

PERTH CASINO ROYAL COMMISSION

PUBLIC HEARING - DAY 1

MONDAY, 12 APRIL 2021

COMMISSIONER N J OWEN

COMMISSIONER C F JENKINS

COMMISSIONER C MURPHY

**MS PATRICIA CAHILL SC and MR MICHAEL FEUTRILL SC appear
with MS KIRSTEN NELSON, MR ADAM SHARPE and MR DAVID LEIGH
as counsel assisting the Perth Casino Royal Commission**

COMMISSIONER OWEN: Please be seated.

THE ASSOCIATE: Perth Casino Royal Commission is now in session.

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COMMISSIONER OWEN: Good morning. By a Commission dated 5 March 2021 and published in the Government Gazette on 12 March 2021 the Honourable Lindy Jenkins, Mr Colin Murphy and I have been constituted as a Royal Commission to inquire into and report on the affairs of Crown Casino Perth and related matters. The decision to establish the Commission follows findings made in what has come to be called the Bergin Inquiry to which I'll refer later and which called into question among other things, the proper operation of the Perth Casino.

15 For ease of reference and consistency we propose to call this inquiry the Perth Casino Royal Commission or the acronym PCRC. Since 5 March 2021 we have been working to establish the infrastructure and the legal and administrative personnel necessary for us to discharge the responsibility that the Commission imposes upon us. The preparatory work is not yet complete, particularly in relation to premises, technology infrastructure and the availability of some personnel but we believe that we have progressed sufficiently to enable us to convene this first hearing to give a brief outline of our present thinking about our task and how we intend to approach it.

25 Now, when I completed the remarks that the Commissioners wish to make I will invite counsel assisting to address other issues again in a brief and provisional way. We do not intend to have the Commission read into the transcript but it is now formally tendered as part of the record and will be exhibit 1. It is available to be read on the website.

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EXHIBIT 1

DATE

12/04/2021

The opening remarks the Commissioners wish to make, available to be read on the website.

35 COMMISSIONER OWEN: The Commission is prescribed by the terms of reference. In summary, we are required to inquire into and report on two broad but interconnected issues each of which has in turn a number of internal areas for consideration. What follows is a simple description of those issues and the language does not necessarily mirror the wording of the terms of reference.

40 The first of the broad issues can be described as the regulation of casinos in Western Australia and the internal areas are first, did the Gaming and Wagering Commission as regulator properly carry out its functions in relation to the licensee of the Perth Casino?

45 Secondly, was the Gaming and Wagering Commission properly supported in carrying out its functions by the Department of Government now called the Department of Local Government, Sport and Cultural Industries. And thirdly, is the regulatory framework for casinos enshrined in legislation what I might term fit for purpose and if not, what changes to the statutory regime should be

50 made to render it so.

5 The second of the broad areas concerns the licensee of the Perth Casino and within that there are two internal questions. First, is the licensee of Crown Perth Casino a suitable person to hold the casino license and are nominated close associates suitable persons to be concerned in the operations of the casino. And secondly, if the answer to that question is in relation to any relevant corporate entity, “No,” in respect of identified deficiencies, what remedial measures need to be implemented to render it a suitable person?

10 The licensee of the Perth Casino is Burswood Nominees Limited. It is the trustee of the Burswood Property Trust and the nominated close associates in the terms of reference are Burswood Resort Management Limited, Burswood Limited and Crown Resorts Limited which is the ultimate holding company. Subsidiaries of Crown Resorts Limited own and operate a casino in Melbourne and they hold a license for a casino in Sydney that is yet to commence operations.

20 What should be clear from the summary that I've just given is that the Inquiry is not about the morality of gambling or whether there should be a casino in Perth or elsewhere in this State. They are matters of public policy that lie within the remit of others. However, as part of our investigations we will be looking at things such as governance structures and regimes and the operational process of the casino operations. This is likely to include aspects of what is loosely termed corporate social responsibility that may be relevant to the questions of suitability, the functioning of the regulator and the adequacy of the statutory framework.

