WESTERN AUSTRALIA

Perth Casino Royal Commission

Interim Report on the Regulatory Framework

30 June 2021

Acknowledgement of Country

The Government of Western Australia acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures; and to Elders both past and present.

PERTH CASINO ROYAL COMMISSION
The Honourable Neville John Owen AO (Chair)
The Honourable Carolyn Frances Jenkins
Mr Colin Murphy PSM

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PERTH CASINO ROYAL COMMISSION

111 St Georges Terrace,
PERTH WA 6000

30 June 2021

The Honourable Kim Beazley AC
Governor of Western Australia
Government House
13 St Georges Terrace
PERTH WA 6000

Your Excellency

In accordance with paragraph (k) of the Commission dated 5 March 2021, we are pleased to present the Interim Report on our inquiries thus far in relation to paragraphs 8 to 11 (the Regulatory Framework) of the terms of reference.

Yours sincerely

Commissioner Neville Owen

Commissioner Carolyn Jenkins

Commissioner Colin Murphy

Foreword

By Commission dated 5 March 2021, made under the *Royal Commissions Act 1968* (WA), and published in the Government Gazette on 12 March 2021, we were appointed as a Royal Commission to inquire into and report on the affairs of the Perth Casino and related matters.

Our inquiry is not at large. We are constrained by the terms of reference which form part of the Commission.[1] The terms of reference contain two broad but interconnected areas of inquiry. The first area concerns the suitability of the licensee of the Perth Casino and related entities (Suitability ToR). The second area of inquiry concerns the adequacy of the regulatory framework to regulate casinos in Western Australia (Regulatory Framework ToR). The terms of reference are not about the morality of casino gaming or whether there should be a casino in Western Australia.

This is the first time since the grant of the Perth Casino licence in 1985 that there has been an inquiry into these issues. Given the social changes in over 30 years, our inquiry is an important step in the process which will ensure that casino regulation in Western Australia is of the standard expected by the Western Australian community, and which will enable the Perth Casino to operate in a socially responsible, lawful and efficient manner in the twenty-first century.

The Commission requires us to submit an Interim Report that we consider appropriate in relation to the Regulatory Framework ToR no later than 30 June 2021 and a Final Report into all the terms of reference by 14 November 2021. We are pleased to meet our first reporting time frame by presenting an Interim Report which is the foundation for our Final Report and the recommendations which will form part of it.

It has been an extremely busy few months for all involved in the inquiry. To start, we established a secretariat and premises and engaged counsel and solicitors to assist us. We then commenced research and issued notices to gather the documents required to make proper inquiry into the matters the subject of the terms of reference. On 12 April 2021 we held our first public hearing.

Our obligation is to submit an Interim Report about the Regulatory Framework ToR and only to the extent that we consider appropriate. Accordingly, we started by inquiring into paragraphs 8 to 11 of the terms of reference. Inquiries into the Suitability ToR will form the second phase of our inquiry.

One of our main objectives for the first round of hearings was to build a store of knowledge about the regulatory framework that applies to the Perth Casino and the approach that the Gaming and Wagering Commission, the casino regulator, took to the discharge of its functions over time. The information and knowledge gathered from examinations, requests for information and notices to produce documents has informed our inquiry into the Regulatory Framework ToR and it is also the foundation for the future inquiry into the Suitability ToR. We have built the knowledge base about the Regulatory Framework ToR which will enable us to

[1] Appendix 1.

move forward to the next stage of our inquiry. However, those inquiries are not complete and there is more work to be done.

As well as the additional work still to be completed, the issues considered in our inquiries into the Regulatory Framework ToR will require further consideration once we receive evidence in our inquiry into the Suitability ToR. It is highly likely that aspects of the inquiry into the Suitability ToR will identify additional matters which are relevant to findings about the Regulatory Framework ToR. This may mean that we will need to recall some witnesses. We cannot hear submissions about the Regulatory Framework ToR. until the evidence is completed.

Accordingly, we have decided not to make any findings or recommendations on the Regulatory Framework ToR until the Final Report. Our work so far has led us to the firm view that to make findings or recommendations at this stage would be unfair to all concerned in this inquiry. It would deprive us of the opportunity to consider the Regulatory Framework ToR in the context of the evidence that we will hear in relation to the Suitability ToR, as well as the benefit of considering submissions that counsel assisting and the interested parties will make.

Our hearings are being held in a hearing room of the Western Australian Industrial Relations Commission (WAIRC). The WAIRC has kindly made two hearing rooms, office space and other rooms available for our use. We appreciate the assistance given to us by the WAIRC and its staff.

We acknowledge the hard work of everyone involved in the inquiry which has enabled us to provide this Interim Report on time. We acknowledge the tireless work of those engaged directly to assist us and the assistance of witnesses who have prepared witness statements and given evidence with limited notice. We are also grateful for the co-operation of those who are representing parties.

The Honourable Neville Owen AO

The Honourable Carolyn Jenkins

Mr Colin Murphy PSM

Chapter 1: Background and methodology

Purpose of this Chapter

1. The purpose of this chapter is to provide the background to the Perth Casino Royal Commission (PCRC), give an overview of the administrative and legal work undertaken by the PCRC and describe the content of this report (Interim Report).

Background

The Bergin Inquiry: background and findings

2. The impetus for the PCRC was the publication on 1 February 2021 of the Independent Liquor and Gaming Authority (ILGA) report handed down by the Hon Patricia Bergin SC (Bergin Report). The background to the ILGA inquiry, established under s 143 of the *Casino Control Act 1992* (NSW) (Bergin Inquiry), and the findings made in the Bergin Report are relevant to understand the matters which are the subject of the PCRC's terms of reference.

3. The Bergin Inquiry was established to inquire into the suitability of Crown Sydney Gaming Pty Ltd (Barangaroo Licensee) to give effect to the restricted gaming licence for the proposed Barangaroo Casino at a development on the Sydney Harbour foreshore and the suitability of Crown Resorts Limited (Crown Resorts) to be a close associate of the Barangaroo Licensee. The Barangaroo Licensee is a wholly owned subsidiary of Crown Resorts.[2]

4. After examining these issues, the Bergin Inquiry found that Crown Resorts was not a suitable person to be a close associate of the Barangaroo Licensee. The PCRC terms of reference state that the Bergin Inquiry found that Crown Resorts had:

    a. facilitated money laundering through the accounts of Southbank Investments Pty Ltd and Riverbank Investments Pty Ltd unchecked and unchanged in the face of warnings from its bankers;

    b. disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and

    c. entered into and/or continued commercial relationships with junket operators who had links to triads and other organised crime groups.

[2] Bergin Report, vol 1 [BGN.0001.0001.0001] 2-5 [1]–[10].

5. At the time, the finding that Crown Resorts was not a suitable person to be a close associate of the Barangaroo Licensee was relevant to Western Australia for the following reasons:

   a. the holder of the casino gaming licence for the Perth Casino, is a wholly owned subsidiary of Crown Resorts;

   b. some of the conduct by Crown Resorts, which led to the finding in the Bergin Report that it was not a suitable person, related to conduct occurring at Perth Casino;

   c. the nature of these two findings, coupled with the fact they had been made by a regulator in another jurisdiction, raised concern as to whether the existing regulatory framework for casinos and casino gaming in Western Australia is adequate and effective to address the risks posed by money laundering and other extant and emerging risks in the area of casino gaming.

Other Inquiries

6. Publicity surrounding money laundering at Australian casinos and the findings of the Bergin Inquiry have led to a series of separate inquiries being initiated by regulators and others in other Australian jurisdictions. While these inquiries are separate, independent and constituted under different legislation with different terms of reference, they share a commonality of subject matter.

7. To facilitate the proper and expeditious conduct of its inquiry the PCRC has contacted these inquiries to explore the possibility of collaboration and cooperation where to do so would be consistent with its legislative and other responsibilities.

Victorian Casino Royal Commission

8. On 22 February 2021, the Honourable Ray Finkelstein AO QC was appointed as Commissioner and Chairperson of the Royal Commission into the Casino Operator and Licence in Victoria.

9. The Victorian Casino Royal Commission (VCRC) is required to inquire into, report and make any recommendations in relation to its terms of reference. The VCRC is required to report on its findings and any recommendations to the Governor no later than 15 October 2021. While the VCRC's terms of reference require inquiry into matters similar to the PCRC,[3] there are differences, including that the subject of the VCRC inquiry is the suitability of Crown Melbourne Limited to operate the Crown Casino Melbourne (Melbourne Casino).

10. The PCRC has engaged with the VCRC with a view to sharing information. At this stage, other than material which is publicly available, the VCRC has not provided the PCRC with

[3] Victoria, Government Gazette, No S 83 (22 February 2021).

material it has gathered. This is a function of the relevant legislative framework and does not reflect an unwillingness to cooperate.

11. The PCRC is still considering the extent to which it is appropriate for the PCRC and VCRC to share information. The Western Australian *Royal Commissions Act 1968* (WA) does not empower the PCRC to provide to a body conducting another inquiry materials that were coercively obtained using its powers under that Act. It is anticipated that as the Inquiries progress, the PCRC and the VCRC will agree categories of documents that can be shared.

Independent Liquor and Gaming Authority Inquiry

12. Following the findings and recommendations of the Bergin Inquiry, ILGA is presently deliberating on whether, in light of remedial measures taken and to be taken by Crown Resorts and its subsidiaries (Crown), it is suitable to hold the licence for the Barangaroo Casino. The discussions between ILGA and Crown are in confidence and ILGA is yet to conclude its deliberations.

13. On 16 April 2021, ILGA released a statement announcing it had reached agreement with Consolidated Press Holdings (CPH) on a number of undertakings regarding Crown.

14. The announcement stated that some of the key proposed undertakings by CPH include:

    a. not entering into any information sharing arrangements with Crown;

    b. not initiating any discussions with Crown, other than through public forums, about Crown's businesses or operations;

    c. not seeking to have its executive or nominee appointed to Crown's board, or requisition a meeting of Crown shareholders to seek the appointment of any person as a director of Crown, before October 2024;

    d. not seeking any amendment to the Crown constitution which would affect the management or operation of Crown's businesses; and

15. It is expected that the final form of the agreed undertakings will be recorded in an enforceable legal document between CPH and ILGA.[4]

16. The PCRC has contacted ILGA and awaits its decision. The information arising out of the ILGA Inquiry and the remediation will be of significant relevance to the PCRC.

Victorian Independent Policy Review of Casino Regulation

17. In addition to the VCRC, the Victorian Minister for Consumer Affairs, Gaming and Liquor Regulation commissioned a review (Victorian Regulatory Review) to investigate the structural and governance issues relevant to casino regulation in that State and the role of the casino regulator, the Victorian Commission for Gambling and Liquor Regulation

[4] Crown Resorts, NSW ILGA Announcement in Relation to Agreement with CPH, ASX/media release (2021) [CRW.512.042.0001].

(VCGLR). Like the ILGA Inquiry, this review is not public and will produce an independent report to the Victorian Government on casino regulation.

18. The PCRC has engaged with the Victorian Regulatory Review and awaits the publication of the report. If it is made available to the PCRC, the report will be of significant relevance to the PCRC.

AUSTRAC Investigation

19. In October 2020, the Australian Transaction Reports and Analysis Centre (AUSTRAC) commenced an investigation into Crown over non-compliance with anti-money laundering (AML) laws at the Melbourne Casino.[5]

20. On 7 June 2021, Crown Resorts announced it had been notified by AUSTRAC that it had commenced a formal enforcement investigation into a potential serious risk of non-compliance with AML laws at the Perth Casino.[6]

21. The matters to be investigated by AUSTRAC are relevant to the PCRC. The PCRC will co-operate with AUSTRAC, to the extent it is able to do so, noting that the legislation that governs AUSTRAC's investigation contains secrecy provisions. It is likely that AUSTRAC's investigations into the Perth Casino may assist the PCRC in its inquiries into the Suitability ToR if the findings from the investigation are released publicly before the PCRC is required to report finally to the Governor on 14 November 2021.

Market movement and changes in corporate ownership of Crown Resorts

22. Since the commencement of the PCRC, a number of interested parties have moved to make unsolicited bids to acquire shares in Crown Resorts. On 22 March 2021, the Blackstone Group (Australia) Pty Ltd on behalf of The Blackstone Group Incorporated and its affiliates (Blackstone) made an $8 billion private equity takeover offer for Crown Resorts. This bid was revised on 10 May 2021. On 19 April 2021 Crown Resorts received an offer equivalent to $3 billion from Oaktree Capital Management (Oaktree) to assist Crown in acquiring CPH's interest in Crown Resorts. This offer was revised on 15 June 2021. On 10 May 2021 Star Entertainment Group Ltd (Star), the current operator of Sydney's only licenced casino, Star Casino, submitted a merger proposal to Crown Resorts.

23. On 17 May 2021 Crown Resorts announced that it rejected Blackstone's revised bid and that it had not yet formed a view on the merits of the Star merger proposal. Crown Resorts has not made a public announcement about the Oaktree proposal.[7]

24. At this time, it seems unlikely that the negotiations over a potential change in ownership of Crown Resorts will be finalised prior to the submission of the PCRC's Final Report (Final Report). However the situation is fluid and largely, the circumstances are unknown to the PCRC. If there is an agreement to sell all or part of Crown Resorts prior to the

5 Crown Resorts, AUSTRAC Enforcement Investigation, ASX/media release (2020) [PUB.0016.0015.0043].
6 Crown Resorts, Update in Relation to Regulatory Compliance Matters, ASX/media release (2021) [PUB.0016.0015.0044].
7 Crown Resorts, Update on the Acquisition Proposal from Blackstone, ASX/media release (2021) [PUB.0016.0015.0041].

completion of the PCRC, it will alter the scope and content of the inquiry into the Suitability ToR.

Methodology

Public hearings and publicly available documents

25. At the commencement of hearings the PCRC expressed a view that it was in the public interest for the hearings to be conducted in public, where possible. However, there are a number of factors that the PCRC must consider when deciding what evidence can and cannot be put into the public domain.

26. One consideration is the interests of the Perth Casino as a private enterprise concern. Due recognition must be given to the private and commercial interests of Crown and their investors. The PCRC recognises the contribution the facilities at, and connected to, the Perth Casino make to the employment and recreation of Western Australians and to the tourism industry.

27. However, the licensee of Perth Casino can only operate a casino in Western Australia because it holds a statutory licence issued by the Government of Western Australia on behalf of the people of this State. In Western Australia, the Perth Casino licensee holds the only casino gaming licence granted under the *Casino Control Act 1984* (WA) (CC Act). Members of the public who wish to engage in casino gaming can do so only at the Perth Casino.

28. Notwithstanding the private and public interest considerations, the overarching consideration in any determination in making public information provided to the PCRC must be whether the PCRC has the power to do so under the *Royal Commissions Act 1968* (WA). While s 7 of the *Royal* Commissions *Act 1968* (WA) empowers a Commission to determine the way an inquiry will be conducted, there are limits to this power.

29. There is no provision in the *Royal Commissions Act 1968* (WA) that expressly authorises or requires a Royal Commission to conduct hearings in public. However ss 19 and 19A empower the inquiry to be conducted in private, which assumes that a Royal Commission is authorised to conduct an inquiry in public. The PCRC has construed the power conferred by s 7 of the Act, to do all things necessary or incidental to the exercise of its function and performance of its terms of reference, as enabling the PCRC to conduct its hearings in public where it considers it appropriate to do so.

30. The PCRC considers that the public interest makes it appropriate to conduct hearings in public as much as possible. To ensure that interested members of the public can observe the hearings they have been livestreamed and both the recordings and transcripts of the hearings are available on the PCRC website. The PCRC has also uploaded to the website the witness statements provided by the witnesses who have been examined.

31. The PCRC has received a large number of documents pursuant to the power conferred by ss 8A and 8B of the *Royal Commissions Act 1968* (WA). Some of these documents have been shown to the witnesses who have been examined by the PCRC and have been

tendered as exhibits. Others have been referred to in this report and have also been tendered as exhibits. The PCRC has considered whether it is appropriate to upload these exhibits to the website and concluded that the *Royal Commissions Act 1968* (WA) does not empower it to do so.[8] In some circumstances, this makes it more difficult for the public to understand what is happening at the hearings.

32. A further issue arises under the *Royal Commissions Act 1968* (WA) in relation to the protection from disclosure of information by way of a claim of legal professional privilege. While the PCRC acknowledges the right of parties to make a claim of legal professional privilege as a reasonable excuse for non-production of a document, it has been assisted by some parties electing not to claim privilege in return for the PCRC providing an undertaking not to make public the information over which a claim for privilege is made. Given the benefit of this undertaking will allow the PCRC access to material it would not otherwise have seen, it is an appropriate exercise of powers under s 7 of the *Royal Commissions Act 1968* (WA).

Administrative, legal and investigatory support

33. On 5 March 2021, work began on establishing the infrastructure to support the PCRC. The PCRC found premises within the existing space occupied by the WAIRC at 111 St Georges Terrace, Perth. This includes hearing rooms on the 18th floor and office space for the Commissioners, secretariat and legal team on levels 17 and 11. The PCRC gained partial access to a portion of this space in March 2021. The legal team gained access to the office space on 1 April 2021.

34. At the request of the PCRC, the Attorney General, the Honourable John Quigley LLB JP MLA, appointed both senior and junior counsel to assist the PCRC. Ms Patricia Cahill SC and Mr Michael Feutrill SC were appointed as senior counsel assisting. Ms Kirsten Nelson, Mr Adam Sharpe, Mr David Leigh and Ms Ann Spencer were appointed junior counsel assisting.

35. Corrs Chambers Westgarth, Perth were appointed solicitors assisting.

36. An investigatory team was appointed to assist the PCRC.

37. Ms Val Buchanan was engaged as Media and Communications Coordinator responsible for all media matters. A media room was set up outside the hearing room with a live video feed of public hearings to the media room to allow an environment for journalists to work while at the same time covering the public hearings.

38. A website for the Commission was set up on 9 April 2021 with the domain name 'pcrc.wa.gov.au'. The website is the information source between the PCRC and the public for hearing information, publication of publicly available documentation, information for parties, including practice directions and available transcript. Public hearings are livestreamed through the website.

[8] This conclusion has been supported by advice from independent senior counsel.

Work to Date

Work outside of hearings

39. Prior to the commencement of public hearings, work commenced on briefing papers scoped from the PCRC's terms of reference. This included research work on the historical and legislative background to the establishment of the Perth Casino and the regulatory framework for casinos and casino gaming in Western Australia. Some of this research is the subject of this Interim Report.

40. Work commenced on a detailed analysis of the Bergin Report to ascertain the findings and the evidentiary materials supporting the findings.

41. On 1 April 2021, the PCRC issued its first notice to produce, seeking documents and statements of information from the GWC. To date, the PCRC has issued 18 notices to produce including to the Department of Local Government, Sport and Cultural Industries (Department), the Gaming and Wagering Commission of Western Australia (GWC) and Crown and has received approximately 22,858 documents in response, totalling more than 214,800 pages.

42. In anticipation of the commencement of public hearings proper the PCRC issued its first practice direction on 13 April 2021. This was made available to the parties via the Commission's website.

43. Five practice directions have been issued and published on the website. These are intended to assist parties and provide guidance on hearing procedure, applications for leave to appear, preparation of witness statements, non-publication orders, document production and management. The PCRC has also issued a formal document management protocol in relation to the recording and storage of electronic documentation in a form that is compatible with our document management system.

44. In addition to the public hearings there has been considerable work undertaken outside the hearing, including preparation for further hearings and the preparation of this Interim Report.

45. The process of gathering information and evidence relevant to the terms of reference has been and continues to be a significant piece of work. The interconnectedness of issues and overlap of evidence produced has been challenging and time consuming. The PCRC's legal team and the parties have been cooperating to try to ensure information gathering is being undertaken in a responsible and efficient manner.

46. The requirement under the terms of reference to make findings on the adequacy of the regulatory framework and recommendations for the future has required both a past and forward review of the regulatory framework. Consequently, a significant body of research has been undertaken to understand the historical background surrounding the establishment of the Perth Casino and the design of the regulatory framework. The PCRC has also examined the changes that have occurred within the regulatory regime over the last 30 years.

