002

Mr Brian Farrell  
Chief Executive Officer  
Casino Control Authority  
Level 17, 309 Kent Street  
SYDNEY 2000

Dear Mr Farrell

I write to compliment the work being undertaken by Star City Casino and the TABCORP organisation in their efforts to implement the McClelland recommendations of the past year.

I understand some significant cultural changes have been undertaken by the organisation, particularly in relation to the Endeavour Room.

From any anecdotal evidence that comes my way and from observations on several occasions with my own eyes, I can see genuine attempts at improvement.

As a strong critic of the regulatory environment surrounding casino gaming in NSW, I think Star City Casino and TABCORP have demonstrated their own willingness to improve operations.

Yours sincerely

**ROBERT OAKESHOTT MP**  
**MEMBER FOR PORT MACQUARIE**  
**SHADOW MINISTER FOR RESPONSIBLE GAMING AND RACING**



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8 February 2002

Brian Farrell  
Chief Executive  
NSW Casino Control Authority  
GPO Box 3970  
SYDNEY NSW 2001

## **TTF INPUT TO THE REVIEW OF STAR CITY AS RECOMMENDED BY THE SECTION 31 INVESTIGATION**

Dear Mr Farrell,

Thank you for the opportunity to provide a tourism industry submission to this inquiry.

The TTF is a private, national, lobby group representing Chief Executives of the 200 major corporations and institutions in Australia's tourism, transport and leisure industries.

We have a long-standing position in favoured of legalised and regulated gaming in NSW. We recognise that the regulation of casino gaming requires a deft touch if the unacceptable activities noted in the report by Mr McClellan within the Endeavour Room are to be minimised and widespread illegal gaming is not to resume outside the Casino.

It is not too long ago that NSW was a victim of a policy framework which:

- Cost the NSW taxpayer significant revenue;
- Provided a massive free-kick to organised crime;
- Cheated the NSW economy of 3,000 jobs in the non-black economy;
- Denied NSW residents and the tourism industry exciting non-gaming entertainment options, and
- Offered far more limited consumer protection for gamblers.

In addition, the Star City casino has been a major contributor to the refashioning of the Pyrmont peninsula in one of Australia's largest urban renewal exercises. Recently, the Casino through sponsorship ensured that Pyrmont's annual festival went ahead.

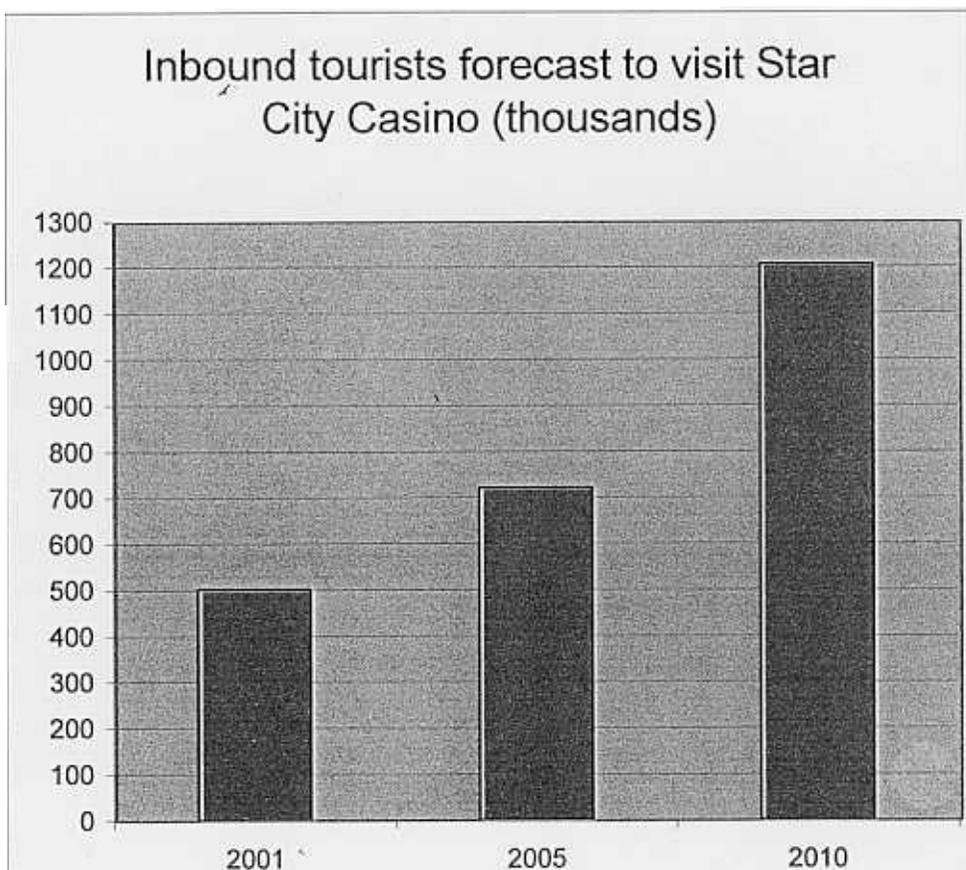
As is usual with review of regulation, the key questions are whether the compliance burden on the provider/consumer and other costs of regulation are more than met by the benefits from imposing the regulations both within the regulated environment and beyond the reach of the regulations.