30 I now wish to say a little about the website and our team. We've established a website that can be located at pcrc.wa.gov.au. It is still under development and although not yet fully functional it contains essential information about the Royal Commission and we suggest that people have regard to it. On 30 March 2021 we issued a press release that can be found on the website and at which we gave details of the critical personnel appointments.

35 The Commissioners wish to record their gratitude to the key personnel who have committed their time and expertise at short notice and for an extended period. Without repeating all of the material in the press release we note these appointments. Ms Danielle Davies is the Project Director. The position of Deputy Project Director is not filled at the moment but in the short term Ms Kelly Martinelli is assisting on an acting basis.

40 Counsel assisting are Ms Patricia Cahill SC, Mr Michael Feutrill SC supported by Ms Kirsten Nelson, Mr David Leigh and Mr Adam Sharpe. We have engaged Corrs Chambers Westgarth Perth as solicitors assisting. The Corrs team is led by Ms Kirsty Sutherland and includes Mr John Tuck and others from Corrs Melbourne Office but who are not involved in the team that is acting as solicitors assisting the Victorian Royal Commission and I will refer in more detail to the Victorian Royal Commission a little later.

I now want to turn to the timeline. We are required to submit an interim report on issues relating to regulation by 30 June and a final report on all issues by 14 November 2021. We are determined to hold to those time prescriptions and we look forward to the cooperation of parties interested in these proceedings to assist us to do so. To assist in this regard, we note section 7 of the Royal Commissions Act which enables one or more Commissioners to act separately from the other or others. We may from time to time hold hearings that are constituted by one or two Commissioners and where appropriate have two hearings occurring at the same time.

It is in our view, appropriate that a person who holds a statutory license to conduct in a protected environment a commercial gaming facility or who is associated with such an entity would regard it as part of its obligations to cooperate with a duly constituted regulatory inquiry. Our approach to questions of suitability may include considerations of that kind.

The next subject on which I wish to attribute comments is the public interest. The Perth Casino is of course a private enterprise concern and due recognition must be given to the private interests of the Crown Group and to those who invest in it. We also recognise the contribution that the Crown facilities at the Burswood Complex make to employment and recreation for people in Western Australia and to the tourism industry, however, the Crown Group can only operate a casino within that complex because it holds a statutory license issued by the Government of Western Australia on behalf of the people of this State and the nation generally.

This renders the socially responsible lawful and efficient operation of its gaming activities as matters of public interest. So far as we are aware, this is the first time since the grant of the casino license in 1988 that there has been an inquiry into these issues and given social changes in over 30 years there is an increased importance to an inquiry of this kind. We will be concerned with grave matters of private and public interest and we enter into this investigation with that firmly in mind.

The import of the public interest has a number of relevant aspects. First, we will so far as is possible, hold hearings in public but there are likely to be occasions when we will have to take evidence in private sessions and/or attach confidentiality restrictions on documents or evidence. Secondly, we will provide opportunities for members of the public to make submissions on matters relevant to and within the terms of reference. Full details of the format for and the manner of lodging submissions will be included on the website in coming days.

Thirdly, we are aware that some figures as to the likely cost of this inquiry have been mentioned in media reports. Those figures may have come from tentative and provisional estimates made at a very early stage, certainly before the Commission was issued on 5 March 2021. They cannot be regarded as a budget as that term is normally understood. Discussions about necessary resources are continuing and they will no doubt inform the compilation of a

budget. The Commissioners are aware of the responsibility to keep costs within reasonable bounds and to utilise public resources in the best and most efficient manner so as to complete the Inquiry on time and in accordance with the public interest.