47. The PCRC has looked to other jurisdictions to assist in its examination of the current regulatory regime and to identify what may be considered best practice, nationally and internationally, in casino regulation.

48. Another area of significant work during this interim period has been to perform a detailed analysis of the Bergin Report. Paragraph (b) of the terms of reference requires that the PCRC has regard to the Bergin Report and other matters relating to the Bergin Inquiry. This extends to the allegations, issues, findings, observations, materials, recommendations, public transcripts of evidence as well as communications between the Perth Casino licensee and any person concerned in or associated with the organisation. It further includes the conduct of the gaming operations of Perth Casino on the one hand and the GWC on the other, prior to and during the Bergin Inquiry.

49. In determining the extent to which the PCRC needs to consider the Bergin Report and the other inquiries described above, attention must be given to paragraph (d) of the terms of reference which states that the PCRC is not required to inquire into matters to the extent that it is satisfied that the matter has been, or is being or will be, sufficiently covered by other inquiries, investigations, or proceedings. The public interest militates against a full-scale re-examination of matters that have been or will be exhaustively covered in another duly constituted regulatory inquiry.

50. The PCRC is closely monitoring the VCRC, AUSTRAC, Victorian Regulatory Review and ILGA inquiries to identify the extent to which any matters may already have been or will be sufficiently covered by them.

51. Meeting the directives in paragraphs (b) and (d) of the terms of reference is not a simple task. Access to and use of transcripts, evidence and communications connected to the Bergin Report has come with its own suite of issues arising out of the different legislative privileges and protections in each jurisdiction. While the PCRC has received a significant tranche of materials from the Bergin Inquiry, at the time of preparing the Interim Report, the extent to which these can be relied on has not yet been determined. The PCRC is committed to make the best and most efficient use of the available materials.

Public hearings

52. The first public hearing was held on 12 April 2021 when the Commissioners made an opening statement.

53. On 20 April 2021, the PCRC's second public hearing was held. This was for the purpose of hearing applications for leave to appear from interested parties. Five applications for leave to appear before the PCRC were granted.

54. In considering applications for leave, the PCRC had regard to the following factors; whether the person has a direct or special interest in the terms of reference; the potential for the person to be subject to an adverse finding; and the ability of a person to assist the Commission in the inquiry including, whether granting leave to appear would assist the Commission's inquiry over and above the assistance which may be provided by way of written submissions.

55. The parties granted leave to appear were Crown Resorts and subsidiaries relevant to the Perth Casino operations, current Crown directors and a former director John Horvath AO, the GWC, the Department and former Chief Casino Officer (CCO) Mr Michael Connolly.

56. Twenty-four witness summonses were issued for the first round of hearings. Witnesses were invited to provide a written statement of evidence to the PCRC prior to appearing in person. This enabled oral evidence to be given in an efficient manner.

57. Between 10 and 27 May 2021, the PCRC commenced the examination of witnesses to assist with its inquiries into the regulatory framework. The witness list included current and former GWC members and officers, and Department staff involved in the regulation of the Perth Casino. The evidence of most of those witnesses has concluded but some will have to be recalled to testify about further matters.

58. As the PCRC has limited time, some hearings were held concurrently. That is, two Commissioners sat to hear evidence in one hearing room and the other Commissioner sat to hear evidence in a second hearing room. The Commissioners then familiarised themselves with the evidence given in the hearing room in which they were not present. It was only by this method that the evidence relevant to the Interim Report was heard within time. The PCRC intends to continue to use this process wherever convenient.

Public submissions

59. The matters the subject of the PCRC and, in particular, the need for legalised gaming activities to be regulated properly and efficiently, are matters of public interest. The PCRC considers it may be assisted by public comment on these matters.

60. The PCRC called for public submissions from early April 2021 to 31 May 2021. The PCRC has received five formal public submissions from interested parties specifically relating to the regulatory framework. This information will be considered when we come to devising our recommendations in the Final Report.

61. In addition to the formal public submissions the PCRC received 52 emails from interested members of the public seeking to share information about their knowledge or experiences at the Perth Casino. In some cases, these reports may be relevant to the PCRC's terms of reference and will be investigated and/or considered by the PCRC.

The Interim Report

62. The PCRC is required to submit an Interim Report in relation to the Regulatory Framework ToR as it considers appropriate by 30 June 2021. At this stage of its inquiries, the ability to report is necessarily limited. The Interim Report does not contain a summary of the evidence heard to date because the evidence of some witnesses is incomplete. The PCRC will finalise its view on the evidence when it has heard all the evidence from every witness and had an opportunity to hear closing submissions. Further, the Interim Report does not refer to every topic canvassed in evidence and every relevant issued raised concerning the Regulatory Framework ToR. The significance of

many issues will only be known when the evidence and final submissions have been heard.

63. Consistent with that approach, in many parts of this Interim Report the phrase 'the PCRC has formed a preliminary view' (or similar wording) is used. These references are to be understood as meaning that there is some evidence or other material that warrants further investigation and should not be read as a finding or conclusion.

64. For all these reasons, the PCRC does not express any final or concluded views in this Interim Report and is only able to report on the following:

a. the PCRC's current understanding of the meaning and content of the Regulatory Framework ToR;

b. the legislative history of the regulatory framework of casino gaming in Western Australia;

c. the extant and emerging strategic risks identified by the Bergin Report and the PCRC (to date);

d. the way that the regulatory framework in Western Australia and other Australian jurisdictions addresses these extant and emerging strategic risks;

e. the issues to be considered in assessing the appropriateness, capability and effectiveness of the GWC to discharge its statutory functions and exercise its statutory powers in relation to casino regulation;

f. the approach to be taken in assessing the capability and effectiveness of the Department to support the GWC;

g. the issues to be considered in assessing the capability and effectiveness of the GWC, and the Department in supporting the GWC, to identify and address conflicts of interest by officers involved in casino regulation; and

h. the PCRC's preliminary view of the issues that will be considered in the Final Report on the matters that might enhance the regulatory framework and the future capacity of the GWC and the Department to address the risks identified.

Chapter 2: Regulatory framework terms of reference

Purpose of this chapter

65. The purpose of this chapter is to explain the PCRC's current understanding of the meaning and content of the Regulatory Framework ToR and the PCRC's approach to its inquiry in that context. For the reasons already explained, the PCRC does not presently express any final or concluded views on these topics.

General observations

66. The PCRC's inquiry into the Regulatory Framework ToR is to enquire and report upon:

> B. The following affairs of the Crown Casino Perth and related matters -
>
> > 8. the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address extant and emerging strategic risks identified in the Bergin Report, or otherwise by this inquiry, including in relation to junket operations, money laundering, cash and electronic transactions and the risk of infiltration by criminal elements into casino operations;
> >
> > 9. the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged by the Gaming and Wagering Commission under State and Commonwealth laws;
> >
> > 10. the capability and effectiveness of the Gaming and Wagering Commission in discharging its regulatory functions and responsibilities, and the Department in supporting the Gaming and Wagering Commission, including in relation to identifying and addressing any actual or perceived conflicts of interest by officers involved in casino regulation; and
> >
> > 11. matters which might enhance the regulatory framework and the Gaming and Wagering Commission's and Department's future capability and effectiveness in addressing any of the matters identified above, including any policy, legislative, administrative or structural reforms or changes, including additional regulatory controls.[9]

67. The primary focus of ToR 9 and ToR 10 is the activities and conduct of the GWC and the Department.

68. To the extent that the definition in the terms of reference of Department extends to predecessors of the Department, this includes the Department of Racing, Gaming and Liquor[10] and the Office of Racing, Gaming and Liquor.[11]

69. Until 2003 the GWC was known as the Gaming Commission of Western Australia (GC).[12]

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9 Western Australia, Government Gazette, No 45 (12 March 2021) 1080.
10 Between 1 July 2001 and 30 June 2017.
11 Between 14 December 1984 and 30 June 2001.
12 *Racing and Gambling Legislation Amendment and Repeal Act 2002* (WA) s 124, assented to on 26 June 2003.

70. The prefatory words to the Regulatory Framework ToR confine this aspect of the PCRC's inquiry to the affairs of the Perth Casino and related matters.

71. The PCRC therefore is not inquiring into the regulatory environment as it relates to gaming generally (which would include activities such as community gaming and lotteries), except to the extent that such inquiry also relates to the affairs of the Perth Casino or matters related to those affairs.

72. Likewise, the PCRC is inquiring into the regulatory environment in relation to casinos and casino gaming specifically, only to the extent that it relates to the affairs of Perth Casino or matters related to those affairs.

Term of reference 8

Regulatory Framework

73. For the purpose of this Interim Report, the PCRC construes the relevant 'regulatory framework' as being the collection of Acts and Regulations that together regulate casinos and casino gaming in Western Australia. Essentially, those Acts and Regulations are:

    a. the *CC Act;*

    b. the *Gaming and Wagering Commission Act 1987* (WA) (GWC Act);

    c. the *Casino (Burswood Island) Agreement Act 1985* (WA) (CBIA Act);

    d. the *Casino Control Regulations 1999* (WA) (CC Regs);

    e. the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) (CCBILE Regs); and

    f. the *Gaming and Wagering Commission Regulations 1988* (WA) (GWC Regs).

74. There are also offences in the Criminal Code (WA) that may apply to conduct within and related to the Perth Casino and casino gaming. However, they play only a peripheral role in the regulation of casinos and casino gaming.

75. At the federal level, the AML/CTF Act and the AML/CTF Rules are important parts of the regulatory framework, so far as they regulate certain financial transactions which are conducted within and for casinos and casino gaming.

Casinos and Casino Gaming

76. ToR 8 requires the PCRC to inquire into the adequacy of the existing regulatory framework in relation to 'casinos' and 'casino gaming'.

77. The terms of reference do not provide a definition of 'casinos' but 'casino' is defined in similar, but not identical, terms in each of the CC Act and the GWC Act.[13] Guided by

[13] *Casino Control Act 1984* (WA) s 3(1); *Gaming and Wagering Commission Act* (WA) s 3(1).

those definitions, and conventional dictionary meanings of the word,[14] ToR 8 requires the PCRC to inquire into the adequacy of the existing regulatory framework in relation to physical areas or spaces (typically buildings) within which games such as roulette, blackjack and other games of chance are played for money and activities ancillary to the playing of such games are carried out, under a licence granted pursuant to s 21 of the CC Act.

78. The scope and content of the phrase 'casino gaming' is not defined in ToR 8 or in any relevant legislation. It may be assumed for the purposes of understanding the scope of ToR 8 that '(the operation of) casinos' and '(the conduct of) casino gaming'[15] are distinct concepts. Casino gaming is probably not to be equated to 'gaming operations' as defined in s 3 of the CC Act, as that would result in an inquiry almost coextensive with an inquiry into 'casinos'.

79. Section 22(1) of the CC Act permits the GWC to declare by gazettal a game to be an 'authorised game' for the purposes of that Act.[16] Only 'authorised game(s)' may be played or conducted at Perth Casino.[17] The CBIA Act and the casino agreement entered into on 20 February 1985 between the State of Western Australia, West Australian Trustees Limited and Burswood Management Limited for the establishment of the Perth Casino (State Agreement)[18] adopt the CC Act nomenclature of an 'authorised game' and, in relevant substance and effect, provides that tax is payable to the State in respect of revenue from the playing of:

a. games authorised pursuant to s 22 of the CC Act, being 'Electronic Gaming Machine(s)' (as defined), 'Fully Automated Table Games' (ATG) (as defined) or Keno;

b. any new games authorised pursuant to s 22; and

c. 'Table Games' identified in Schedule D to the State Agreement.

14 Shorter Oxford English Dictionary (6th ed, 2007) 'casinos' means a building for gambling, often with other amenities.
15 Western Australia, Government Gazette, No 45 (12 March 2021) 1079.
16 See also *Casino Control Act* 1984 (WA) s 3, the definition of the of 'authorised game'.
17 *Casino Control Act 1984* (WA) s 22(6).
18 *Casino (Burswood Island) Agreement Act 1984* (WA) Sch 1, cl 2, 22.

80. Against this background, the PCRC considers that the appropriate scope for inquiry into the adequacy of the regulatory framework in relation to 'casino gaming' includes:

    a. the process by which the GWC, pursuant to s 22 of the CC Act, authorises or revokes authorisation for a game to be played at a licensed casino;

    b. the process of regulating and overseeing the conduct of games that have been authorised; and

    c. to the extent that ToR 8 requires consideration of the regulatory framework to prevent unauthorised gaming, the conduct of (unauthorised) casino gaming *of the type* that has been authorised or otherwise described in the State Agreement. This would include electronic gaming machines (EGM), ATG and Schedule D table games.

Strategic risks

81. The focus of the PCRC's inquiry into the existing regulatory framework is as to its capacity to serve the public interest and, in particular, its adequacy to address extant and emerging 'strategic risks'.

82. ToR 8 specifically identifies from the Bergin Report one such risk, being the risk of infiltration by criminal elements into casino operations.[19] Otherwise, ToR 8 describes 'strategic risks' non-exhaustively and without specific identification, as those 'strategic risks':

    a. identified in the Bergin Report;

    b. related to certain activities, being junket operations, money laundering, and cash and electronic transactions; and

    c. otherwise identified by the PCRC's inquiry.

83. Apart from these descriptions in ToR 8, the scope and content of the phrase 'strategic risks' is not defined in the terms of reference or in any relevant legislation.

84. At its most elementary level of description, 'risk' describes a situation where circumstances may or, perhaps more importantly, may not eventuate in a way that one would desire. Dictionary definitions tend to focus on the risk of an outcome that is harmful in some way, in the sense that it may result in injury, loss or, more generally, misfortune.[20]

85. Relevant dictionary definitions of the word 'strategic' tend to focus on a purposive element to the meaning of the word, being, relevantly for the purposes of ToR 8, a risk to the long-term, overall and important aims and interests of an enterprise or activity.[21]

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19 Bergin Report, vol 2, pp 628, 632 [BGN.0001.0001.0334].

20 Oxford English Dictionary (2nd ed, 1989) 'risk'; Shorter Oxford English Dictionary (6th ed, 2007) 'risk'; Collins English Dictionary (13th ed, 2018) 'risk'; Lexico Dictionary (online at 11 June 2021) 'risk'; Merriam-Webster's Collegiate Dictionary (11th ed, 2003) 'risk'; Cambridge Advanced Learner's Dictionary (4th ed, 2013) 'risk'.

21 Oxford English Dictionary (2nd ed, 1989) 'strategic'.

86. Considering the adequacy of the regulatory framework in relation to casinos and casino gaming the exercise of identifying long-term, overall and important risks is necessarily influenced by public interest considerations. At its broadest, therefore, a strategic risk is a risk of harm or possible harm to the good government of Western Australia and the community. As a consequence, it may be readily accepted that there is a relevant public interest in ensuring that the operation of the Perth Casino is, generally, socially responsible, lawful and efficient. The more specific public interest considerations identified in the definition of 'public interest' in s 3 of the CC Act will also be relevant; that is, the creation and maintenance of public confidence and trust in the credibility, integrity and stability of licensed casino gaming operations.

87. Against this background, the PCRC's current view is that a 'strategic risk' (whether extant or emerging) for the purposes of ToR 8 will likely include any situation, or action or omission related to the operation of the Perth Casino or gaming within the casino that:

    a. harms or may possibly harm the socially responsible, lawful and efficient operation of the casino or casino gaming;

    b. may diminish or possibly diminish the confidence and trust the public of Western Australia has in the credibility and integrity of gaming operations at the Perth Casino; and

    c. may diminish or possibly diminish the confidence and trust the public of Western Australia has in the stability of gaming operations at the Perth Casino.

88. The field of potential extant and emerging strategic risks relevant to ToR 8 is therefore broad. It encompasses risks that arise from the fact and manner of operating a casino, such as social harms and risks of criminal infiltration. Equally, it covers risks that threaten its operation, in the sense that a casino operation that is stable and viable and is conducted in a socially responsible, lawful and efficient manner confers evident public benefits. Those benefits include a facility for legitimate recreational and entertainment pursuits, increased State revenue and the economic advantages that accrue to the community through increased employment and business opportunities.

89. Chapter 4 of this Interim Report addresses the extant and emerging strategic risks identified in the Bergin Report and otherwise by the PCRC to date.

Terms of reference 9 and 10

Appropriateness, capability and effectiveness

90. In relation to the GWC, the language of 'appropriateness', 'capability' and 'effectiveness' in ToR 9 and ToR 10 focuses the PCRC's inquiry upon the qualitative aspects of the GWC's conduct and its performance of its functions, powers, responsibilities and obligations. The apparent objective of that inquiry, expressed broadly, is to examine to what extent and how the GWC's conduct and performance of its functions, powers, responsibilities and obligations meet the purposes for which it was established.

91. The inquiry the subject of ToR 9 and ToR 10 is therefore informed by an analysis of the GWC's overarching purpose or purposes, to the extent that can be ascertained from the legislative framework. The PCRC addresses that topic in Chapter 3 and 6 of this Interim Report.

92. The language of 'appropriateness' has been used in ToR 9 in apparent deliberate contradistinction to the language of 'capability and effectiveness' in ToR 10.

93. 'Appropriate' in ordinary usage carries one of two meanings: 'suitable or fitting for a particular purpose, person or occasion';[22] or '(of behaviour) acceptable';[23] the first meaning being most apt to reflect the apparent objective of the inquiry, as explained above.

94. 'Capability' is the power or ability to do something.[24] In the context of ToR 10 this directs inquiry to such things as the GWC's expertise, training and resourcing relevant to the discharge of its statutory responsibilities.

95. 'Effectiveness' is the degree to which something is successful in producing the desired result.[25] It shares a similar purposive element to 'appropriateness' but there is a relevant difference; 'appropriateness' is directed towards a qualitative assessment of whether something (for example, the manner of exercise of powers) has the potential or capacity to achieve a particular purpose while 'effectiveness' is directed towards whether something in fact achieves that purpose.

96. In the context of the PCRC's inquiry therefore, 'appropriateness' in ToR 9 is concerned with whether the manner in which powers were exercised and responsibilities and obligations were discharged by GWC under State and Commonwealth laws was suitable in order to achieve the objectives or purposes for which the powers were conferred and the responsibilities and obligations devolved.

97. Correspondingly, the meaning of 'effectiveness' in ToR 10 is concerned with whether the GWC's discharge of its regulatory functions and responsibilities was, or is, successful in achieving the objectives or purposes for which the powers were conferred.

98. Generally, the scope and content of the inquiry in ToR 9 and ToR 10 focuses upon an examination of the composition, governance, systems, procedures and policies of GWC as a whole rather than the conduct of individual officers. However, examples of conduct by individuals will be relevant to illustrate and inform, in particular, the issues of 'appropriateness', 'capability' and 'effectiveness' as they relate to the GWC.

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22 Shorter Oxford English Dictionary (6th ed, 2007) 'appropriate'; Dictionary.com (online at 11 June 2021) 'appropriate'.

23 Oxford English Dictionary (2nd ed, 1989) 'appropriate'; Collins English Dictionary (13th ed, 2018) 'appropriate'.

24 Lexico Dictionary (online at 11 June 2021) 'capability'.

25 Lexico Dictionary (online at 11 June 2021) 'effectiveness'.

Conflicts of interest

99. The inquiry in ToR 10 into the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities expressly includes:

> 'in relation to identifying and addressing any actual or perceived conflicts of interest by officers involved in casino regulation'.[26]

100. The phrase 'conflict of interest' is not defined in the terms of reference, the GWC Act or the CC Act.

General law: conflict of interest

101. The general law applies the so-called 'conflict rule' to fiduciaries. The rule is expressed variously as a proscriptive obligation the fiduciary has not to:

a. place themselves in a position of actual or possible conflict between their duty and their own interests;[27] or

b. without informed consent, promote their personal interest by making or pursuing a gain or benefit in circumstances where there is a conflict between the fiduciary's personal interest and those whom the fiduciary is bound to protect.[28]

102. Although the conflict rule is usually formulated in terms of the need to avoid a conflict between interest and duty, it also requires a fiduciary to avoid a conflict between interest and interest and duty and duty.[29] The rule is concerned with the avoidance of an actual conflict or a real and substantial possibility of a conflict.[30] In other words, the rule is not concerned with conflicts that are merely possible, in the sense of being remote or purely theoretical.