The issue of compliance burden is sensitive in the tourism industry. Depending on their nationality, many of the nearly 3 million international tourists who visit Sydney each year arrive through a tortuous visa process.

Unfortunately, the most recent official Federal Government data on international tourist visitation to Star City Casino comes from 1999. (This is due to processing issues with Passenger Cards in the Department of Immigration). In 1999, of the 2.6 million international visitors to NSW, one in six (or 420,000 inbound tourists) visited Star City Casino, not including multiple visits by the same tourist. By source market, over one in three international visitors to NSW from Hong Kong, Malaysia and China made at least one visit to Star City Casino.

However, beyond Star City's current contribution to tourism in NSW, is its potential for a much greater contribution in coming years as our inbound tourism shifts its source markets.

The following two charts provide a guide to the expected growth of Star City Casino's inbound tourist patrons. As many of these patrons will visit more than once during their trip, this chart understates total inbound tourist visitation expected to the Casino. These forecasts were derived by applying the 1999 share of inbound visitors by source country who visited Star City (source: International Visitors Survey 1999, Bureau of Tourism Research, p47) to the official forecasts for growth in arrivals by source country (source: Tourism Forecasting Council, *Forecast*, October 2001).

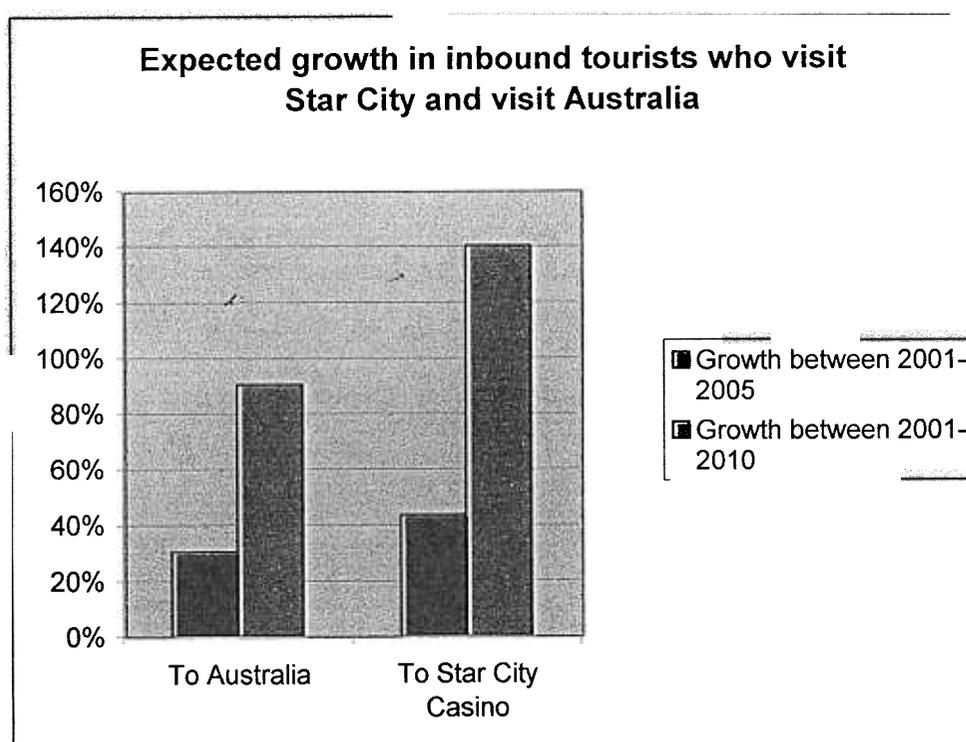


In addition it is worth noting that Star City Casino has high patronage among source markets to Australia that are expected to grow far faster than overall inbound tourism.

Fast growing tourism from China, is particularly important to prospects for tourism to NSW and the Star City Casino. In 1999, 87% of Chinese visitors to Australia visited NSW. In the ten years to 2010 the Federal Government's Tourism Forecasting Council predicts that the total number of arrivals from China (not including Hong Kong) will increase from 168,000 in 2001 to a staggering 1,046,000 in 2010.

Should Star City maintain its share of visitors from total Chinese visitation to Australia, it could be expected that nearly 350,000 Chinese visitors to Australia would visit Star City Casino at least once in 2010.

The expectation of faster growth in Star City inbound tourist patronage than in overall growth in inbound tourism is shown in the following chart.



Turning to the core of the McClellan recommendations, we have reviewed the material provided to Star City staff and reports of the other processes put in train by Star City to address the concerns raised with the corporate culture of management in the Endeavour Room.