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In relation to the question of evidence, we have serious matters to consider and we will do so with an open mind and in a manner that seeks to be respectful of both private and public interests. A Royal Commission is not bound by the rules of evidence that apply in court proceedings but the Commissioners intend to base their eventual findings on logically probative materials. In gathering evidence leading to findings, the rules of procedural fairness properly understood are intended to be applied in a reasonable way that best suits the scope and nature of the Inquiry and the legitimate expectations of interested parties. We will leave it to counsel assisting to provide a little more detail about the manner in which evidence will be collected and dealt with.

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I now wish to say something about participation by the public and interested parties. The Western Australian Industrial Relations Commission has kindly made the room in which we now sit available for hearings of this Royal Commission. We have been advised that under COVID regulations as they presently apply, this room can accommodate a maximum of somewhere between 28 and 32 people including Commissioners and Commission officers. This may have an impact on the ability to accommodate members of the public but we are confident that by the time we commence substantive hearings livestreaming to the Internet website will be available. Further details of these facilities will be provided in coming days.

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There will be some individuals and corporate entities whose interests are clearly affected by the subject matter of the Inquiry and those persons may be given leave to appear in the Inquiry. Leave to appear will carry with it the ability subject to conditions to cross-examine witnesses and to produce witness statements and evidence. We intend to issue a practice direction hopefully tomorrow, 13 April, giving details about the application for leave to appear process. We also intend to hold a second hearing provisionally set for Tuesday, 20 April to deal with applications for leave to appear.

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I want to turn now to other relevant inquiries. It's a matter of public record that entities associated with Crown Resorts Limited operate or hope to operate casinos in Perth, Melbourne, London and Sydney. We are primarily concerned with the licensee of the Perth Casino but we are obliged to consider whether Crown Resorts Limited among other companies in the Crown Group is a suitable person to be concerned in or associated with the licensee of the Perth Casino.

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It's also a matter of public record that there are at least three other inquiries that have considered or are considering matters similar to those with which we are concerned. The first is what has come to be known as the Bergin Inquiry and that is described in some detail in our terms of reference. Briefly, it was an inquiry into whether a subsidiary of Crown Resorts Limited was a suitable

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person to operate a yet to be established casino in Sydney and whether Crown Resorts Limited was a suitable person to be a close associate of that licensee.

5 In a report dated 1 February 2021 the inquirer answered both questions in the negative although with an outline of steps that if taken, might render both entities as suitable persons. The report was delivered to the Independent Liquor and Gaming Authority in New South Wales and that body is presently deliberating on whether in light of remedial measures taken and to be taken by Crown, the relevant entities are now suitable persons. Our terms of reference
10 require us to have regard to the Bergin Report and matters referred to in it including allegations, issues, findings, observations, materials and recommendations.

15 We are still in the process of carrying out a detailed analysis of the Bergin Report and we are not yet in a position to indicate the precise use we will make of the report and the source material which are a public record and which inform the matters raised in it. The public interest militates against a full scale re-examination of things that have been exhaustively covered in a prior and duly constituted regulatory inquiry into the same or similar subject matter. We
20 will seek to make the best and most efficient use of the available materials consistent with the separate obligations under our terms of reference and the legislation in this State and taking into account the public interest and questions of fairness.

25 We are mindful of paragraph (d) of our terms of reference. It indicates that we're not obliged to inquire into things that have been or are being or will be sufficiently covered by other inquiries or investigations. We'll have more to say on this issue once our analysis of the Bergin materials has been finalised.

30 The second relevant inquiry is a Royal Commission constituted by the Victorian Government to inquire into among other things, whether a subsidiary of Crown Resorts Limited which holds the license for and operates a casino in Melbourne is a suitable person to hold the license, whether Crown Resorts is a suitable associate of that licensee and if the answer to those questions is in the
35 negative, what action would be required to render the entities suitable.

The third inquiry we wish to mention is also concerned with the Melbourne Casino and it is running in parallel with the Victorian Royal Commission. It is a review established by the Victorian Government into Victoria's Casino regulatory framework. The Bergin Inquiry, the Victorian Royal Commission,
40 the Victorian regulatory review and our Commission are separate and independent with different terms of reference and constituted under different legislation. However, it is apparent that there is a good deal of commonality of subject matter.