103. The precise content and extent of the duties of a fiduciary are moulded to the character of the particular fiduciary relationship by reference to the course of dealing between the parties or the circumstances of the appointment of the fiduciary.[31] In *Streeter v Western Areas Exploration Pty Ltd [No 2]*, for example, the particular circumstances of the company and its appointment of the relevant directors meant that the conflict rule did not operate to prevent those directors from investing or being a director of other companies with similar objectives.

104. There is controversy about whether the conflict rule is limited to situations where a fiduciary actually prefers or pursues their personal interest or whether it extends to the mere existence of the actual or real and substantial possibility of a conflict.[32] The

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26 Western Australia, Government Gazette, No 45 (12 March 2021) 1080.
27 *Bray v Ford* [1896] AC 44, 51-2.
28 *Hospital Products Ltd v United States Surgical Corporation* (1984) 156 CLR 41, [103]; *Pilmer v The Duke Group Ltd (in liq)* (2001) 207 CLR 165, [78].
29 *Streeter v Western Areas Exploration Pty Ltd [No 2]* [2011] WASCA 17, [66]-[68] (McLure P).
30 *Settlement Agent's Supervisory Board v Property Settlement Services Pty Ltd* [2009] WASCA 143 [70]-[76] (McLure P).
31 *Streeter*, [70] (McLure P).
32 *Vanguard Financial Planners Pty Ltd v Ale* [2018] NSWSC 314, [129].

extended position has been said to apply to the aspect of the rule that requires a fiduciary not to place themselves in a position of conflict.[33]

Department and GWC Codes of Conduct

105. The GWC and the Department each has a Code of Conduct prepared pursuant to Public Sector Commissioner's Instruction No. 8.[34] Both Codes seek to define a conflict of interest in terms consistent with the definition contained in the Conflicts of Interests Guidelines for the Western Australian Public Sector (June 2011), being 'a situation arising from conflict between the performance of public duty and private or personal interests' whether the conflict 'may be actual, or be perceived to exist or potentially exist at some time in the future'.[35]

106. The extent of alignment between the scope and content of a conflict of interest under general law and under the Guidelines/Codes of Conduct is therefore unclear. In particular, it is unclear whether the Guidelines/Codes of Conduct definition:

a. extends to conflicts between interest and interest and between duty and duty;

b. includes the preventative aspect of the general law rule which requires a fiduciary to avoid placing themselves in a position of conflict; or

c. fully embraces the general law requirement of a 'real sensible possibility' of conflict.

Definition of conflict of interest

107. It will be necessary for the PCRC to decide whether the phrase 'conflicts of interest', as used in ToR 10, has the meaning ascribed to it in the general law or in the Public Sector Guidelines/Codes of Conduct mentioned above. That decision is best left to a later date when all the evidence has been heard. For the purposes of this Interim Report, and to the extent that it is necessary to do so, the PCRC will consider matters relating to conflicts of interest in a more limited way that assumes, without deciding, that the definition is more limited than that provided under the general law.

108. Finally, despite not being expressly mentioned, the identification and management of conflicts of interest are also likely to be relevant to the PCRC's inquiry pursuant to ToR 9 into the 'appropriateness' of GWC's conduct.

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33 *Agricultural Land Management Ltd (No 2)* [2014] WASC 102, [266]-[268]; *Re Colorado Products Pty Ltd (in prov liq)* [2014] NSWSC 789, [351]-[360].

34 GWC Code of Conduct dated January 2018, [GWC.0001.0007.0188]; Department Code of Conduct dated November 2019 [GWC.0001.0011.0001].

35 ICG (The Integrity Coordinating Group) (2011) Conflicts of Interests: Guidelines for the Western Australia Public Sector [online document], ICG, accessed 11 June 2016, p 1 [PUB.0007.0011.0001].

Inquiry into Department

109. ToR 10 requires an inquiry into the capability and effectiveness (as distinct from, appropriateness) of the Department 'in supporting the GWC' capably and effectively to discharge its (the GWC's) regulatory functions and responsibilities.

110. The scope of that inquiry will encompass, amongst other things, an examination of the expertise, experience and training of relevant Department officers, the adequacy of resources made available to the GWC as well as inquiring into other relevant qualitative aspects of that support in relation to such matters as corporate governance, regulatory approach and (expressly) management of conflicts of interest.

Broad themes and topics of inquiry

111. At this relatively early stage of the PCRC's inquiry, some broad themes and topics of inquiry have emerged relevant to ToR 9 and ToR 10. That inquiry continues and the resultant findings and recommendations will be included in the Final Report. For the purposes of this Interim Report, the PCRC has collated some relevant observations and preliminary considerations in Chapter 6 gathered from the investigations it has undertaken and the evidence it has heard to date.

Chapter 3: Legislative history

Purpose of this chapter

112. The purpose of this chapter is to provide an overview of the legislative history of the regulatory framework of casino gaming in Western Australia. The history has been drawn from a review of reports published prior to 1985, Parliamentary debates, GWC records and point-in-time legislation.

Reports published prior to the introduction of the Casino Control Act

1974 Report of the Royal Commission into Gambling

113. In 1973, the Royal Commission into Gambling was tasked with, amongst other things, reporting on the effect on the social and economic wellbeing of the people of the State of permitting further licensed gambling in Western Australia 'by means of gambling in a casino'.[36]

114. The report published by the Royal Commission recommended that 'it would be advantageous to the best interests of the people of the State to permit further licensed gambling',[37] including by way of a licensed casino. In addition, the Royal Commission made the following observations:

    a. that the provision of gambling services by the State should be through a public statutory authority, which would be in the best interests of the people;[38]

    b. that compulsive gambling was an inherent problem that would need to be addressed and some of the proceeds of gambling should be used to support research into problems of compulsive gambling and to disseminate information about compulsive gambling to welfare organisations;[39]

    c. that the establishment of a casino would result in a substantial increase in tourism, which would directly benefit all those associated with the tourist trade, particularly hotels and shops, and indirect benefits would flow to the community;[40]

    d. that the establishment of a casino outside of the metropolitan area would be of most benefit to the State because many of the objections to a casino would be overcome if its facilities were not available as a regular gambling outlet to a large permanent population;[41]

36 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 5.
37 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 123.
38 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 125.
39 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 118, 125.
40 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 97.
41 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 97.

e. that organised crime and criminality are more likely to be associated with gambling when it is prohibited rather than when it is permitted;[42] and

f. that if casino gambling were to be permitted then a properly established and effectively controlled casino would not bring any significant increase in social harms (such as crime, drugs or prostitution) in its wake.[43]

1983 Report of the Casino Advisory Committee

115. The Burke Government explored the establishment of a casino in Western Australia soon after forming government in February 1983.

116. On 28 March 1983, Cabinet established the Government Casino Advisory Committee[44] which was tasked with reporting on various aspects of casino establishment and regulation. It reported to the Government in November 1983 by way of four separate reports, owing to the division of views between the members of the Advisory Committee on the merits of establishing a casino in Western Australia.[45] The Chair of the Advisory Committee supported the establishment of a casino and recommended that an 'open type' casino incorporated into a large tourist/convention type hotel complex be established in the Perth metropolitan area.[46] The Director of the Department of Tourism was similarly supportive, while the Commissioner of Police and Crown Solicitor representative were opposed to the introduction of a casino in Western Australia.[47]

117. While the members of the Advisory Committee were divided as to the merit of establishing a casino in Western Australia, they unanimously advocated, in the event a casino was to be established, that it should be under 'strict control by Government' and[48] regulated by legislation and by a statutory authority.[49] The Advisory Committee agreed that if a casino was established, 'poker machines and video games should be prohibited' but Keno should be permitted.[50]

118. The Advisory Committee was alive to criminal and undesirable activities associated with casinos, such as organised crime, money laundering, drug abuse, problem gambling and

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42 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 96.
43 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 96.
44 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 10.
45 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 3 [1]-[2].
46 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 4 [4], [7].
47 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 3 [1].
48 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 5.
49 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 4-9 [13].
50 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 4 [12].

prostitution. However, the Chair's view was that the risk of such activities could be mitigated by strict rules and regulations.[51]

The Statutory Regime

119. In the years following the Royal Commission and Advisory Committee reports, three pieces of legislation governing casino gaming in Western Australia were enacted: the CC Act, the CBIA Act and the *Gaming Commission Act 1987* (WA) (GC Act) (which was subsequently renamed the GWC Act). As is explained below, the GC Act was introduced following publication of a further governmental report.[52]

120. The legislation does not contain an express statement of regulatory objectives and philosophy for casino regulation. However, the nature of this legislation when enacted, and the manner in which it was subsequently amended, provides some insight into the regulatory objectives and philosophy that underpin casino regulation in Western Australia and their evolution over time.

Casino Control Act 1984

121. The CC Act commenced on 15 July 1984. It was modelled on Tasmanian, Northern Territory and Queensland casino legislation and divided into five parts. This structure continues today. The essential aspects of the CC Act were found in Parts III, IV and V, respectively providing for the relevant Minister to enter into a 'casino agreement' with a public company to construct and establish casino premises in the State;[53] for the grant of a casino gaming licence;[54] and for the establishment of controls in respect of authorised gaming.[55] A consideration of those parts assists in revealing the regulatory objective and philosophy of the legislation.

Part III: Casino agreement

122. While the CC Act empowered the Minister to enter into a casino agreement, that power was not wholly unfettered. In particular, s 19(3) provided that no agreement was enforceable unless and until it had been ratified by an Act. Given that a degree of controversy had attended the then Government's decision to introduce a casino,[56] it was perhaps unsurprising that the CC Act afforded the State Parliament the right to deliberate on the terms of any agreement reached between the Minister and developer. Express reference to this feature of the legislation was made by the Leader of the

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51 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 41 [80].

52 *Racing and Gambling Legislation Amendment and Repeal Act 2003* (WA) s 121.

53 *Casino Control Act 1984* (WA) (as enacted) s 19(1). The *Casino Control Act 1984* (WA) was amended by the *Acts Amendment and Validation (Casino and Control) Act 1985* (WA) s 23(c) to rename an agreement, a Casino Complex Agreement.

54 *Casino Control Act 1984* (WA) (as enacted) s 21.

55 *Casino Control Act 1984* (WA) (as enacted) ss 22-29.

56 In the course of the second reading debate for the Casino Control Bill it was described as 'the greatest hot potato ever to be introduced to this Parliament in the last decade': Western Australia, Parliamentary Debates, Legislative Council, 9 May 1984, 8084 (Hon J Williams, Member for Perth Metropolitan) [PUB.0016.0013.0277].

Legislative Council in the course of the second reading speech accompanying the introduction of the bill.[57]

123. Two features of Part III indicate that a central objective of the CC Act was to secure government revenues and other economic benefits to the State.

124. First, s 20(1) provided that a public company entering into a casino agreement with the Minister must undertake to pay tax to the State, as well as a casino gaming licence fee. Further, s 20(2) contemplated that the agreement might provide for the review by the Minister of both the rate of tax and the amount of the licence fee. The fact that the securing of taxation was one of the few mandatory aspects of any casino agreement emphasised its importance.

125. Secondly, s 19(2) provided that a casino agreement must contain a provision that no casino gaming licence would be issued unless the premises to which the casino agreement relates were completed, and accompanied by or incorporated 'substantial hotel development and other amenities to international standards'. Aside from the economic benefits that might be obtained in the construction of such amenities, they could be expected to provide significant employment opportunities: hotels and international standard amenities would require a significant staffing complement to operate. References to both economic benefits and employment opportunities were also made in the second reading speech.[58]

126. As is discussed below in relation to Part IV, the CC Act's concerns with the financial status of a casino licensee (and the reputation, financial status and capacity of its employees), and provision for close supervision of the conduct of casino gaming, suggests that public confidence and trust in the credibility, integrity and stability of gaming was another fundamental regulatory objective. Patrons could not be expected to frequent a casino that would not honestly observe the rules of the games, or be able to pay them out if they won. It may be thought that without sufficient patronage the casino would not be a success, government revenues would suffer and employment benefits might decrease.

127. The fact that s 20(1) separately provided for payment of a casino gaming licence fee and tax was significant, and tended to confirm that one of the philosophical precepts underpinning the CC Act was that it was appropriate for the licensee to contribute to the costs of regulating its licensed activities. This was made explicit in the CC Act as enacted. Section 14(1) provided that the funds available to the statutory regulator, the Casino Control Committee (Control Committee) for the administration of the Act included (in addition to moneys appropriated by Parliament) all other moneys lawfully received, made available to or payable to it. While the CC Act as enacted did not expressly stipulate that the casino gaming licence fee should be paid to the Control Committee, it was amended to so provide only a few months later.[59] As amended in 1985, the CC Act

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57 Western Australia, Parliamentary Debates, Legislative Council, 3 May 1984, 7774 (Hon DK Dans, Leader of the House) [PUB.0016.0013.0274].

58 Western Australia, Parliamentary Debates, Legislative Council, 3 May 1984, 7775 (Hon DK Dans, Leader of the House) [PUB.0016.0013.0274].

59 The relevant amendments to s 20(1) *Casino Control Act 1984* (WA) were made by the *Acts Amendment and Validation (Casino Control) Act 1985* (WA).

provided that the casino gaming licence fee was to be used by the Control Committee for its costs and the costs of administering the CC Act.

128. The CC Act did not make express provision for the manner in which casino gaming licence fees and tax rates should be calculated, or the factors of which account should be taken when they were reviewed. This left unresolved a potential tension in the legislation. On the one hand, the State had an interest in the growth and diversification of casino gaming activities because that would increase the licensee's gaming revenues on which tax would be paid. On the other, the State also had an obligation to ensure that gaming revenues were not the result of money laundering or other criminal activities and were derived in a socially responsible manner. Arguably, increased gaming activity would require increased regulatory effort. The CC Act's structure left open the possibility that any amendments to a casino agreement might result in increases to the overall amount of tax to be earned by the government without commensurate increases to the licence fee available to the Control Committee so as to properly regulate the casino in accordance with Part V.

Part IV: Casino gaming licence

129. When the CC Act was enacted Part IV contained only a single section, being s 21, which was concerned with the process by which a casino gaming licence was to be granted to a party to a casino agreement.

130. Section 21(2) provided for the Control Committee to carry out 'such investigations as it considers necessary or desirable' concerning the financial status of the applicant; and the reputation, financial status and capacity to organise and conduct casino gaming operations of each 'natural person' that was intended by the applicant to do so. Thereafter, the Control Committee would provide its recommendations to the Minister to allow the latter to make a decision as to whether the licence should be issued.[60]

131. As already suggested, a legislative concern to establish a licensee's financial status may have disclosed an intention to ensure that only persons with the financial capacity properly to operate a casino would do so. However, the concern to investigate the natural persons who would operate the casino on behalf of the licensee suggested a desire to ensure that those persons would act in a socially responsible and lawful manner and would not be corrupted easily by criminal elements.

132. As noted earlier in this chapter, the risk of organised crime infiltrating casinos had been flagged by prior reports. Despite their conclusions, the Government was convinced that the 'problems attributable' to casino gaming were 'in the main unsubstantiated by facts'.[61] However, investigating persons before granting a licence appears to have been one mechanism by which the CC Act addressed that risk.[62] Another mechanism

60 *Casino Control Act 1984* (WA) (as enacted) s 21(2)-(4).

61 Western Australia, Parliamentary Debates, Legislative Council, 3 May 1984, 7774 (Hon DK Dans, Leader of the House) [PUB.0016.0013.0274].

62 *Casino Control Act 1984* (WA) (as enacted) s 21(2).

(although not appearing in Part IV) was conferring on the Governor the power to make regulations in respect of the licensing of casino key employees and employees.[63] The fact that the legislation's concern with casino employees was not confined to the point at which a licence was granted tends to confirm a regulatory assumption that whatever was the risk of corruption or criminal infiltration, it would be a continuing one. Similarly, that the means by which scrutiny of employees was to be effected was through regulation, rather than in accordance with legislative criteria, tends to confirm that Parliament considered it appropriate that there be a flexible regulatory framework that could be responsive to changing circumstances.

Part V: Control of casino gaming

133. The primary responsibility of the Control Committee under Part V of the CC Act as enacted was to declare games to be 'authorised games' for the purposes of the CC Act, after it had first approved the rules for that game.[64] The Control Committee could subsequently alter the approved rules.[65] The fact that a game had been so declared afforded a defence to prosecution for playing that game, so long as it was played on casino premises.[66]

134. This indicates that Parliament continued to regard gaming as a potentially harmful activity that should be permitted only when subject to close supervision and control.

135. Otherwise, the core regulatory feature of Part V was to be found in s 24, which conferred a power to give Directions to a casino licensee as to the keeping of accounts, the supervision and control of gaming operations by persons appointed by the Minister, and as to the production of information relevant to that gaming. While this power was reposed in the Minister when the CC Act was enacted, the legislation was amended a few months later to confer the power on the Control Committee.[67] The CC Act provided that the Control Committee may appoint a CCO and other staff.[68]

136. Notwithstanding Parliament's apparent concerns as to the potential harms of gaming, the CC Act did not contain any mandatory stipulations as to the manner in which gaming operations should be conducted or supervised. This suggests a generally deferential regulatory philosophy; the Control Committee was to be afforded wide discretion in the discharge of its obligations, and the State would rely on its judgment. Such an approach appears to have assumed that the manner in which casino operations were conducted may well change over time and afforded the regulator the flexibility to respond to such changes by amending either, or both of the Directions or rules pursuant to which gaming was conducted. This regulatory approach is notable in that it was arguably not consistent with that suggested by the Advisory Committee, which had recommended

63 *Casino Control Act 1984* (WA) (as enacted) s 37(2)(a), read in light Sch 2, cl 2.
64 *Casino Control Act 1984* (WA) (as enacted) s 22(1), (2).
65 *Casino Control Act 1984* (WA) (as enacted) s 22(3).
66 *Casino Control Act 1984* (WA) (as enacted) s 23.
67 *Acts Amendment and Validation (Casino* Control*) Act 1985* (WA) s 34.
68 *Casino Control Act 1984* (WA) (as enacted) s 9.

that the CC Act itself deal with the 'degree of supervision and management required to control the casino's internal operations'.[69]

137. An example of the use of the power to make Directions under s 24 of the CC Act is considered below in relation to the historical regulation of junkets.

General comments

138. Some additional features of the CC Act as enacted should be noted.

139. The CC Act required the Control Committee to be composed of four persons of 'repute, experience and integrity', however was silent as to what experience was required.[70] The CC Act was also silent as to the degree of independence the Control Committee was to have from the casino or the Department.

140. The CC Act, as enacted, required a member of the Control Committee, who had a direct or indirect pecuniary interest in a matter before the Control Committee, to declare the interest at a meeting of the committee. Such a disclosure had to be recorded in the minutes and, unless determined otherwise by the Minister or the Control Committee, the member was not to be present when the issue was considered by the committee or take part in any relevant decision.[71] These requirements were deleted in 1987.[72]

141. The CC Act also generally adopted recommendations which the Advisory Committee had described as 'basic safeguards'.[73] Those recommendations included:[74]

    a. The establishment of a Board or Commission (Authority) to regulate the establishment and operations of a casino or casinos in Western Australia;[75]

    b. Applicants for licences should be required to reveal full details of company ownership and shareholdings and the Authority should be empowered to promulgate regulations to prescribe the detailed information required from an applicant;[76]

    c. The Authority should investigate and then make a recommendation to the responsible Minister in respect of the application, who would have the power to approve (subject to conditions or unconditionally), reject or defer an application;[77]

    d. Applications approved by the Minister should be granted by the Authority;[78]

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69 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 8 [13(r)].

70 *Casino Control Act 1984* (WA) (as enacted) s 4(3).