Of particular importance, is the regular updating of the TABCORP Board by former Court of Appeal Judge, Mr Jerrold Cripps, QC monitoring the issues raised by Mr McClellan. Indeed, it appears that Star City has taken steps beyond those recommended by Mr McClellan by implementing signage urging reporting of illegal activities backed by retraining staff and revising the Company's code of conduct and processing of reports of illegal conduct.

We noted with interest the shift to more favourable press reporting of Casino administration of issues identified by Mr McClellan from mid 2001.

Additional evidence for the sea-change in the culture of Star City is the evidence of exclusion of undesirable patrons from the Casino. The Daily Telegraph in July reported the

We noted with interest the shift to more favourable press reporting of Casino administration of issues identified by Mr McClellan from mid 2001.

Additional evidence for the sea-change in the culture of Star City is the evidence of exclusion of undesirable patrons from the Casino. The Daily Telegraph in July reported the exclusion of 140 suspect high rollers.

In the last week or so, Star City's claims as a responsible employer were reinforced by an outside review. Winners of the "Best Employers to Work for In Australia" study by consultants Hewitt Associates and the Australian Graduate School of Management was reported in the Australian Financial Review of 1 February 2002. This review recognised Star City Casino in the top nine employers with more than 1,000 staff. The relevance of this award to the McClellan findings was that the final of four main reasons for the results was that "culture and values are viewed as critically important" (AFR 1/2/02 p 78).

As we noted at the outset of this submission, Casino regulation is a delicate balancing act. The public has strong interests in legalised gaming in terms of tax revenues, employment and gambler protection. Yet, there will inevitably be undesirable aspects associated with high level gaming and the role of regulation is to balance the respective community interests, without encouraging a return to flourishing illegal gaming which entails a far worse outcome for NSW residents.

Best practice casino regulation and management cannot guarantee to exclude all unsavoury incidents, and part of the Casino Control Authority's brief in responding to the Review of McClellan recommendations should be to ensure that the nature of the regulatory balancing act is better understood by the public.

If you or your staff have any queries on the contents of this submission, please ring Karl Flowers, General Manager – Policy and Research, on 02 9368 1500.

Yours sincerely



**HON JOHN BROWN, AO**  
Chairman

cc Minister Face  
Minister Nori