45 We believe that the public interest will best be served by collaboration between the various inquiries so far as that is possible and is consistent with individual responsibilities. We have reached out to or intend to approach the other duly constituted inquiries to reach understanding about appropriate levels of

cooperation. The objective will be to permit each of us to make the best use of efficiencies and available resources in the public interest while recognising and respecting our respective legislative and other remits and requirements. We hope it will also contribute to a lessening of practical burdens on interested parties who will be affected by the work of regulators or inquirers in at least three different jurisdictions.

There is a particular issue which we refer to as the temporal question and it has an impact on the task in which the deliberations of ours and the other inquiries may be informative. The terms of reference require us to decide whether Burswood Nominees Limited is a suitable person to hold the license and whether each of the other named entities is a suitable person to be concerned in the organisation and conduct of the casino. The use of the present tense is significant.

We will be making those decisions later this year and we believe they will have to speak at or near the time when we are called on to opine. In other words, it will be a fluid situation informed by what has occurred in the past, for example matters canvassed in the Bergin Inquiry but taking into account what has happened in more recent times, the remedial measures that the Crown Group companies have taken and other measures that can reasonably be expected to take place in the future.

By the time we come to make findings some or all of the other inquiries may have completed their work and reached conclusions about the suitability of the entities with which they are directly concerned. We will of course reach our own decisions on the matters before us on the evidence that is presented to us and using materials from the Bergin and other inquiries. However, we believe the public would expect us to give due regard to conclusions reached by other properly constituted inquiries into the same or similar issues and on the same or similar materials. In due course we will issue a practice direction covering the way we'll handle the fluidity of these aspects of the inquiries.

Let me turn now to the indicative program. Because we're required to deliver an interim report by 30 June we intend to focus in the first instance on the first of the two broad issues, namely, the manner in which the regulator carried out its functions and the statutory framework under which the superintendents of casinos occurs. In this respect initial notices to produce have already been issued and others will follow in coming days. It can be anticipated that hearings on those questions will be scheduled during the month of May.

Our present intention is to conduct hearings on the second broad question, that is, the suitability of the licensee and its associates from time to time during the months of July, August and September. That having been said, preparatory work on those issues has already commenced and will continue in parallel with the consideration of regulatory issues. We'll provide further detail about schedules as soon as convenient and will give interested parties as much notice as possible. I've already mentioned the practice direction dealing with the

application for leave to appear will shortly be promulgated and other practice directions and guidance notes will be issued from time to time.

5 I'm sure you're all aware of the old story of the traveller in the outback who was lost, comes across a local and asks for directions to the destination and the local says, "Well, if I were going there I wouldn't start from here." I want to assure you that we are not lost but it doesn't hurt to get directions from time to time and in this part, the part in that story played by the locals is played by our solicitors and counsel assisting so I would now ask Ms Cahill to give us some
10 directions to our destination.

MS CAHILL: Commissioners, I appear with Mr Michael Feutrill SC, Ms Kirsten Nelson, Mr Adam Sharpe and Mr David Leigh. We've all been appointed by the Attorney-General of Western Australia, Mr John Quigley as
15 counsel assisting the Perth Casino Royal Commission. It is our task to assist the Commissioners in executing their commission in accordance with the terms of reference. The Commissioners will also have the assistance of a team of solicitors drawn from law firm Corrs Chambers Westgarth and from the State Solicitor's Office assigned to the Commission for the term of the Inquiry and
20 working from the Commission's premises.