71 *Casino Control Act 1984* (WA) (as enacted) s 8.

72 *Acts Amendment and Repeal (Gaming) Act 1987* (WA) s 14.

73 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 6 [13].

74 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 6-9 [13].

75 *Casino Control Act 1984* (WA) (as enacted) ss 4-18.

76 *Casino Control Act 1984* (WA) (as enacted) s 21(2)(3).

77 *Casino Control Act 1984* (WA) (as enacted) s 21(2)-(4).

78 *Casino Control Act 1984* (WA) (as enacted) s 21(6).

e. Application procedures should meet set criteria, for example, good reputation, financial stability and capacity to organise and conduct casino gambling;[79]

f. The Authority should have the power to regulate rules of games, hours of play, licensing of operating personnel, premise facilities, games equipment, wagering limits, handling of cash, audit requirements, casino accounting, financial management, admission of patrons, credit facilities and general operating conditions;[80]

g. The Authority should be required to publish an annual report that would include the financial aspects of its operations and the revenue to the government from casino gaming;[81] and

h. The specification of police powers, if necessary, in respect of all offences, including those not necessarily directly connected with the operation of a casino. Police should be given power to enter all parts of a casino, not just the games rooms.[82]

142. Some recommendations of the Advisory Committee were omitted from the regulatory framework. In particular, the CC Act did not confer on the Authority the power to renew casino licences for a specified period.[83]

143. Notwithstanding the concerns as to compulsive gambling outlined in the 1974 Royal Commission Report,[84] and as to criminal activities expressed by the 1983 Advisory Committee,[85] when first enacted the CC Act did not expressly provide that the regulatory objective of the legislation included the minimisation of social harms or associated criminal activity. However, amendments to the statutory framework over time have indicated that the GWC has the duty and power to formulate and implement policies and otherwise take steps to minimise the harm caused by gambling, including casino gaming.

Casino (Burswood Island) Agreement Act 1985 and the State Agreement

144. The CBIA Act was enacted in accordance with s 19 of the CC Act, which empowered the Minister to enter into a casino agreement and provided that no such agreement would be enforceable until it was ratified. It came into operation on 25 March 1985.

145. The CBIA Act ratified the State Agreement which is the casino agreement entered into on 20 February 1985 between the State of Western Australia, West Australian Trustees Limited (Trustee) and Burswood Management Limited (Manager) for the establishment of the Perth Casino.[86] The Trustee was to hold the casino licence and to act as the trustee

79 *Casino Control Act 1984* (WA) (as enacted) s 21(2).
80 *Casino Control Act 1984* (WA) (as enacted) ss 22, 24, 29(3), 37, Sch 2.
81 *Casino Control Act 1984* (WA) (as enacted) ss 17, 18.
82 *Casino Control Act 1984* (WA) (as enacted) s 28.
83 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 6 [13(b)].
84 Western Australia, Report of the Royal Commission into Gambling (Report, 1974) [PUB.0004.0002.0320] 117, 125.
85 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 15, 40-41, 57-58, 73-83.
86 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted).

for the unit holders of the Burswood Property Trust. The Burswood Property Trust was to have beneficial ownership of the assets of the casino resort complex. The Manager was to be the project manager for the entire resort development and to manage the assets and property constituting the trust fund.[87]

146. Aside from affording Parliament the opportunity to scrutinise the terms of the agreement, the text of the State Agreement suggests a further reason a State agreement mechanism was adopted was to ensure the construction of the casino complex was not subject to certain potentially applicable laws; this is expressly set out at cl 9(3) of the State Agreement. The Solicitor General for Western Australia has recently suggested that ratification of such State agreements by Parliament is necessary because otherwise 'you would have the Executive entering into a contract which, if it is performed according to its terms, is inconsistent with the statutes of the Parliament'.[88]

147. The State Agreement, as amended from time to time, remains in force. It is presently settled law in this State that, although a State agreement is ratified by an enabling Act, it remains a contract and is accordingly to be interpreted as a contract rather than a statute.[89]

148. The State Agreement operates alongside the CC Act and prescribes the conditions for establishing and operating a casino at Burswood Island. Key clauses covered by the State Agreement as enacted included:

a. construction and development of Burswood Resort;[90]

b. corporate and organisation matters relating to the Trustee and Manager;[91]

c. distribution and limitation on shareholdings;[92]

d. grant of the casino gaming licence to the Trustee, licence exclusivity;

e. prohibition on extending credit to gamblers without the consent of the regulator and approval of authorised games;[93]

f. taxation;[94]

g. security interests and assignments;[95] and

h. termination of the State Agreement.[96]

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87 Western Australia, Parliamentary Debates, Legislative Council, 21 February 1985, 168 (Mr DK Dans, Leader of the House) [PUB.0016.0013.0262].

88 *Mineralogy Pty Ltd & Anor v State of Western Australia; Palmer v The State of Western Australia* [2021] HCATrans 106 (16 June 2021) [PUB.0016.0013.0105].

89 *Commissioner of State Revenue v Oz Minerals Ltd* [2013] WASCA 239 [PUB.0016.0013.0001] [179] (Buss JA, with whom Newnes and Murphy JJA agreed); *Hancock Prospecting Pty Ltd v BHP Minerals Pty Ltd* [2003] WASCA 259 [PUB.0016.0013.0078] [65]-[67] (Hasluck J, with whom Murray J agreed).

90 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 1, cl 6-13.

91 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 1, cl 14–20.

92 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 1, cl 17(1)(g), (l).

93 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 1, cl 21, 22.

94 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 1, cl 23.

95 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 1, cl 25.

96 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 1, cl 26, 27.

149. Clause 5 of the State Agreement, in essence, makes provision for continued Parliamentary oversight, requiring any variations to the State Agreement to be 'laid on the table of each House of Parliament within 12 sitting days next following its execution'.[97] Either House might then pass a resolution disallowing such agreement.[98]

150. It is notable that the State Agreement includes, by way of cl 7(8), a requirement that the Manager maintain an up-to-date set of drawings for the security surveillance and alarm systems; promptly advise the Control Committee's[99] representative of any proposed variations to the systems; make available the complete set of drawings for the inspection of the Committee's representative; and deliver to the Committee at the Minister's request particulars of the systems to show how they operate and that they are adequate for their purpose. This clause demonstrates a keen concern on the part of the State to be able to confirm that the security of the casino is adequate (and thereby, in turn, be satisfied that the revenue owed to the State under the State Agreement is secure). While the s 24 direction-making power would likely have entitled the Minister to obtain the information contemplated by cl 7(8), the State Agreement effectively entrenched this requirement.

Gaming Commission Act 1987

151. The GC Act introduced substantial reforms to the regulatory framework by which gaming in Western Australia was governed. The legislation followed on from a governmental report which had recommended some (although not all) of those reforms. Accordingly, it is appropriate to briefly consider that report before considering the provisions of the GC Act as enacted.

1984 Report of the Committee appointed to inquire into and report upon gaming in Western Australia

152. In August 1984, the Government Gaming Inquiry Committee (Gaming Inquiry Committee) was tasked with 'reviewing the gaming legislation in Western Australia with a view to considering the rationalisation of the gaming laws of this State into a composite Gaming Act'.[100] The Gaming Inquiry Committee did not inquire into the regulation of casino gaming. It reported in December 1984, which was a year before the Perth Casino commenced operating in December 1985.

153. The Gaming Inquiry Committee's report recommended a Gaming Act be enacted and an independent, autonomous regulator be established with the capacity to handle all newly liberalised areas of gaming.[101] The Gaming Inquiry Committee recognised that special

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97 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 5(2).

98 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 5(3).

99 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 2 (definition of 'Committee'). The State Agreement has subsequently been amended so as to refer to the GWC's representative.

100 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 7.

101 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 8, 14.

skills and knowledge were required to control and run gaming properly.[102] It recommended that the regulator be empowered to delegate some of its functions where it considered it necessary.[103]

154. The Gaming Inquiry Committee also recommended that poker machines remain unlawful.[104] The regulatory history of poker machines in Western Australia is discussed in detail below.

155. While many of the Gaming Inquiry Committee's recommendations were ultimately implemented in the GC Act, some recommendations were not implemented in full; for example, while the GC Act established the GWC as a regulator, it was not an independent, autonomous body with specialised skills as had been recommended.[105]

156. Notably, the Gaming Inquiry Committee considered that casino regulation was adequately dealt with by the CC Act and was a specialised area. Therefore, it proposed that casino gaming be excluded from the proposed Gaming Act and Gaming Authority.[106] Notwithstanding this suggested approach, when the GC Act was enacted the GC took over the role previously held by the Control Committee, as is further discussed below.

Introduction of the Gaming Commission Act 1987

157. The GC Act came into operation on 8 October 1987. As explained in the second reading speech accompanying the introduction of the bill, the overall purpose of the legislation was to provide for the rationalisation of gaming laws in Western Australia into a composite Act and to amalgamate under one body the regulation of all gaming, with the exception of lotteries and horse and greyhound racing.[107]

158. The GC Act generally liberalised the law of gaming, including by way of formally allowing gaming which the Gaming Inquiry Committee had noted was already openly engaged in.[108] In particular, the GC Act permitted 'social gaming',[109] which extended to gaming or betting of any kind so long as it was spontaneous (in the sense that it was organised amongst the persons engaged in the gaming or betting, rather than that it was arranged by a promoter); not conducted or promoted for private gain (that is, a portion of the winnings could not be taken as a fee by a person who had organised the gaming or betting); did not jeopardise the physical or moral welfare of children; and was fairly

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102 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 8, 21.

103 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 9, 21.

104 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 10, 37.

105 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 8, 11, 21; *Gaming Commission Act 1987* (WA) (as enacted) ss 5, 6, 12.

106 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 21.

107 Western Australia, Parliamentary Debates, Legislative Assembly, 26 May 1987, 1377–1378 (Mrs PA Beggs, Minister for Racing and Gaming) [PUB.0016.0013.0223].

108 Western Australia, Report of the Committee appointed to inquire into and report upon Gaming in Western Australia, report (1984) [PUB.0004.0002.0261] 10, 33.

109 *Gaming Commission Act 1987* (WA) (as enacted) ss 53, 64.

conducted.[110] This represented a significant relaxation of the previous prohibitions against gaming in the State.

159. The GC Act did not introduce any substantive changes as to the regulatory framework to which the holder of a casino licence was subject, but made substantial changes to the way in which that framework was thereafter to be administered.

160. Through the enactment of the GC Act, the Control Committee was absorbed by the GC.[111] When Part II of the GC Act came into force,[112] the powers, duties and rights of the Control Committee were conferred upon the GC and the Control Committee members ceased to hold that office.[113] However, one member of the original Control Committee was appointed as a member of the inaugural GC.[114] The members of the Control Committee were deemed to be a committee of the GC until 23 April 1988.[115]

161. The replacement of the Control Committee with the GC might suggest a legislative devaluing of the importance (or at least the relative importance) ascribed to casino regulation. Whereas the CC Act had previously provided for the Control Committee to consist of four persons of repute, experience and integrity,[116] the sole function of which was to regulate licensed casinos (in practice, a single casino), the GC Act now required a new four person Commission to administer the law relating to nearly all gaming and betting.[117] Of those four persons, two were to be ex-officio members, namely the Executive Director of the Office of Racing and Gaming (who would be chair) and the chair of the Lotteries Commission (or a member or officer of the Lotteries Commission nominated by the chair).[118] That is, the structure of the GC would allow for, at most, two persons appointed solely for the purpose of or as a result of their experience in administering casino regulation.

162. Further, the new GC was charged with a panoply of duties that had not previously been imposed on the Control Committee, including, amongst other things, to keep under review the conduct, extent and character of gaming and betting and formulate policies for its scrutiny, control and regulation;[119] to advise the Minister as to any matter relating to gaming or to betting;[120] and to enforce, and to prosecute persons contravening, the laws relating to gaming and to betting.[121] In short, the new GC was to be a generalist body, while the Control Committee had been a specialist body.

163. As noted above, notwithstanding that the Gaming Inquiry Committee had recommended an independent and autonomous regulator, the chair of the GC was to

110 *Gaming Commission Act 1987* (WA) (as enacted) s 64(2).
111 *Gaming Commission Act 1987* (WA) (as enacted) s 112.
112 Western Australia, Government Gazette, No 23 (4 March 1988) 665 [PUB.0016.0013.0076].
113 *Gaming Commission Act 1987* (WA) (as enacted) s 112(1), (3).
114 *Gaming Commission Act 1987* (WA) (as enacted) s 12(2).
115 *Gaming Commission Act 1987* (WA) (as enacted) s 112(4); Western Australia, Government Gazette, No 36 (22 April 1988) 1226 [PUB.0016.0013.0077].
116 *Casino Control Act 1984* (WA) (as enacted) s 4(3).
117 *Gaming Commission Act 1987* (WA) (as enacted) ss 7(1), 12(1); 'Betting' was defined to exclude betting on horse races which was regulated by the *Betting Control Act 1954* (WA).
118 *Gaming Commission Act 1987* (WA) (as enacted) s 12(1)(a).
119 *Gaming Commission Act 1987* (WA) (as enacted) s 7(1)(b).
120 *Gaming Commission Act 1987* (WA) (as enacted) s 7(1)(f).
121 *Gaming Commission Act 1987* (WA) (as enacted) s 7(1)(h).

be an ex-officio appointment. Further, s 6(2) of the GC Act provided for the Minister to give the GC directions of a general character as to the exercise of its functions, to which the GC was required to give effect. To that extent, the GC Act might be said to have marked a lessening in the degree of autonomy that had previously been afforded to the casino regulator, and an increase in the extent to which the Executive could influence or control its operations.

164. While the GC Act did, in effect, convert the Control Committee into a more generalist and less autonomous body, there was nothing to indicate a lessening of the degree of flexibility available to the GC in respect of casino regulation. The CC Act continued to contain the same powers to issue Directions as were discussed earlier in this chapter.

165. Additionally, the GC Act afforded the new body significantly wider investigative and enforcement powers than had previously been available to the Control Committee. Under the CC Act express provision had been made for an Inspector appointed under the CC Act (Inspector) to enter any part of a licensed casino.[122] However, the GC Act provided a detailed range of powers to persons authorised by the GC,[123] including the power to seize and detain material in the course of an investigation; require a person to provide information;[124] and to require information, production of books and accounts where that information is suspected to be relevant to an investigation under the GC Act or any other written law relating to gaming or betting.[125]

166. The CC Act was shortly thereafter amended so as to provide those powers to the GC and its members and officers in relation to a wide range of matters connected to a casino complex agreement.[126] These changes suggest that Parliament continued to regard as essential the continued monitoring of licensed casinos. In that respect, it is significant that the amendments to the CC Act were not restricted to permitting the GC's officers only to investigate gaming operations. Instead, they contemplated investigations or inquiries into:

a. any party to, or any manager or other person, trust, premises or property the subject of, a casino complex agreement;[127]

b. any thing that the Commission or that officer had reasonable cause to believe relates to, or may be likely to affect, a person or matter referred to in paragraph (a);[128] and

c. the organisation, management, operation and use of a casino complex including the gaming operations and related accounting, audit and security procedures in, and amenities or facilities ancillary to, the casino comprised in the casino complex.[129]

122 *Casino Control Act 1984* (WA) (as enacted) s 28.
123 *Gaming Commission Act 1987* (WA) (as enacted) Pt III generally.
124 *Gaming Commission Act 1987* (WA) (as enacted) s 26.
125 *Gaming Commission Act 1987* (WA) (as enacted) s 27.
126 *Casino Control Act 1984* (WA) s 21A, as inserted by the *Acts Amendment and Repeal (Gaming) Act 1987* (WA).
127 *Acts Amendment and Repeal (Gaming) Act 1987* (WA) s 21A(1)(a).
128 *Acts Amendment and Repeal (Gaming) Act 1987* (WA) s 21A(1)(b).
129 *Acts Amendment and Repeal (Gaming) Act 1987* (WA) s 21A(1)(c).

167. The breadth of these powers indicated a continuing regulatory objective to protect the State's interests in gaming revenues by way of the tax imposed on those revenues. They were also consistent with the CC Act's apparent objective of ensuring that casinos operations were regulated effectively and would not be subject to corruption or criminal infiltration. Further, they appear to signal the view that the powers previously available to the Control Committee to regulate casinos properly were insufficient and should be bolstered.

168. In addition to the above significant changes, there were many features of the CC Act that were continued following the introduction of the GC Act.

169. The GC, for example, similarly to the Control Committee, was afforded the power to make use of employees of other State instrumentalities or agencies,[130] and delegate its powers.[131] While the provisions of the CC Act which had previously enabled the Control Committee to make arrangements for the use of other employees were removed once the analogous provisions in the GC Act were available, the power to appoint the CCO remained. However, the language of that power was amended from active to passive: instead of providing that the Control Committee would appoint the CCO, after the introduction of the GC Act the relevant section simply provided that a CCO 'shall be appointed'.[132]

170. Further, notwithstanding the broadening of the responsibilities of the GC as compared to the Control Committee, the introduction of the GC Act saw no amendment to s 14(1)(aa) of the CC Act, which continued to provide that the licence fee in respect of the casino was available for the administration of the CC Act. The suggestion that it was intended that the licence fee be used exclusively for that purpose appears to have been confirmed by s 9(2)(b) of the GC Act, which provided that the account formerly known as the Casino Control Committee Account was to be maintained and hold moneys received under the CC Act separately from other moneys (which were to be held in a different account). This suggests that the changes in the regulatory environment wrought by the GC Act did not alter the regulatory philosophy that it was incumbent on the casino licensee to fund (or at least contribute to the funding of) its own regulation.[133]

171. However, at about the time the GC Act came into force, the CC Act s 14 was amended to delete the requirement that moneys held in the Control Committee Account be used for the costs of the Committee and the costs of administering the CC Act.[134] The PCRC is continuing to inquire into the effect of these statutory changes on casino regulation.

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130 *Gaming Commission Act 1987* (WA) (as enacted) s 18; compare with *Casino Control Act 1984* (WA) (as enacted) s 10.

131 *Gaming Commission Act 1987* (WA) (as enacted) s 21(2); compare with *Gaming Commission Act 1987* (WA) (as enacted) Sch 1, cl 3(1).

132 *Casino Control Amendment Act 1985* (WA) s 3.

133 The second reading speech accompanying the introduction of the bill which became the *Gaming Commission Act 1987* (WA) suggests that it was expected the licensee's contribution would generally fund all regulation costs: Western Australia, Parliamentary Debates, Legislative Assembly, 26 May 1987, 1378 (Mrs PA Beggs, Minister for Racing and Gaming) [PUB.0016.0013.0223].

134 *Acts Amendment and Repeal (Gaming) Act 1987* (WA) s 18.

Modification of the statutory regime

172. Since the enactment of the CC Act, CBIA Act and GWC Act, there have been numerous amendments to the legislative framework. Some of the changes have already been referenced in the context of the introduction of the GC Act. The amendments suggest a continued reliance on the regulator to use its discretion to enforce casino regulation flexibly and effectively.

Expansion of GWC membership over time

173. Over time, the membership of the GC/GWC has increased from four members.[135] In 1998, membership was increased to five members as a result of the Review of the Gaming Commission Act 1987.[136] The purpose of the additional member was to enable 'greater community input'.[137] The five members were to now include the Executive Director of the Office of Racing, Gaming and Liquor, as Chair,[138] and four members nominated by the Minister 'as being persons of repute, experience and integrity'.[139]

174. In 2003, GWC membership was again increased when the GWC's duties were expanded to include duties in respect of the regulation of wagering. The amendments required the GWC to consist of the CEO of the Department as chair and between five and seven other members appointed by the Minister.[140]

175. The GWC's increased membership appears to reflect a legislative acknowledgment of its expanded responsibilities, given a framework in which a single body has broad responsibilities for regulating gaming and wagering in Western Australia. That framework in turn appears to reflect a legislative preference for consistency in regulatory approach, rather than a potentially more ad hoc environment in which multiple regulators are separately charged with exercising broad discretionary powers.

Amendments to the powers, duties, and obligations of the Minister and the GWC under the regulatory framework

176. Over time, the powers, duties and obligations of the Minister and the GC/GWC under the CC Act and the GC Act/GWC Act in respect of regulatory oversight have increased.

135 *Gaming and Wagering Commission Act 1987* (WA) s 12(1).
136 Hon M Evans, Review of the Gaming Commission Act 1987, report (1996) [PUB.0004.0002.0129] 4-5.
137 Western Australia, Parliamentary Debates, Legislative Council, 29 April 1998, 2107 (Hon Max Evans, Minister for Racing and Gaming) [PUB.0016.0013.0271].
138 *Acts Amendment (Gaming) Act 1998* (WA) s 35(1); *Gaming Commission Act 1987* (WA) (reprint, 30 October 1998) s 12(1)(a).
139 *Gaming Commission Act 1987* (WA) (reprint, 30 October 1998) s 12(1)(b).
140 *Racing and Gambling Legislation Amendment and Repeal Act 2003* (WA) s 129(1), (2).

177. Material amendment for present purposes occurred in 1985,[141] 1998[142] and 2003,[143] and 2006.[144] Of those amendments the following are of note:

a. From 1985, the GC was required to investigate an applicant following an application for a casino gaming licence.[145]

b. In 1998, the Minister was empowered to require a 'close associate' to divest any financial interest in a public company the subject of a casino complex agreement.[146] In tandem with that power, an obligation was imposed on the GC to carry out investigations it considered necessary before the Minister entered into a casino complex agreement, and thereafter submit a report and a recommendation to the Minister.[147]

c. In 2003, a specific duty was imposed upon the GWC to formulate and implement policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling.[148] This duty was complemented by a corresponding general power to take steps to minimise harm to the community, or any part of the community, caused by gambling.[149] While certain features of the CC Act had always suggested that the legislation was concerned to avoid harm,[150] these changes appear to suggest that when exercising its functions under the CC Act the GWC is to take into account the need to ensure that the Perth Casino is regulated in a way that minimises gaming related harm.

d. In 2006, a power was granted to the GWC to utilise ss 146-150 of the *Criminal Investigation Act 2006* in respect of seizing things in the course of an investigation under the GWC Act.[151]

178. All of these powers or functions of the GC/GWC are consistent with a continuing regulatory objective of ensuring close and robust scrutiny of casino operations so as to ensure they are not subject to corruption and criminal infiltration.

Amendments to the Casino (Burswood Island Agreement) Act 1985

179. The State Agreement has been renegotiated over time, and both it and the CBIA Act have been amended since their commencement. Provisions that have been amended on multiple occasions include those relating to taxation, individual shareholding and exclusivity clauses. There are 15 Supplementary Agreements to the State Agreement.

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141 *Acts Amendment and Validation (Casino Control) Act 1985* (WA).
142 *Acts Amendment (Gaming) Act 1998* (WA).
143 *Racing and Gaming Legislation Amendment and Repeal Act 2003* (WA).
144 *Criminal Investigation (Consequential Provisions) Act 2006* (WA) Pt 9.
145 *Casino Control Act 1984* (WA) s 21.
146 *Gaming and Wagering Commission Act 1987* (WA) s 19B.
147 *Casino Control Act 1984* (WA) s 19.
148 *Gaming and Wagering Commission Act 1987* (WA) s 7(1)(ba).
149 *Gaming and Wagering Commission Act 1987* (WA) s 8(2)(da).
150 Such as the prohibition on persons under 18 playing games at the casino (*Casino Control Act 1984* (WA) s 27 and the prohibition on the authorisation of poker machines discussed later in this chapter.
151 *Gaming and Wagering Commission Act 1987* (WA) s 31A.

Taxation and the licence fee

180. The CC Act deferred the licence fee and rate of taxation to be determined by the State Agreement.[152] The ability to negotiate amendments to the State Agreement has seen several amendments to the taxation and casino gaming licence fee clauses.[153] The Parliamentary debates suggest that amendments to taxation have generally been in response to what was perceived as the changing landscape of casino gaming both in Australia and internationally. Reductions in taxation have been associated with reductions in casino gaming and claimed competition for international business.[154] Conversely, increases in taxation have been associated with applications by the Perth Casino licensee to expand gaming.[155]

181. Amendments to the taxation regime provide some insight into the legislative approach to specific aspects of casino operations. For example, Parliamentary debates indicate government support for junket operations as a source of government revenue. From 2003, International Commission Business (that is, primarily, junket operations) was taxed at a lower rate than other casino activities.[156] The debates suggest that this lower rate was to enable the licensee to offer incentives to attract international patrons to Perth Casino: such business was considered a benefit to the local economy.[157]

182. While the taxation rate has been amended on several occasions, the casino gaming licence fee has only been amended once.[158] The Second Supplementary Agreement increased the annual casino gaming licence fee to $1.4 million plus CPI.[159] During the second reading speech for this amendment, the Minister for Racing and Gaming stated that the costs of regulating the casino by the [GWC] are funded from the existing casino gaming licence fee, as well as contributions from Consolidated Revenue Fund. The Minister stated that the new licence fee will fully cover the costs of regulating the casino and thus result in significant savings to the taxpayers of this State.[160]

183. While it appears that Parliament sought to fund the casino regulator fully through the increased casino gaming licence fee, which was also adjusted for CPI, the model of a licence fee remained. The financing of the regulator in a set amount may be insufficient in circumstances where the casino experiences increased gaming, which may necessitate increased resourcing of the regulator. Given the conflict of interest it creates, it may not

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152 *Casino Control Act 1984* (WA) (as enacted) s 20.

153 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted) Sch 3, cl 3; Sch 9, cl 3, cl 8; Sch 11, cl 4; Sch 13 cl 3, 5; Sch 14, cl 3.

154 Western Australia, Parliamentary Debates, Legislative Assembly, 13 August 2003, 9860 (Mr MJ Birney, Member for Kalgoorlie) [PUB.0016.0002.0071]; Western Australia, Parliamentary Debates, Legislative Assembly, 27 November 2014, 8977 – 8978 (Mr TK Waldron, Minister for Racing and Gaming) [PUB.0016.0009.0001].

155 Western Australia, Parliamentary Debates, Legislative Council, 6 December 2007, 8622 (Hon B House, Member for South-West) [PUB.0016.0002.0001]; Western Australia, Parliamentary Debates, Legislative Assembly, 16 June 2011, p4347b-4367a (Hon M McGowan, Member for Rockingham) [PUB.0016.0002.0095].

156 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 9, cl 8, 10.

157 Western Australia, Parliamentary Debates, Legislative Assembly, 13 August 2003, 9860 (Mr MJ Birney, Member for Kalgoorlie) [PUB.0016.0002.0071]; Western Australia, Parliamentary Debates, Legislative Assembly, 13 August 2003, 9865 (Mr RN Sweetman, Member for Ningaloo) [PUB.0016.0002.0071].

158 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted 25 March 1985) Sch 3, cl 3.

159 *Casino (Burswood Island) Agreement Act 1985* (WA) (as enacted 25 March 1985) Sch 3, cl 3.

160 Western Australia, Parliamentary Debates, Legislative Assembly, 7 June 1990, 2049 (Mrs Beggs, Minister for Racing and Gaming) [PUB.0016.0002.0117].

be appropriate for the regulator to retain a percentage of turnover as the licence fee (in the manner taxation is determined).[161] However, there is no clause enabling any unilateral increase to the casino gaming licence fee (up to a certain amount) by the Minister.[162] This inflexibility in the State Agreement, means that any increase in the casino gaming licence fee must be the subject of further negotiation. The casino gaming licence fee and the use to which it is put are subjects of continuing inquiries by the PCRC.

Limit on shareholdings

184. The CBIA Act has always capped shareholdings for individual and foreign shareholders.[163] When the CBIA Act was enacted, the cap on individual shareholdings in the licensee, without the Minister's approval, was 5% of the aggregate total.[164] In 1997, it was increased from 5% to 10%.[165] The reason for this increase is unclear, however parliamentary debates suggest it may have been in response to submissions and deputations by institutional investors and fund managers.[166]

185. The State Agreement was also amended at this time to facilitate the corporatisation of the trust structure. A public company could acquire up to all of the units in the Burswood Property Trust with the approval of the Minister and thereby become a 'Approved Company'.[167] Amongst other things, restrictions were imposed upon foreign ownership of shares in an Approved Company. An individual shareholding in an Approved Company could not exceed 10% without an exemption from the Minister.[168]

186. Further amendments were made in 2003, which inserted ss 11-17 into the CBIA Act.[169] The provisions enabled individuals to hold more than 10% of shares in an Approved Company subject to probity testing and approval from the GWC.

187. It was anticipated that these amendments to enable greater shareholdings would increase the Approved Company's share price, and improve its funding opportunities.[170] The State would share in any resulting increase in the company's revenues through taxation.[171]

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161 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 23(5)-(7).
162 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 23(6)-(7).
163 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 17(1)(g), (l).
164 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 17(1)(g).
165 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 4, cl 10(b)(iii)–(iv).
166 Western Australia, Parliamentary Debates, Legislative Council, 19 June 1997, 4372 (Hon M Evans, Minister for Finance) [PUB.0016.0002.0118].
167 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 4, cl 10–12.
168 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 4, cl 19.
169 *Casino (Burswood Island) Agreement Amendment Act 2003* (WA) s 7.
170 Western Australia, Parliamentary Debates, Legislative Assembly, 13 August 2003, Legislative Assembly, 9880-9881 (Mr ES Ripper, Treasurer) [PUB.0016.0002.0071].
171 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 23(1)(a), (c).

Gaming exclusivity

188. For 15 years after the Perth Casino licence was granted, the State was prohibited from entering into another casino complex agreement, granting another casino licence or approving any game commonly played in a casino or any Authorised Game.[172]

189. After this period expired, the State could only authorise or approve the playing of casino games for the Perth Casino or for any other casino the subject of a casino complex agreement.[173] There were some exclusions; for example, two-up could be permitted as long as it was played outside of a 200 km radius of Perth Casino.

190. There are two apparent reasons to allow gaming exclusivity. The first is the minimisation of harm resulting from casino gaming by ensuring that gaming remains confined to casinos. The second is to afford casinos under the CC Act a monopoly, to help ensure that such casinos will be successful and reliably provide consequential government revenue.

191. Over time, the State Agreement has been amended to permit additional gaming. Two-up was allowed to be played at RSL locations on Anzac Day (with no radius limit),[174] and the 200 km radius was reduced to 100 km.[175] Gaming on cruise ships (including intrastate cruises) is permitted, provided it is not within 12 nautical miles of the Western Australian baseline.[176]

192. In 2019, the State Agreement was amended to permit simulated racing to be played outside of Perth Casino.[177] In order to offer simulated games, the incoming wagering operator would be required to pay a one-off sum of $1.2 million to the Perth Casino licensee.[178]

193. As a result of the above changes, games which have been authorised under s 22 of the CC Act can in some instances now be played outside of the Perth Casino. However, these changes have been limited and highly regulated. This may be due to the potential for social harm or a consequence of the casino licensee having to agree to an amendment to the State Agreement. The benefits of expansion within the State includes increased revenue from casino gaming.

Role of the Chief Casino Officer

194. When the CC Act was enacted, the CCO had no specific statutory powers or duties. The CCBILE Regs were gazetted on 16 August 1985[179] and the CCO then became specifically responsible for receiving applications for casino key employee and casino employee

172 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 22(3).
173 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 22(4).
174 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 5, cl 3.
175 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch13, cl 4(e).
176 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 13, cl 4; Sch 15, cl 3-4.
177 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 16, cl 3-4.
178 Western Australia, Parliamentary Debates, Legislative Assembly, 15 May 2019, 3369 (Mr BS Wyatt, Treasurer) [PUB.0016.0002.0120].
179 Western Australia, Government Gazette, No 76 (16 August 1985) 2906 [PUB.0016.0005.0001].

licences and making a recommendation to the Control Committee as to whether or not a licence should be granted.

195. Over time, the responsibilities of the CCO have become express. The *Acts Amendment and Validation (Casino Control) Act 1985* (WA) inserted s 3(2) which provided that a reference to an 'officer of the Committee' included a reference to the CCO.[180] The same set of amendments included provisions which extended the powers and functions of officers of the Committee to those conferred under the CC Act, any other Act or a casino complex agreement.[181] The amendments also empowered an officer of the Committee, amongst others, to enter at any time and remain in any part of a licensed casino.[182]

196. Later, the *Acts Amendment (Gaming) Act 1998* (WA) expanded the powers, functions and duties of the CCO by including the CCO in the definition of an 'authorised officer'. At the same time, the CCO was given the power, with the approval of the GWC, to delegate to another officer of the GWC any of the CCO's powers, functions or duties, except the power of delegation itself.[183]

197. Today, authorised officers have numerous powers, functions and duties under the GC Act, including:

    a. examining and reporting on matters that affect the administration of the GC Act;[184]

    b. inspecting and remaining on premises where permitted gaming is or purports to be conducted;[185] and

    c. obtaining evidence in the course of exercising powers under the GC Act.[186]

198. An authorised officer's functions extend beyond casino regulation and include gaming and wagering functions.[187] As such, the CCO, as an authorised officer, may exercise more than casino-related functions.

199. The CCO may institute proceedings for an offence under the CC Act.[188]

Statutory ambiguities

200. There are a number of potential ambiguities arising out of the legislative framework, some of which are outlined below.

Powers available to the GWC when investigating suspected offences

201. Casino regulation in Western Australia is complicated by the regulator having its primary powers, duties and functions under the GWC Act, while casino regulation specifically is

180 *Acts Amendment and Validation (Casino Control) 1985* (WA) s 23.
181 *Acts Amendment and Validation (Casino Control) 1985* (WA) s 25(b).
182 *Acts Amendment and Validation (Casino Control) 1985* (WA) s 38.
183 *Acts Amendment (Gaming) Act 1998* (WA) s 7.
184 *Gaming and Wagering Commission Act 1987* (WA) s 21(3).
185 *Gaming and Wagering Commission Act 1987* (WA) s 22.
186 *Gaming and Wagering Commission Act 1987* (WA) s 26.
187 *Gaming and Wagering Commission Act 1987* (WA) ss 21(3), 22, 25, 26, 31, 36, 85(3), 109F, 109I.
188 *Casino Control Act 1984* s 36(1).

provided for in the CC Act. This bifurcation arguably creates ambiguity as to whether certain investigative powers under the GWC Act are available to the GWC when investigating a suspected offence under the CC Act. It potentially creates uncertainty over whether the duties and powers of the GWC apply to the GWC's role as casino regulator under the CC Act.

202. For example, s 31A of the GWC Act provides that ss 146 to 150 of the *Criminal Investigation Act 2006* (WA) apply to seizing a thing under 'this Act or the *Betting Control Act 1954*'. Section 21(3), which deals with the duties of authorised officers to examine and report on specified matters, is drafted in similar terms. The powers of entry conferred by s 22(1) appear to be similarly limited to gaming under the GWC Act.

203. However, s 21A of the CC Act provides that the GWC, and any member or officer thereof, may, in relation to specified matters relating to a casino complex, exercise such powers as would be available to the GWC (or an authorised officer under the GWC Act) in relation to gaming and betting. This curiously phrased provision appears intended to confer upon the GWC and its members or officers, when investigating matters relating to a casino complex agreement, all of the powers ordinarily available under Part III of the GWC Act to an authorised officer when examining on or reporting any matter affecting that Act or the *Betting Control Act 1954* (WA). If that is correct then the powers conferred by ss 31A, 21(3) and 22(1) GWC Act would all be available to the GWC and its members or officers when carrying out investigations under the CC Act, notwithstanding the apparently exclusive terms by which those powers are framed.

204. That construction is, arguably, undermined by certain provisions under Part III of the GWC Act, such as ss 27(1) and 31, which specifically extend the powers in those sections to an investigation into an 'offence under this Act *or any other written law relating to gambling*' (emphasis added). This inconsistent approach tends to at least raise doubts as to the extent to which powers under the GWC Act are available for the purposes of investigations or enforcement under the CC Act.

205. As a matter of policy, there is no obvious reason why some of those powers under the GWC Act should not be available to investigating suspected offences under the CC Act.

Body responsible for the appointment of the Chief Casino Officer

206. A further ambiguity in the legislation concerns the appointment of the CCO under s 9 of the CC Act. As originally drafted, s 9 read as follows:

> (1) The Committee may –
>
> (a) appoint a [CCO] and such casino inspectors and other officers, either full time or part time;
>
> (b) employ such temporary or casual employees; and
>
> (c) engage under contracts for services such professional or technical or other assistance,
>
> as the Committee considers necessary for the purposes of this Act.
>
> …

207. In 1985, s 9 was relevantly amended as follows:

> (1) There shall be appointed under and subject to the *Public Service Act* 1978 a [CCO] and such casino inspectors and other officers, either full time or part time, as may be necessary –
>
> (a) for the purposes of this Act or of any other Act or of a casino complex agreement; and
>
> (b) to provide such administrative and other services to the Committee as will enable it to exercise the powers, and perform the functions and duties…[189]

208. The wording of s 9 as amended in 1985 remains in substance the wording of the provision today. On its face, it is unclear who is intended to be the appointing body and, in particular, whether the CC Act contemplates the CCO being appointed by the GWC or by the Department.

History of junket regulation

209. In general terms, junkets typically involve an arrangement between a casino and a junket operator for a group of players from interstate or overseas to visit a casino and participate in casino gaming.[190] In Australia, junket players usually come from overseas.[191] In return for bringing the junket players to the casino, the casino generally pays the junket operator a commission based on the collective gambling activity of the junket players.[192]

210. Junkets operate differently depending on the casino, the junket operator and the arrangement made between the two in respect of each junket program. Operations also differ based on the regulatory requirements in the state in which the casino is located.[193] Junket operations often include movement of large sums of money in and out of the casino. Financial incentives such as a portion of the commission the casino pays the junket operator may also be offered to players.[194]

211. Extension of credit is also often a feature of junkets and has been permitted at Perth Casino for International Commission Business players since 2005.[195] Extension of credit is otherwise prohibited under the legislative framework.[196] The latter point is of particular significance when examining the regulatory framework of junkets. It is a further example of the discretionary nature of the regulator's powers.

212. Junkets are a particular focus for regulation for the reasons set out in Chapter 4 of this report. In brief, junkets are particularly vulnerable to money laundering and criminal

189 Amended by *Casino Control Amendment Act 1985* (WA) s 3.
190 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 8.
191 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 9.
192 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 8.
193 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 9.
194 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 9.
195 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 9; *Burswood Casino Directions,* dir 3F [GWC.0002.0012.0001].
196 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 21(d)(iv).

infiltration due to various reasons, including that junkets involve the movement of large sums of money and involve multiple parties such that the source and ownership of funds ultimately used in a casino is obscured.[197] For consideration of risks generally relevant to a casino environment, including money laundering and criminal infiltration, see Chapter 4.

213. The following chronology provides an overview of the regulation of junkets and junket operators in Western Australia.

1988 – 1998

214. The PCRC's current understanding is that prior to the enactment in 1998 of s 25A of the CC Act, which permits the making of regulations to regulate junkets, junkets were regulated to some extent by Directions. These Directions will be discussed in the Final Report.