You have identified in broad terms, Commissioner, the two areas of inquiry as concerning the regulation of casinos in this State and the suitability of the licensee of the Perth Casino. As to the area of regulation, the primary pieces
25 of State legislation are the Casino Control Act, the Gaming and Wagering Commission Act and the Casino Burswood Island Agreement Act. The Casino Control Act and the Gaming and Wagering Commission Act are the main sources of regulation of casino operation and casino gaming. The Casino Burswood Island Agreement Act amongst other things, ratifies the State
30 agreement made between the State and the licensee and manager for the operation of the casino.

It's worth noting that the statutes I've just mentioned were first enacted in the mid-1980s. We anticipate that it will be necessary for us to obtain evidence, in
35 particular of an expert nature about the current and emerging issues relevant to the operation of casinos and what is current best practice both in Australia and internationally to address those issues. That will assist the Commission's inquiry into whether the current legislative framework is fit for purpose and represents best practice in 2021. If it doesn't, such evidence will be helpful in
40 identifying the changes that need to be made to the legislative and regulatory framework so that it reflects best practice now and also for the future.

As to the area of suitability of the licensee, the terms of reference require findings to be made about whether each of the licensee and its nominated
45 associates is a suitable person. The scope of that inquiry is potentially very broad. It will at least require a consideration of matters bearing upon the character of the licensee and its nominated associates and the ability and willingness of the licensee to discharge the obligations it has under both the license and the State Agreement.

5 This will include the sorts of matters identified in the terms of reference such as reputation and integrity issues, competence and ability issues, financial capability, governance issues including risk management and the public confidence and trust that the relevant person maintains.

10 One of the important tasks of the Commission's legal team will be to gather for the Commissioners information and evidence relevant to the terms of reference. We will of course endeavour to do that responsibly and efficiently using the public resources that have been made available to us for that purpose. As you have foreshadowed, Commissioner, we will seek to utilise the Bergin Report and collaborate with other inquiries where appropriate to do so. Outside of those avenues we intend to obtain evidence and information when we can through the cooperation of parties and by non-compulsory means. 15 When that option is not available or appropriate then the Commission will exercise the statutory powers it has under the Royal Commissions Act 1968 to obtain information and documents and summons witnesses.

20 You have made reference, Commissioner, to the Commission's intention to hold hearings in public as much as possible. The Commission website will assist this objective by livestreaming all public hearings. The Commission will also give notice on the website of upcoming hearings. Accordingly, any member of the public with access to the Internet should be able to observe any or all of the public hearings as they wish. The website will also be the place 25 where the Commission publishes practice directions about how the Commission will conduct its work and what will be required of parties engaging the Commission. The practice directions will address such matters as the document protocols to be followed when producing documents to the Commission, the procedure for a party to follow when seeking leave to appear 30 before the Commission as you've already mentioned and the like.

35 Another important task of the Commission's legal team will be to assist the Commissioners with submissions about the use to be made of the information and evidence gathered and to propose findings and recommendations that may be available on that information and evidence and which the Commissioners may wish to adopt for inclusion in the reports they are required by the Commission to submit to the Government.

40 In that regard you have already identified, Commissioner, that an interim report is required to be submitted by 30 June 2021 in respect of the area of inquiry to do with casino regulation. We expect there is much on that topic that can be inquired into and reported on in the interim report and we have already made a start on gathering part of the evidence that relates to this topic. It may be, however, that aspects of the inquiry into the licensee's suitability will identify 45 matters that are also relevant to the adequacy of the current regulatory system. Accordingly, we foreshadow that the Commissioners may wish to supplement the interim report as to casino regulation in the final report due in November 2021.

As to those deadlines for reporting, I can say on behalf of the Commission's legal team that we have heeded the determination of the Commissioners to meet those deadlines and we will work diligently to assist the Commissioners to achieve them. May it please the Commission.

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COMMISSIONER OWEN: Thank you, Ms Cahill.

The Commission will now adjourn to a date to be fixed, in all probability Tuesday, 20 April. Thank you very much.

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**AT 12.40 PM THE MATTER WAS ADJOURNED TO
TUESDAY, 20 APRIL 2021**

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