215. A 1996 Parliamentary Review of the GC Act recommended the removal of Directions requiring that junkets be approved by the GC on the basis that there were doubts about the legality of using Directions to enforce a practice said to not be envisaged by legislation. Approving junkets was said to serve no purpose while there was no restriction on the same persons gambling as individuals and not as part of a junket group.[198] The report also appears to have argued that a further reason to remove the Directions was the competitiveness of the junket market, in Australia and overseas, and that other casinos did not require regulator approval. The report made reference to other mechanisms already in place which it contended ensured that all gambling at the casino, including junkets, were conducted properly (for example, security, surveillance and Australian immigration requirements).[199]

216. However, the recommendations in the review were ultimately not adopted. In 1998, s 25A was inserted into the CC Act which provided for the Governor to make regulations with respect to junkets and junket operators.[200] As already noted, the impetus for the move to replace the Directions with regulations was borne out of doubts as to the legality of using Directions to enforce a practice not envisaged by the legislation.[201] The introduction of s 25A into the CC Act can be seen as the striking of a balance between the desire to accommodate revenue raising and protectionary measures to ensure that 'all the gambling in Western Australia is above reproach'.[202]

1999 – 2010

217. In 1999, the CC Regs came into force. Part 3 of the CC Regs required applications to the GWC for approval as a junket operator, or a junket operator's representative, to contain

197 Bergin Report, vol 1 [BGN.0001.0001.0001] 60-65.
198 Hon M Evans, Review of the Gaming Commission Act 1987, report (1996) [PUB.0004.0002.0129] 108.
199 Hon M Evans, Review of the Gaming Commission Act 1987, report (1996) [PUB.0004.0002.0129] 106-108.
200 *Acts Amendment (Gaming) Act 1998* (WA) s 21.
201 Hon M Evans, Review of the Gaming Commission Act 1987, report (1996) [PUB.0004.0002.0129] 108; Western Australia, Parliamentary Debates, Legislative Assembly, 21 May 1998, 3043 (Mr Cowan, Deputy Premier) [PUB.0016.0013.0219].
202 Western Australia, Parliamentary Debates, Legislative Council, 24 June 1998, 4603 (Ms Warnock, Member for Perth) [PUB.0016.0013.0268].

detailed information about the applicant's background. They also empowered the GC to require the applicant to permit their fingerprints to be taken; to require the applicant to submit to an interview; and to conduct other investigative processes. The regulations also required a casino operator to give the GC at least 24 hours' notice of the commencement of a junket, including the names and passport details of the junket operator or representative and junket participants. No amendments were made to Part 3 of the regulations between 1999 and 2010.

218. As is discussed below, in 2010 the GWC considered a proposal to remove the requirement in Part 3 of the CC Regs for junket operators and representatives to be approved. A GWC agenda paper recommending that the proposal be adopted contained the following statement:

> The junket approval process has been in place since approximately 1988. Over time the process has altered and has been 'relaxed' as measures by other regulatory bodies have either supplemented or replaced the probity checks that were conducted as part of the junket operator/representative approval process. [203]

219. The PCRC's inquiry into whether, in practice and effect, GWC's process of oversight of junkets was between 1999 and 2010 'relaxed' is ongoing.

2010 repeal

220. By way of a letter dated 4 December 2009, the Perth Casino submitted a proposal to the then Acting CCO, Mr Connolly, for the removal of the requirement in Part 3 of the CC Regs for junket operators and representatives to be approved by the GWC.[204] The main reasons advanced by Crown were, in essence:

    a. The necessary integrity checks of persons entering Australia, including junkets and junket operators, were being carried out by Federal Government agencies. Those processes included checks under the AML/CTF Act.

    b. The junket approval process imposed economic costs on the casino operator in the extremely competitive International Commission Business[205] market compared to casinos in other jurisdictions where there was no junket approval process in place by the regulator.

221. In a GWC meeting agenda pack for its meeting of 23 February 2010, a departmental officer recommended that the GWC consider amending the Regulations to remove the requirement for junket operators and representatives to be approved by the GWC.[206] The rationale for that recommendation was, in essence:

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203 GWC, agenda paper [GWC.0002.0016.0001] 337, 345.

204 Crown, letter [DLG.0001.0007.0002].

205 A term defined in the State Agreement to mean 'Junket Activity', 'Premium Player Activity' and 'Privileged Player Activity', the latter of two of which are defined in the State Agreement so as to be limited to players who are non-residents of Australia.

206 GWC, agenda paper [GWC.0002.0016.0001] 337, 2346.

a. The current junket approval process duplicates rigorous checks already conducted by Federal Government agencies; and

b. The junket approval process imposes economic costs on the casino operator in the extremely competitive International Commission Business market compared to casinos in other jurisdictions where there is no junket approval process in place by the regulator.[207]

222. In the minutes for the meeting, record that the GWC resolved, in line with the recommendation, to approve an amendment of the Regulations, to 'remove the requirement for junket operators and representatives to be approved by the Commission'.[208] This represents a departure from the position some 10 years prior when, as noted above, a similar recommendation in the 1996 Review was not followed.

223. In June 2010, Part 3 of the CC Regs were repealed in their entirety; that is, all of the regulations relating to control of junkets and not merely the requirement that junket operators and representatives be approved by the Commission.[209] PCRC's inquiry continues into the circumstances in which Part 3 of the CC Regs were repealed.

2010 – 2016

224. The PCRC's inquiries continue into the specific content of any control and/or oversight of junket tour operations in the period 2010—2016.

2017 – present

225. The PCRC's current understanding is that since at least 2017 there has been no obligation for junket operators to be licensed or approved by the GWC. Section 19 of the Casino Manual (Operations) (CM(Ops)) deals with 'International/Interstate Gaming Business', which includes junkets, premium player activity and privileged player activity.[210] Between September 2017 and February 2021, Part 2, headed 'junket program-preliminary procedures', included a requirement for the casino operator to obtain information about junket operators and accompanying players and to forward the information to the Legal Officer, AML and any other departments deemed necessary. The PCRC's inquiries continue into earlier editions of the manual to ascertain what processes may have previously been in place for junket approval at Perth Casino.

226. In December 2020, the GWC approved to issue a Direction to the Perth Casino licensee to cease junket operations.[211] On 23 February 2021, the GWC resolved to give effect to a draft amending instrument, DA/104, which prohibited the conduct of junkets and similar activity.[212] That prohibition may suggest a significant shift in approach from the initial regulatory position under s 24 of the CC Act which permitted junket activity at the

207 GWC, agenda paper [GWC.0002.0016.0001] 337, 338, 345-346.

208 The minutes of the 23 February 2010 meeting were adopted at the 23 March 2010 meeting and record the resolution as having been agreed: GWC, minutes [GWC.0002.0016.0020] 10.

209 Western Australia, Government Gazette, No 100 (4 June 2010) 2484 [PUB.0005.0003.0146].

210 Casino Manual (Operations) [CRW.700.001.1244] s 19.

211 GWC, agenda paper [GWC.0002.0016.0363] 11.

212 GWC, agenda paper [GWC.0002.0016.0367] 10.

Perth Casino for revenue raising purposes, which then moved to a stricter, prescriptive legislative regime for harm minimisation purposes, and which then returned to a non-legislative regulatory regime.

227. The PCRC's inquiries continue into the specific content of any control and/or oversight of junket tour operations in the period 2017 to the present.

Poker Machines and Electronic Gaming Machines

Definition of poker machines

228. The term 'poker machine' is defined in similar terms by the Macquarie Dictionary and Oxford English Dictionary, each of which refers to what might be considered to be the original or historical version of a poker machine:

> **noun** a coin-operated gambling machine, with images such as playing cards, pictures of fruit, etc., on a set of (usually three or four) wheels which are set in motion by pressing a button or pulling a lever, the score depending on the combination of symbols visible when the wheels come to rest. Also, fruit machine, slot machine.
>
> **n**. originally U.S. a coin-operated gaming-machine which pays out according to the combination of symbols (usually representations of playing cards) appearing on the edges of the wheels spun by the operation of a lever.

229. Wikipedia offers a more comprehensive definition, which takes into account the modern features of such machines:[213]

> A slot machine (American English), known variously as a fruit machine (British English), puggy (Scottish English), the slots (Canadian English and American English), poker machine/pokies (Australian English and New Zealand English), fruities (British English) or slots (American English), is a gambling machine that creates a game of chance for its customers. Slot machines are also known pejoratively as one-armed bandits because of the large mechanical levers affixed to the sides of early mechanical machines and the games' ability to empty players' pockets and wallets as thieves would.
>
> A slot machine's standard layout features a screen displaying three or more reels that "spin" when the game is activated. Some modern slot machines still include a lever as a skeuomorphic design trait to trigger play. However, the mechanics of early machines have been superseded by random number generators, and most are now operated using buttons and touchscreens.
>
> Slot machines include one or more currency detectors that validate the form of payment, whether coin, cash, voucher, or token. The machine pays out according to the pattern of symbols displayed when the reels stop "spinning". Slot machines are the most popular gambling method in casinos and constitute about 70% of the average U.S. casino's income.
>
> Digital technology has resulted in variations on the original slot machine concept. As the player is essentially playing a video game, manufacturers are able to offer

213 Wikipedia, 'slot machine', 14 June 2021 [PUB.0018.0002.0071].

> more interactive elements, such as advanced bonus rounds and more varied video graphics.(citations omitted)

Historical prohibition on poker machines in Western Australia

230. From the time of its enactment, Part VI of the *Police Act 1892* (WA) (Police Act) contained prohibitions against the establishment and operation of common gaming houses, and the playing of games of chance in any public place or place to which the public had access.[214]

231. In 1961, s 89A was inserted into the Police Act.[215] That section empowered the Governor to specifically prohibit the use or possession of 'slot machines', which were defined as being, in essence, machines operated by the insertion of a coin or valuable token, or upon payment of valuable consideration.

232. By way of proclamation first made in 1962, and made again in the same terms in 1963, the Governor prohibited the use or possession of, amongst other things, machines 'of the kind generally known and described as a poker machine, fruit machine or roulette machine or [which] is a mechanical device in the nature of, or similar to, any of them'.[216] The term poker machine was not defined in the proclamation.

233. Section 89A and other provisions of the Police Act concerned with gaming were repealed after the introduction of the GC Act.[217] Section 85(1) and (4) of the GC Act effectively continued the prior operation of the proclamation under the Police Act, by prohibiting the playing of games using, or the possession of, 'any machine (not being a video machine authorized for use in the Burswood Casino pursuant to the Casino Control Act 1984) of the kind generally known or described as a poker machine, fruit machine or roulette machine or any machine in the nature of or similar to a machine of that kind'.[218]

234. The term poker machine was also not defined in the GC Act. A 1996 review of the GC Act recommended that amongst other things, the term 'poker machine' be defined in that Act.[219] The recommendation was endorsed,[220] but no definition was inserted.

Continuing prohibition on poker machines at the Perth Casino

235. Only games which have been declared by the GWC to be authorised games for the purposes of the CC Act may be played at the Perth Casino.[221]

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214 *Police Act 1892* (WA) ss 86, 66(6).

215 *Police Act Amendment Act 1961* (WA) s 2.

216 Western Australia, Government Gazette, No 70 (6 September 1963) 2710 [PUB.0004.0002.0261] 59.

217 *Acts Amendment and Repeal (Gaming) Act 1987* (WA).

218 *Gaming Commission Act 1987* (WA) s 85(1)(a).

219 Hon M Evans, Review of the Gaming Commission Act 1987, report (1996) [PUB.0004.0002.0129] 71-72. The review explained that such changes were needed in order to prevent the proliferation of machines which courts had ruled were not captured by s 85(1)(a) of the GC Act because they did not offer a prize worth more than the cost of playing the game. Games of this kind were held to come within an exception provided by s 39(2)(e) of the *Gaming Commission Act 1987* (WA).

220 Hon M Evans, Review of the Gaming Commission Act 1987, report (1996) [PUB.0004.0002.0129] 9.

221 *Casino Control Act 1984* (WA) s 22(6).

236. Section 22(1)(a) of the CC Act provides that the GWC may declare any game, except for a game played with poker machines (which are not defined), to be an authorised game. There are no exceptions to this prohibition. It is apparent therefore that what is significant in determining whether the GWC may declare a game to be authorised is not the specific features of the game itself, but whether the machine upon which the game is played is one which, having regard to its fundamental characteristics, might properly be characterised as a poker machine.

237. By cl 22(3) and (4) of the State Agreement, the State has also agreed not to approve (whether under the CC Act, any other Act, or otherwise) the playing of any games commonly played in casinos (whether in Australia or elsewhere), or any variation or derivation thereof, other than in:

    a. the Perth Casino or other casino the subject of a casino complex agreement under the CC Act; or

    b. in certain circumstances, cruise ships operating in Western Australian waters.

238. It is not controversial that poker machines are commonly played in casinos internationally and in other parts of Australia. However, the combined effect of these provisions is that the playing of poker machines may not be approved in Western Australia, whether in the Perth Casino or anywhere else.

239. It is not entirely clear on the face of the legislative provisions what is meant by 'poker machine' and the reasons for the prohibition.

240. In those circumstances, it is appropriate to consider extrinsic materials relevant to the CC Act as an aid to construction.[222]

Extrinsic materials and legislative history relating to Poker Machines

241. The prohibition on the approval of poker machines did not appear in s 22(1)(a) of the CC Act as enacted.

242. In the course of the second reading debate for the Casino Control Bill a number of members made reference to poker machines, also variously described as one-armed bandits and pokies,[223] and expressed concern that in the absence of an express prohibition against poker machines they might ultimately be installed in the casino.[224]

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222 Regard to extrinsic materials for the purpose of confirming the meaning of a provision, or determining its meaning when the provision is obscure or ambiguous, is permitted by s 19 *Interpretation Act 1984* (WA). For an example of the use of extrinsic materials in the interpretation of statutory terms see *R v A2*; *R v Magennis; R v Vaziri* [2019] HCA 35; 93 ALJR 1106 [33] (Kiefel CJ and Keane J, with whom Nettle and Gordon JJ, and Edelman J, generally agreed).

223 Western Australia, Parliamentary Debates, Legislative Council, 9 May 1984, 8091 (Hon HW Gayfer, Member for Central), 8105 (Hon N Oliver, Member for West), 8108 (Hon GC MacKinnon, Member for South-West) [PUB.0016.0013.0277].

224 Western Australia, Parliamentary Debates, Legislative Council, 9 May 1984, 8091, and 8092 (Hon HW Gayfer, Member for Central), 8094 and 8097 (Hon GE Masters, Member for West), 8105 (Hon N Oliver, Member for West) [PUB.0016.0013.0277]; Western Australia, Parliamentary Debates, Legislative Council, 15 May 1984, 8364 (Hon GC MacKinnon, Member for South-West) [PUB.0016.0013.0258]; Western Australia, Parliamentary Debates, Legislative Assembly, 29 May 1984, 8603, 8606-8608, 8636 (Mr Hassell, Leader of the Opposition), 8623 (Mr Watt, Member for Albany) [PUB.0016.0014.0001].

243. These concerns were raised notwithstanding repeated references to a bipartisan consensus that poker machines should not be introduced into Western Australia.[225] In the course of the debate, the basis of that bipartisan consensus was explained by reference to a concern that 'Eastern States experience had shown they could become addictive'.[226] The debate also suggested that members understood that poker machines were designed to guarantee losses over time, with reference being made to prior reports which had concluded there was no doubt that poker machines would provide substantial revenues.[227]

244. An attempt to amend the Casino Control Bill, to require that rules or directions relating to machines 'commonly known as poker machines' be laid before each house of Parliament, failed.[228]

245. However, the prohibition now found in s 22(1)(a) was subsequently inserted some nine months later, when the CC Act was amended by the *Acts Amendment and Validation (Casino Control) Act 1985* (WA). The amending bill was introduced to Parliament immediately after the *Casino (Burswood Island) Agreement Bill* which became the CBIA Act.[229]

246. In the second reading speech which accompanied the introduction of the amending bill the Leader of the House in the Legislative Council explained that: 'In accordance with the Government's previous stance on this issue, the use of poker machines in a casino will be specifically prohibited by amendment of sections 22 and 23 of the Act'.[230] The amending Act was enacted without any substantive debate as to the nature of poker machines, or why it was appropriate that they be prohibited.

247. Section 23 of the CC Act, as referred to in the second reading speech, had originally provided that it was a defence to prosecution under, amongst other provisions, Part VI of the Police Act, to show that the relevant game (or instrument necessary to the conduct of that game) was lawful under the CC Act. The amendments to that section now clarified that the defence was not available in respect of games played with poker machines.

248. As discussed above, those provisions of the Police Act which were concerned with gaming appeared in Part VI. Accordingly, the 'poker machines' contemplated by the CC Act appear to have been intended to correspond generally to the machines

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225 Western Australia, Parliamentary Debates, Legislative Assembly, 8 May 1984, 8016-8017 (Mr Parker) [PUB.0016.0013.0237]; Western Australia, Parliamentary Debates, Legislative Council, 10 May 1984, 8243 (Hon DK Dans, Leader of the House) [PUB.0016.0013.0243]; Western Australia, Parliamentary Debates, Legislative Assembly, 29 May 1984, 8606, 8607 (Mr Hassell, Leader of the Opposition), 8606, 8636 (Mr Parker, Minister for Minerals and Energy) [PUB.0016.0014.0001].

226 Western Australia, Parliamentary Debates, Legislative Assembly, 29 May 1984, 8608 (Mr Hassell, Leader of the Opposition), 8620 (Mr Coyne, Member for Murchison-Eyre), 8623 (Mr Watt, Member for Albany), 8636 (Mr Parker, Minister for Minerals and Energy) [PUB.0016.0014.0001].

227 Western Australia, Parliamentary Debates, Legislative Council, 9 May 1984, 8091, 8092 (Hon HW Gayfer, Member for Central) [PUB.0016.0013.0277].

228 Western Australia, Parliamentary Debates, Legislative Council, 10 May 1984, 8240 [PUB.0016.0013.0243].

229 Western Australia, Parliamentary Debates, Legislative Council, 21 February 1985, 166-170 (Hon DK Dans, Leader of the House) [PUB.0016.0013.0262]; Western Australia, Parliamentary Debates, Legislative Assembly, 12 March 1985, 795 [PUB.0016.0013.0182]. Both bills were dealt with in a cognate debate in the Legislative Assembly.

230 Western Australia, Parliamentary Debates, Legislative Council, 21 February 1985, 171 (Hon DK Dans, Leader of the House) [PUB.0016.0013.0262].

prohibited by the Police Act. Since the 1962 and 1963 proclamations that prohibition had included machines 'of the kind generally known and described as a poker machine, fruit machine or roulette machine or [which] is a mechanical device in the nature of, or similar to, any of them'. On one view of it, the amendments to the CC Act may have been intended to confirm and entrench the existing and widely framed prohibition.

249. There is support in the Parliamentary debates for the wide meaning suggested by the legislative context. Those debates indicate that the term poker machine as it appears in the CC Act is broadly used so as to encompass one-armed bandits; machines of the same kind as which had been introduced into the Eastern States prior to the passage of the CC Act. Reference is made in the debates to the risk of addiction and resulting social harm. The debates in which poker machines were discussed focussed primarily on the consequences such machines might have, rather than their means of operation, and did not mention the use of spinning reels.

250. The 1974 Report of the Royal Commission into Gambling noted submissions that poker machines, through the sophisticated use of 'intermittent reinforcement' (offering rewards or wins in such a way as to most effectively encourage a player to continue trying to win even when they were suffering considerable loss), were claimed to be addictive to certain individuals and that treatment of such addiction was generally unsuccessful.[231] There was also a general recognition that losses while playing poker machines were inevitable. This was the basis on which it was suggested that poker machines might provide fundraising for clubs in which they were installed, or State revenue by way of taxes.[232]

251. The report recommended against the legalisation of poker machines in Western Australia. The authors explained they had formed the opinion that 'poker machine playing is a mindless, repetitive and insidious form of gambling which has many undesirable features. It requires no thought, no skill or social contact. The odds are never about winning. Watching people playing the machines over long periods of time, the impressionistic evidence at least is that they are addictive to many people. Historically poker machines have been banned from Western Australia and we consider that, in the public interest, they should stay banned'.[233]

252. The Gaming Inquiry Committee made the same recommendation.[234] The Chair's individual report referred in detail to the reasoning of a 1974 report as explaining this recommendation.[235] The Chair also noted that there was 'no doubt' that the revenue benefits from poker machine were substantial,[236] thus recognising that losses were inevitable over time when playing on poker machines.

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231 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 28.

232 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 44, 72-73, 75-76, 121.

233 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 76 - 77.

234 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 6.

235 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 31.

236 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 30.

Electronic Gaming Machines at the Perth Casino

253. The 1983 Advisory Committee Report recommended that both poker machines and video games should be prohibited at casinos.[237]

254. Nonetheless, the CC Act contained no prohibition against video games when first enacted. No such prohibition was inserted when s 22 was amended to prohibit the authorisation of poker machines. The CC Act as it exists today makes no reference to video games.

255. Similarly, the State Agreement as first ratified contained no reference to either video games or EGM.

256. However, on 20 December 1985 a notice was published in the Western Australian Government Gazette giving notice that the then Control Committee had declared as authorised games for the purposes of the CC Act, amongst other games, 'Video Blackjack (Sneaky Peek)'; 'Video Blackjack (Winning Streak)'; 'Video Keno'; and 'Video Draw Poker'.[238]

257. In the following years additional video games were declared to be authorised games for the purposes of the CC Act.[239]

258. On 18 June 2003, the State Agreement was amended by the Eighth Supplementary Agreement to introduce the term 'Electronic Gaming Machine', defined as being an authorised game 'played by means of any electrical, electronic or mechanical contrivance or machine that is not a Table Game'.[240] Provisions dealing with the tax to be levied in respect of EGM were also introduced.

259. On 27 August 2004, 'Video Bingo' was declared to be an authorised game for the purposes of the CC Act.[241] Since that time, the GWC has approved the incorporation of numerous different EGM games within the approved rules of Video Bingo.[242]

260. The information provided to the PCRC to date suggests that early versions of EGM were largely made up of proprietary components and software. Software was typically stored on erasable programmable read only memory (EPROM) chips placed on customised motherboards in sealed logic areas of the gaming machines. Contemporary EGM resemble desktop computers. New machines utilise standard components such as motherboards, hard drives, monitors and other elements that would be recognisable to most people familiar with desktop personal computers. Software is now typically stored

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237 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 6.

238 Western Australia, Government Gazette, No 130 (20 December 1985) 4825 [PUB.0008.0006.0001].

239 For example, 'Video Sic Bo' was authorised by Western Australia, Government Gazette, No 213 (28 November 1997) 7028 [PUB.0016.0008.0001]; 'Video Blackjack', 'Video Money Wheel' and 'Video Roulette' were authorised by Western Australia, Government Gazette, No 108 (2 June 1998), 3019 [PUB.0016.0003.0001]; and Arishinko was authorised by Western Australia, Government Gazette, No 224 (20 December 2002), 6026 [PUB.0016.0007.0001].

240 The amendment was later ratified by the *Casino (Burswood Island) Agreement Amendment Act 2003*.

241 Western Australia, Government Gazette, No 151 (27 August 2004) 3747 [PUB.0016.0006.0001].

242 Crown, The Approved Rules of the Authorised Game Video Bingo [GWC.0001.0007.0397].

on portable storage devices (PSD's) including portable hard drives, DVD rom media and even USB sticks.[243]

261. If, as the information before the PCRC suggests, EGMs are today generally comprised of standard computer parts, with bespoke gaming software running on a base operating system, a question arises as to the point of delineation between 'machine' and 'game' for the purposes of s 22(1) CC Act. While it seems likely that the machine will encompass the physical casing, motherboard and CPU, peripherals, firmware and operating system; and the game the software package that is installed and runs on that operating system, this is a matter in respect of which further evidence maybe sought.

262. The GWC has adopted guidelines distinguishing between EGM which are acceptable for the Perth Casino and poker machines which are not.[244] However, there are apparent similarities between EGM used at Perth Casino and poker machines used at other casinos around Australia; all of which are required to comply with the Australian/New Zealand Gaming Machine National Standard 2016 (National Standard).[245]

263. The GWC has also recently approved the modification of the Western Australian Appendix to the Australia/New Zealand Gaming Machine National Standard 2016,[246] in order to enable games developed for other casinos (which are not subject to a prohibition on poker machines) to also be played at the Perth Casino.[247] The PCRC will continue to inquire into the issue of prohibition of poker machines.

243 GWC, agenda paper [GWC.0002.0016.0186] 54.

244 GWC, agenda paper [GWC.0002.0016.0035] 407-419.

245 Australian/New Zealand Gaming Machine National Standard 2016 [GWC.0001.0007.0185]. The GWC adopted the National Standard in September 2016: GWC, agenda paper [GWC.0002.0016.0186] 49; GWC, agenda paper [GWC.0002.0016.0191] 3. Other States and Territories require compliance with the National Standard, generally as modified by a local Appendix: Victorian Commission for Gambling and Liquor Regulation, Victorian Appendix to the Australian/New Zealand Gaming Machine National Standard [PUB.0018.0002.0001]; NSW, New South Wales Appendix to the Australian/New Zealand Gaming Machine National Standard 2016 [PUB.0018.0002.0021]; Queensland Government, Gaming technical services [PUB.0018.0002.0033]; Tasmanian Liquor and Gaming Commission, Australian and New Zealand Gaming Machine National Standard - Tasmanian Appendix [PUB.0018.0002.0038]; South Australia, South Australian Appendix to the Australian/New Zealand Gaming Machine National Standard 2016 [PUB.0018.0002.0046]; Northern Territory Government, Northern Territory Gaming Equipment Approval Process & Appendix to the Australian/New Zealand Gaming Machine National Standards [PUB.0018.0002.0057].

246 GWC, agenda paper [GWC.0002.0016.0186] 49.

247 GWC, agenda paper [GWC.0002.0016.0281]; GWC, agenda paper [GWC.0002.0016.0283] 4.

Chapter 4: Identification of extant and emerging strategic risks

Purpose of this chapter

264. ToR 8 directs attention to 'extant and emerging strategic risks'. The purpose of this chapter is to discuss, in the context of the operation of the Perth Casino, the extant and emerging strategic risks identified in the Bergin Report, and otherwise by the PCRC to date.

Risks identified by the Bergin Report

265. The Bergin Report identifies three broad strategic risks in the context of casinos and casino gaming: money laundering, criminal infiltration and junkets (Bergin Risks).[248] Cash transactions and electronic funds transfers, being additional risks expressly referred to in ToR 8, may be considered an aspect of one or more of those three broader risks.

266. The Bergin Report makes observations about the interrelationship between junket operations, money laundering and criminal infiltration of casinos and casino gaming.[249]

267. Money laundering is a process of legitimising or hiding proceeds or instruments of crime. It blends criminal and legitimate activities and is a common element in almost all serious and organised crime.[250]

268. Casinos are particularly vulnerable to money laundering, one reason being the large volumes of cash in which they deal.[251] Another reason is a casino's likeness to a bank in that it engages in myriad financial transactions, maintains customer accounts, exchanges foreign currency and facilitates a number of different forms of payment.[252] However, unlike customers of a bank, casino patrons are not required to disclose to a casino their business or professional activities making it difficult to distinguish patrons who may be laundering funds from all other patrons.[253]

269. Junket programs can involve the movement of large amounts of money across borders (domestic or international), either electronically or in cash, through complex transactions involving multiple parties such that the source and ownership of funds is obscured.[254] Hence, money laundering is considered a 'high risk' associated with junket tour operators in Australia.[255]

248 Bergin Report, vol 2 [BGN.0001.0001.0334] 618, 628, 631.
249 Bergin Report, vol 1 [BGN.0001.0001.0001] 63-67.
250 Bergin Report, vol 1 [BGN.0001.0001.0001] 45 [1].
251 Bergin Report, vol 1 [BGN.0001.0001.0001] 46-47 [9].
252 Bergin Report, vol 1 [BGN.0001.0001.0001] 46-47 [9].
253 Bergin Report, vol 1 [BGN.0001.0001.0001] 47 [10].
254 Bergin Report, vol 1 [BGN.0001.0001.0001] 6465.
255 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 4.

270. Further, the credit providing and debt enforcing functions of junkets make them vulnerable to infiltration by organised crime.[256]

271. The potential for money laundering and criminal activity to be associated with the Perth Casino and its operations represents a strategic risk, in the sense it is used in ToR 8, because of the threat such associations pose to the confidence and trust that the public holds in the credibility and integrity of its gaming operations. Junket operations that are vulnerable to money laundering and criminal infiltration represent a similar strategic risk.

Bergin Risks and the Perth Casino

272. On 23 February 2021, the GWC issued a Direction to the Perth Casino pursuant to s 24 of the CC Act prohibiting the conduct of junket tours and programs.[257] Prior to that Direction, junket tours to the Perth Casino had been conducted on a regular basis since at least 1999 when Part 3 of the CC Regs was promulgated.[258]

273. Under the current legislative framework, it is open to the GWC to withdraw or modify the current Direction and to permit the regulation of junket tours to the Perth Casino. The State Agreement provides for the operator of the Perth Casino to pay 'Casino Taxes', which is defined in cl 2 of the State Agreement so as to include taxes to be paid on International Commission Business. The term International Commission Business is defined to include 'Junket Activity', which is in turn defined to mean gaming activity limited to table games arising from a 'Junket'. The word Junket is defined so as to have the same meaning as in s 25A of the CC Act.[259] Section 5A of the CC Act, read in light of s 37, empowers the Governor to make regulations, not only to prohibit the conduct of junkets, but also to regulate their ongoing conduct.

274. Further, there are apparent benefits to both the licensee and the State in the licensee being permitted to receive and promote junket tours to the Perth Casino. The value of junkets and junket operators in generating revenue for casinos is significant. The Bergin Report noted that 'in Australia, as in Macau, casino operators are heavily dependent on junkets for the continued success of the VIP market segment of their revenues'.[260]

275. The annual reports of Crown Resorts suggest that, in Western Australia, attracting increased patronage from overseas may have been a significant aspect of the business strategy adopted in respect to the Perth Casino, particularly between 2011 and 2015.[261] In 2013, Perth Casino's turnover for its VIP Program Play was approximately $11.8 billion .[262] According to a 2016 announcement, international VIP gaming programs represented around a quarter of 'Crown Group' revenues for that year (12% of 'Crown

256 Bergin Report, vol 1 [BGN.0001.0001.0001] 63.
257 *Burswood Casino Amendment Directions 2021* (DA/104) [GWC.0001.0006.0019].
258 Bergin Report, vol 1 [BGN.0001.0001.0001] 74. Part 3 was deleted in 2010.
259 *Casino (Burswood Island) Agreement Act 1985* (WA), Sch 1, cl 23(1)(a), Sch C to Sch 1.
260 Bergin Report, vol 1 [BGN.0001.0001.0001] 19 [40].
261 Crown Resorts Limited, Annual Report 2012, report (2012) [PUB.0013.0001.0541] 8.
262 Crown Resorts Limited, Annual Report 2013, report (2013) [PUB.0013.0001.0681] 15.

Group' revenues were said to be from Chinese players).[263] The Perth Casino's turnover from its VIP program appears to have been in decline since 2016.[264]

276. Under the State Agreement, International Commission Business (that includes Junket Activity) is afforded a lower gaming tax rate compared to, for example, table games and EGMs. The tax rate for International Commission Business is currently set at 1.75% and has dropped from 13% since 2002.[265] The justification for the lower tax rate is that it enables the Perth Casino to remain competitive in the global market, thereby attracting players from interstate and foreign jurisdictions.[266] The PCRC is inquiring into the ramifications of the arrangements.

277. As already explained, the State benefits from higher volumes of junket gaming in the form of increased tax revenue.

Junket operations, money laundering and criminal infiltration as extant strategic risks

278. Against this background, junket operations, and the activities of money laundering and criminal infiltration that may be associated with such operations, can be viewed as extant strategic risks in respect of Perth Casino and its operations.

279. In addition, independently of junket activity, money laundering through Australian casinos has been associated with organised crime and on a similar basis can be viewed as an extant strategic risk affecting the Perth Casino.[267]

Bergin Risks: further inquiry

280. The Bergin Risks will be subjects for further inquiry in the second phase of the PCRC.

Risks identified by the PCRC

Problem gambling

281. This section is confined to a discussion of the extent to which problem gambling, and the consequent social harm, may be viewed as an extant or emerging strategic risk in the context of the operation of the Perth Casino.

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263 Crown Resorts Limited, media release (2016) [PUB.0007.0008.0467].

264 Crown Resorts Limited, Annual Report 2016, report (2016) [PUB.0013.0001.1121] 17; Crown Resorts Limited, Annual Report 2017, report (2017) [PUB.0013.0001.1261] 17; Crown Resorts Limited, Annual Report 2018, report (2018) [PUB.0013.0001.1401] 17; Crown Resorts Limited, Annual Report 2019, report (2019) [PUB.0013.0001.1541] 21; Crown Resorts Limited, Annual Report 2020, report (2020) [PUB.0013.0001.1685] 20 (but note the effect of COVID-19 related shutdowns); Crown Resorts Limited, Annual Report 2015, report (2015) [PUB.0013.0001.0969] 22.

265 *Crown (Burswood Island) Agreement Act 1985* (WA), Sch C-Sch 1, Sch 14.

266 AUSTRAC, Junket Tour Operations in Australia, report (2020) [PUB.0001.0001.0001] 8.

267 Explanatory Memorandum, *Anti-Money Laundering Amendment (Gaming Machine Venues) Bill 2012* (Cth) [PUB.0007.0008.2472] 4; Australian Crime Commission, Organised Crime in Australia, report (2011) [PUB.0007.0008.2493] 50.

282. Problem gambling has an extensive literature and is a significant social issue.[268] The PCRC also notes that, separately, the concept of social harm arising from gambling has been the subject of extensive social science research and that the resulting social harm extends further than harm arising solely from problem gambling.[269]

What is problem gambling?

283. Australians are among the most prolific gamblers in the world.[270] For many Australians, gambling is a manageable and socially acceptable leisure activity.[271] However, gambling can become problematic for some people, with serious personal and social consequences.

284. There is no scientific definition of problem gambling. One description which is commonly used is 'a situation where a person's gaming behaviour creates harm for themselves, and/or to their family, and may extend into the community'.[272] Often the test of harm is related to a series of indicia such as someone betting more than they can afford to lose, gambling with greater quantities of money to get the same feeling of excitement, borrowing money or selling something to be able to gamble, obtaining funds dishonestly with which to gamble, gambling induced health problems such as stress or anxiety, financial problems arising from gambling and guilt about gambling.[273]

Prevalence of problem gambling and related social harm

285. Problem gambling is a public health issue that not only affects the problem gambler but also their families, health care practitioners, the community and the government. In 2017, the Australian Institute of Family Studies released data from the Household Income and Labour Dynamics in Australia survey on the prevalence of gambling in Australia.

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268 Oakes J, Pols R and Lawn S, 'The Frantic Seeking of Credit during Poker Machine Problem Gambling: A Public Health perspective', (2020) 17, International Journal of Environmental Research and Public Health 5216 [PUB.0007.0012.0271]; Productivity Commission, Australia's gambling industries, report (vol 1-3, 1999) [PUB.0007.0008.0001], [PUB.0007.0013.1484], [PUB.0007.0013.2012]; Productivity Commission, Gambling, report (vol 1-2, 2010) [PUB.0007.0014.1100], [PUB.0007.0014.1732]; Financial Counselling Australia, Problem Gambling Financial Counselling: Survey and Case Studies, report (2016) [PUB.0007.0012.0286]; Gainsbury S et al, 'The Prevalence and Determinants of Problem Gambling in Australia: Assessing the Impact of Interactive Gambling and New Technologies', (2014) 28(3) Psychology of Addictive Behaviours 769 [PUB.0007.0012.0401]; Monaghan S and Blaszczynski A, 'Electronic Gaming Machine Warning Messages: Information versus Self-evaluation', (2009) 144 The Journal of Psychology: Interdisciplinary and Applied 83 [PUB.0007.0012.0001].

269 Gambling Research Australia, Gambling and Co-Morbid Disorders, report (2013) [PUB.0007.0012.0030]; Victorian Responsible Gambling Foundation, The Social Cost of Gambling to Victoria, report (2017) [PUB.0007.0016.0001]; Australian Gambling Research Centre, Gambling activity in Australia, report (2017) [PUB.0014.0001.0102]; Australian Gambling Research Centre, Gambling in Australia During COVID-19, report (2020) [PUB.0007.0006.0001]; Australian Institute of Health and Welfare Problem gambling among those seeking homelessness services, report (2009) [PUB.0007.0015.0001]; Blaszczynski B, 'Problem Gambling: We should measure harm rather than "cases"', (2009) 104(7) Addiction 1072 [PUB.0007.0012.0283]; Browne M et al, 'What is the harm? Applying a public health methodology to measure the impact of gambling problems and harm on quality of life', (2017) 36 Journal of Gambling Issues 28 [PUB.0007.0012.0412].

270 Australian Medical Association, The Health Effects of Problem Gambling, position statement (2013) [PUB.0007.0007.0013] 1.

271 Australian Medical Association, The Health Effects of Problem Gambling, position statement (2013) [PUB.0007.0007.0013] 1.

272 Crown Perth, Responsible Gaming (accessed on 9 June 2021) [PUB.0007.0009.0001]; Gambling Research Australia, A review of Australian gambling research, report (2008) [PUB.0007.0008.0468] 46.

273 Australian Gambling Research Centre, Gambling activity in Australia, report (2017) [PUB.0014.0001.0102] 39.

That survey estimated, based on a sample of approximately 18,000 respondents, that 1.1% of adult Australians could be classified as problem gamblers, with a further 2.6% reported as moderate risk gamblers.[274] For every problem gambler it is estimated that an additional seven people in the community are negatively impacted.[275] This means that many Australians feel the health, social and financial effects of problem gambling.[276]

286. In 2013 the Australian Medical Association summarised the research findings on the health effects of problem gambling in a position statement.[277] It noted that the social, physical and mental health of problem gamblers and their families is often at risk due to reduced household income and social disruption.[278] Specific adverse effects include relationship breakdown, domestic violence, lowered work productivity, social isolation, loss of employment, bankruptcy and criminal activity.[279] Problem gambling may impact a family's ability to afford food and other necessities such as heating, shelter, transport and health services.[280] The adverse consequences of problem gambling are most pronounced among socially and economically disadvantaged groups of Australians, including Aboriginal people and Torres Strait Islanders, those with poor literacy, people with pre-existing mental health issues, certain cultural and linguistic communities, and people living in low-socioeconomic areas with high levels of unemployment.[281]

Problem gambling in Western Australia and at the Perth Casino

287. Western Australians may have fewer opportunities to gamble than residents of other Australian states and territories, given that EGM are confined to the Perth Casino. The PCRC is not aware of any recent data that is directed specifically to problem gambling in Western Australia. However, in the absence of such data, on the basis of other Australian research previously cited, the frequency with which Western Australians access problem gambling services[282] and Western Australia's per capita casino gambling expenditure,[283] it may be inferred that there is at least some incidence of problem gambling at the Perth Casino. The PCRC is seeking to locate data in relation to this issue.

288. The CC Act does not expressly regulate an approach to problem gambling or responsible gambling and does not require the GWC to implement policies for social harm

274 Australian Gambling Research Centre, *Gambling activity in Australia*, report (2017) [PUB.0014.0001.0102] 39.

275 Productivity Commission, *Australia's Gambling Industries*, report (1999) [PUB.0007.0008.0001] 252; Australian Medical Association, *The Health Effects of Problem Gambling*, position statement (2013) [PUB.0007.0007.0013] 1.

276 Australian Medical Association, *The Health Effects of Problem Gambling*, position statement (2013) [PUB.0007.0007.0013] 1.

277 Australian Medical Association, *The Health Effects of Problem Gambling*, position statement (2013) [PUB.0007.0007.0013].

278 Australian Medical Association, *The Health Effects of Problem Gambling*, position statement (2013) [PUB.0007.0007.0013] 1.

279 Productivity Commission, *Gambling*, report (vol 1, 2010) [PUB.0007.0014.1100] 30; Australian Medical Association, *The Health Effects of Problem Gambling*, position statement (2013) [PUB.0007.0007.0013] 1.

280 Productivity Commission, Gambling, report (vol 1, 2010) [PUB.0007.0014.1100] 30; Australian Medical Association, *The Health Effects of Problem Gambling*, position statement (2013) [PUB.0007.0007.0013] 1. See also Maslen G, 'Waiting for the wins' (2012) 45 *About the House* 24 [PUB.0007.0018.0001].

281 Australian Medical Association, *The Health Effects of Problem Gambling*, position statement (2013) [PUB.0007.0007.0013] 1-2.

282 Gaming and Wagering Commission, 2019–2020 Annual Report, report (2020) [PUB.0002.0001.0658] 26-28.

283 Australasian Gaming Council, A Guide to Australasia's Gambling Industries, Chapter 3 Australia's Gambling Expenditure 2017-18, 4.

minimisation. The GWC Act, however, provides, in s 7(1)(ba), that it is the GWC's duty to 'formulate and implement policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling'. Section 8(2)(da) gives the GWC the power to 'take steps to minimise harm to the community, or any part of the community, caused by gambling'.

289. In this context, and in recognition of a need for problem gambling services in Western Australia, the Problem Gambling Support Services Committee (PGSSC) was formed in 1995 by the GC with the support from other sectors of the gaming industry to address the issue of problem gambling in Western Australia.[284] The mission statement of the PGSSC explains that its purpose is:[285]

> To educate the community of Western Australia on the impact and consequences of problem gambling and to facilitate and promote the help services available for those people affected by gambling related harm.

290. The PGSSC consists of representatives from the Perth Casino, Racing and Wagering Western Australia, Lotterywest, the WA Bookmakers Association, the Department of Communities, the GWC and the Mental Health Commission. The PGSSC is funded by its members, except for the Department of Communities and the Mental Health Commission.[286]

291. The PGSSC has five key objectives and several action items under each objective which can be summarised as follows:[287]

Objective	Action items
Provide effective gambling help services	• Provide a 24-hour telephone helpline service. • Provide a face-to-face counselling service. • Provide access to online counselling
Increase awareness of the impact of excessive gambling	• Develop and conduct a community awareness campaign. • Provide an online informative website. • Participate annually in Responsible Gambling Awareness Week.
Identify and address gaps in service delivery	• Consult service providers to identify gaps in service delivery.
Maintain contemporary knowledge of issues and trends	• Keep informed of gambling research.
Implement and maintain responsible gambling inititatives	• Stakeholders to implement and maintain responsible gambling initiatives. • Share knowledge of responsible gambling initiatives employed by relevant stakeholders.

284 Gaming and Wagering Commission, agenda paper [GWC.0005.0001.0002].
285 Problem Gambling Support Services Committee, Strategic Plan 2017-2020 [GWC.0005.0003.0003] 2.
286 Summary document prepared by the GWC for the PCRC, 10 June 2021, [GWC.0006.0001.0001].
287 Problem Gambling Support Services Committee, Strategic Plan 2017-2020 [GWC.0005.0003.0003] 3.

292. It is to be noted that none of the action items require any tangible intervention in the operations of the Perth Casino.

293. As at 10 June 2021, the Perth Casino's responsible gaming policies are set out in its Responsible Gaming Code of Conduct. That code addresses matters such as exclusion programs, the operation of a responsible gaming centre, the provision of player activity statements, establishing monetary or temporal limits on electronic gaming, interactions by the responsible gaming team with players exhibiting concerning behaviour, problem gambling support services, safe gaming measures such as the placement of clocks within the gaming area and ATMs at some distance from the gaming area, limiting financial transactions and requirements on advertising and promotion.[288]

Problem gambling as an extant strategic risk

294. There is a public interest in ensuring that the Perth Casino operates in a socially responsible manner. Problem gambling presents a risk to maintaining long-term socially responsible gambling at the Perth Casino. The risk of problem gambling and social harm resulting from such gambling may affect the confidence and trust the Western Australian public have in the Perth Casino's ability to operate with integrity and in a socially responsible manner.

    In that context, the risk of problem gambling at the Perth Casino is an extant strategic risk. The ramifications of this risk on the operation of the Perth Casino are discussed in Chapter 6.

Interactive gambling

Characteristics of interactive gambling

295. Interactive gambling (also known as online gambling) takes place on an internet platform.[289] The internet platform may be a traditional website, a downloaded application or a social media platform.[290]

296. There are broadly two types of interactive gambling: 'traditional' interactive gambling and 'social' interactive gambling.[291]

297. Traditional interactive gambling requires players to transfer funds onto the gaming platform to play games of chance, usually traditional casino style games such as

288 Crown Perth, Responsible Gaming Code of Conduct (accessed on 10 June 2021) [PUB.0007.0008.0431].
289 Australasian Gaming Council, A Guide to Australasia's Gambling Industries 2016-17 [INQ.130.001.0001] 2.
290 Australian Gambling Research Centre, Interactive Gambling, discussion paper (2014) [PUB.0007.0008.2460] 2, 4.
291 Commonwealth, Parliamentary Debates, House of Representatives, 10 June 2020, 3613 (Mr A Wilkie, MP) [PUB.0011.0002.0109].

blackjack, poker, slot style electronic games or roulette.[292] A player is able to withdraw winnings in cash.[293]

298. In social interactive gambling, players participate in games using virtual currency, limited amounts of which are made freely available. Players are also able to transfer funds onto the gaming platform to purchase additional virtual currency. Generally, virtual currency purchased by players, and any additional virtual currency that they might win by playing the game, cannot be withdrawn from the platform.[294]

299. In recent years there has also been concern expressed as to whether aspects of some interactive video games might involve interactive gambling.[295] Australia's interactive game industry largely focuses on the production of games of 'narrative storytelling, problem solving, puzzle solving, escapism, role playing, sports games, games about superheroes, board games, card games, strategy and educational games'.[296] Some video games contain 'loot boxes'. Loot boxes are virtual boxes which may be won or purchased by a player and contain randomly allocated virtual items that can be used within the game or potentially sold or transferred to other players for value.[297] While it is not possible to make broad generalisations, online games which allow players to purchase loot boxes (either directly, or otherwise by using virtual currency that can itself be purchased) might in some circumstances amount to interactive gambling.[298]

300. Australia is estimated to account for 5% of the global interactive gambling market.[299] Between 2004 and 2014, expenditure on interactive gambling in Australia more than doubled to $2.4 billion.[300] One study conducted in 2013 estimated that 21% of Australian gamblers participated in some form of interactive gambling over that year.[301] There is significant innovation in the market from emerging interactive gambling service providers.

301. An example of a successful interactive gambling business, which is located in Perth (but has an offshore focus), is VGW Holdings, a public company which operates a traditional

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292 SMa X, Kim SH and Kim SS, 'Online Gambling Behavior: The Impacts of Cumulative Outcomes, Recent Outcomes, and Prior Use', (2014) 25(3) Information Systems Research 511 [PUB.0007.0002.0349] 7; Hon Barry O'Farrell, Review of Illegal Offshore Wagering, report (2015) [PUB.0007.0004.0320] 36.

293 Environment and Communications References Committee, Parliament of Australia Gaming microtransactions for chance based items (2018) [PUB.0007.0006.0020] 23; Synergy Plus Ltd, prospectus (2016) [PUB.0007.0004.0051] 64.

294 See example definition of 'free play sites' in Hon Barry O'Farrell, Review of Illegal Offshore Wagering, report (2015) [PUB.0007.0004.0320] 7; Australian Gambling Research Centre, Is it Gambling or a game? Simulated gambling problems (accessed on 10 June 2021) [PUB.0007.0008.2289] 5, 8, 9.

295 Commonwealth, Committee Hearings, Senate Environment and Communications References Committee, Gaming microtransactions for chance based items, 17 August 2018 [PUB.0007.0008.2006] 5-12.

296 Environment and Communications References Committee, Parliament of Australia Gaming microtransactions for chance based items (2018) [PUB.0007.0006.0020] 10.

297 Bird & Bird LLP, 'Gambling or Gaming? Australia's regulatory position on loot boxes in video games', Lexology (2020) [PUB.0012.0001.0001] 1; Environment and Communications References Committee, Parliament of Australia Gaming microtransactions for chance based items (2018) [PUB.0007.0006.0020] 8-10; Xiao L, 'Online Gambling in Video Games: A Case Study on the Regulation of Loot Boxes', (2020) ResearchGate [PUB.0007.0008.2398] 4, 43.

298 Environment and Communications References Committee, Parliament of Australia Gaming microtransactions for chance-based items (2018) [PUB.0007.0006.0020] 78.

299 Australian Gambling Research Centre, Betting restrictions and online wagering in Australia: A review of current knowledge, report (2017) [PUB.0007.0008.1948] 7.

300 Hon Barry O'Farrell, Review of Illegal Offshore Wagering, report (2015) [PUB.0007.0004.0320] 45.

301 Australian Gambling Research Centre, Betting restrictions and online wagering in Australia: A review of current knowledge, report (2017) [PUB.0007.0008.1948] 7.

interactive casino called Chumba Casino through its wholly-owned web- based gaming platform and through a Facebook application.[302] Currently, Chumba Casino is not available to Australian users accessing the platform through an Australian IP address, as that would be in breach of the *Interactive Gambling Act 2001* (Cth) (IG Act) for the reasons explained below. Presently, Chumba Casino users are primarily based in the United States and Canada. In the 2020 financial year, VGW's revenue rose 122% to a total of $779 million and profit after tax rose 155% to $72 million.[303]

Regulatory challenges

302. Interactive gambling is able to be provided by a service provider located anywhere in the world and can be accessed by a player located anywhere in the world. Jurisdiction-specific regulation is difficult in these circumstances.

303. In Australia, the IG Act regulates interactive gambling across all Australian States and Territories. The IG Act prohibits interactive gambling services being provided or advertised to Australians,[304] and makes it an offence for a person to provide traditional interactive gambling services if the provision of services is intentional and the service has an Australian customer link (that is, if any or all customers are physically in Australia).[305]

304. However, the IG Act permits state licensing of interactive gambling and does not capture social interactive gambling, including (in most cases) online video games making use of loot box systems.[306]

305. In 2019, the Australian Senate undertook an inquiry into microtransactions in gaming for chance-based items, which included the loot boxes in social interactive gambling. The inquiry produced one recommendation to the Australian Government, namely that it undertake a comprehensive review of loot boxes in video games considering gambling-related harms and regulatory gaps.[307] On 6 March 2019, the Federal Government responded to the recommendation of the Senate Committee Report, stating that since research in relation to gambling related harms caused by video games was only in its infancy it would be a challenge to develop a regulatory approach to the issue and, accordingly, a review of loot boxes was not warranted.[308]

306. Since November 2019, the Australian Communications and Media Authority has been able to use its powers under the *Telecommunications Act 1997* (Cth) to request that an internet service provider block websites where the service being provided contravenes the IG Act.[309] The regime established by the IG Act, whilst addressing traditional

302 Synergy Plus Ltd, prospectus (2016) [PUB.0007.0004.0051] 12, 58.
303 Gunningham C 'VGW doubles revenue to $778M', Startup News (20 October 2020) [PUB.0007.0008.2470].
304 *Interactive Gambling Act 2001* (Cth) ss 15, 61DA.
305 *Interactive Gambling Act 2001* (Cth) s 15.
306 *Interactive Gambling Act 2001* (Cth) ss 15AA, 69.
307 Environment and Communications References Committee, Parliament of Australia Gaming microtransactions for chance-based items (2018) [PUB.0007.0006.0020] 79.
308 See Australian Government, Australian Government response to the Senate Environment and Communications References Committee report: Gaming micro-transactions for chance-based items (2019) [PUB.0007.0019.0022].
309 *Telecommunications Act 1997* (Cth) s 313(3).

interactive gambling, is still subject to the limitations of jurisdiction-specific enforcement.

307. While there may be scope to block domain names (and URL identifiers),[310] this requires considerable resources and 'work arounds' are usually available (such as offshore internet addresses for players which may be accessed through virtual private networks).

308. Because traditional interactive gambling requires the transfer of funds in order to play the game, the use of the banking system to block payments to identified accounts may be an effective control mechanism. However, such controls would come at considerable cost to the banking system.[311] The IG Act does not provide for any enforcement of its prohibitions by the use of the banking system to prevent payment to identified accounts. By way of contrast, VGW identifies regulation as one of the key risks to its business model. VGW considers that it would be a significant risk to its business if governments attempted to regulate interactive gambling providers by restricting financial transactions, the provider's ability to accept payments, or the use of credit cards. VGW speculated that this type of regulation may be considered in response to concerns surrounding money laundering or infiltration of crime.[312]

309. Providers of interactive gambling services, such as those prohibited by the IG Act, may, notwithstanding that prohibition, provide those services free from any effective extraterritorial control by sovereign regulatory regimes. Those providers may carry on all relevant activities in jurisdictions in which their actions are lawful and in which taxation on those activities may not exist or be minimal. The provider does not need to carry on any activity in the jurisdiction in which the player is located other than to provide access to an electronic platform. The jurisdiction in which the player is located in that case may receive no benefit at all.

Relevance to the Perth Casino

Economic returns

310. The Perth Casino derives its revenue from players attending the venue in person and playing traditional table games or using physical EGMs, as well as making associated purchases of goods and services (including accommodation). Two of the main reasons interactive gambling is attractive to players is because it is convenient and there is an expansive range of gaming options.[313] Interactive traditional and social gambling may adversely affect the long-term viability of casinos, including the Perth Casino, if interactive gambling becomes the preferred method of gambling in place of physically attending a casino.

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310 *Telecommunications Act 1997* (Cth) s 313(3).

311 Synergy Plus Limited Prospectus [PUB.0007.0004.0051].

312 Synergy Plus Limited Prospectus [PUB.0007.0004.0051] 108.

313 The Hon Barry O'Farrell, Report to the Minister for Social Services and the Minister for Communication and the Arts, Review of Illegal Offshore Wagering, 2015, 90 [PUB.0007.0004.0320]; Griffiths M (n.d.) 'The Convergence of Gambling and Gaming Addictions on the Internet' [conference presentation] Nottingham Trent University, Nottingham, accessed 4 June 2021 [PUB.0007.0004.0255].

Government revenue streams

311. Because government revenues from casino operations are generally dependent on the revenue earned through licensed gaming operations, greater demand for interactive gambling, and the potential decrease in revenue for casinos, carries the associated risk of reduced government revenue.

Social harm

312. Interactive gambling may also give rise to problem gambling and social harm. Like land-based gambling, interactive gambling carries the risk of addiction and consequential physical, mental and economic harms. That risk is arguably heightened in interactive gambling due to ease of access through technology.[314]

313. Interactive gambling may normalise gambling behaviours by making gambling accessible through everyday technology, able to be enjoyed in private and giving the external appearance that interactive gambling is more socially acceptable and less risky than land-based gambling.[315]

Interactive gambling as an emerging strategic risk

314. Interactive gambling is a rapidly growing sector of the gambling market and presents a potential competition risk to casino gambling, resulting in reduced economic returns to casinos such as the Perth Casino. This in turn has the potential to affect adversely government revenue and the economic benefits that flow otherwise to the State through the operation of the Perth Casino, the jobs it creates and the businesses that service it. To that extent, interactive gambling may therefore be seen as a strategic risk.

315. The continued growth of interactive gambling suggests that it is appropriate to view it as an emerging strategic risk.

Competitive markets

316. The business model under which Crown, including the Perth Casino, has historically operated may come under pressure as it adapts to a changing operating environment. There is an obvious interest in the financial stability and capability of a casino licensee, if for no other reason than to protect the legitimate expectation of the State as the recipient of tax revenue. Threats to a business model can be many and varied. Relevantly for the Perth Casino, a challenge to the business model may come from the diminution in revenues from junket players and other high worth international business and (or) competition from new casinos in overseas jurisdictions.

317. In the past, the Perth Casino has enjoyed good patronage from international markets. Western Australia is located in the Asia Pacific region and can be expected to attract people living in countries within that region, although it is relevant to note that in the

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314 The Hon Barry O'Farrell, Report to the Minister for Social Services and the Minister for Communication and the Arts, Review of Illegal Offshore Wagering, 2015, pp 34, 90 [PUB.0007.0004.0320].

315 Teichert T, Gainsbury S and Mühlbach C (2017), 'Positioning of online gambling and gaming products from a consumer perspective: A blurring of perceived boundaries', Computers in Human Behavior, p 19-20 [PUB.0007.0004.0281].

People's Republic of China gambling is illegal (other than welfare and sport lotteries).[316] It is also illegal to organise more than 10 Chinese citizens to engage in gambling activities overseas for commercial purposes.[317]

318. In North and Southeast Asia there are already operating casinos and new casinos are being developed which may compete with the Perth Casino for its international player base.

319. For example:[318]

a. Macau is a special administrative region of the Peoples' Republic of China where gambling is legal and there are many casinos.

b. Singapore currently has two licensed casinos. Citizens and permanent residents of Singapore are required to pay an entry levy to enter a casino. Tourists are not required to pay the levy;[319]

c. In South Korea, citizens are only permitted to gamble at one of South Korea's 17 casinos. That single casino is located in a remote part of the country. South Korea follows a tourism orientated policy for its casino industry and has announced plans to open casinos in the Incheon free economic zone, located next to the main international airport;[320]

d. Casino gaming in the Philippines is controlled by a state-owned entity, the Philippines Amusement and Gaming Corporation, which performs the roles of regulator and operator. It operates casinos as well as licensing and acting as a regulator to other privately-owned casino operators. There are 72 licensed casinos in the Philippines, at least 20 of which are located in the metropolitan Manila region. The chair of one of the largest casinos in the Philippines observed that its target is to have 30% international guests and, eventually, to bring that up to 50% - particularly from the markets in the Peoples' Republic of China, Taiwan, Korea and Japan;

e. Vietnam has 17 casinos and eight integrated casino facilities which are available to foreigners and citizens who are over the age of 21 and are able to provide evidence of certain income;[321]

f. In Cambodia gambling is illegal for citizens but not foreigners. Cambodia has 193 licensed casinos and in late 2020 announced a new law setting one of the

316 *Criminal Law of the People's Republic of China* (art 33) [PUB.0007.0008.1844].

317 Article 303 and the decisive Interpretation for Trial of Criminal Cases concerning Gambling (the 2005 Interpretation).

318 The material in this section has been drawn from various public sources including media and other published material.

319 Godinho J (2014), 'Casino Gaming in Macau: Evolution, Regulation and Challenges', UNLV Gaming Law Journal, 5(1):1-26 p 23 [PUB.0007.0008.2602].

320 Kim WH (2018), 'Performance Drivers in the Casino Industry of South Korea', Asian-Pacific Economic Literature, 32(2):126 - 134 p 126 - 128 [PUB.0007.0008.2637]; GGRasia (11 December 2019), Incheon seeks to expand casino cluster to counter Japan, GGRasia website, accessed 4 June 2021 [PUB.0007.0008.2596]; Lynch P (23 February 2021) South Korea foreigners-only casino report 59% turnover decrease for 2020, Gambling Insider website, accessed 4 June 2021 [PUB.0007.0008.2649].

321 Nguyen AT (2021) 'Exploring residents' support for integrated casino resort development: a new gambling destination in Vietnam', Tourism Recreation Research, 1(0):1-18,16 [PUB.0007.0008.2664]; Khanh VT (2017), Vietnam to open casino doors to its citizens, Dow Jones Institutional News website, accessed 4 June 2021 [PUB.0007.0008.2647].

lowest tax rates in the world for casinos, in order to create a 'safe and sound', 'competitive' sector and attract greater investment;[322] and

g. In Papua New Guinea there are currently no casinos. However, on 28 May 2021 Paga Hill Development Corporation and the National Gaming Control Board signed an agreement to develop a casino in Port Moresby.[323]

Competitive markets as an extant or emerging strategic risk

320. The expansion of casinos that might compete for the same international customers in the Asia Pacific region may present a risk of harm to the long-term efficiency and stable operation of the Perth Casino. However, the extent of the risk is difficult to calculate. Whether that risk has been realised, is extant, or represents an emerging risk requires further evidence. It is difficult to see what Western Australia, as a jurisdiction, might do to assist in addressing the risk, other than reducing tax rates. That is a measure which may cause a reconsideration of the balance between competing factors that international customers bring. This potential risk will be considered in the Final Report.

Regulatory capture

What is 'regulatory capture'?

321. 'Regulatory capture' can be broadly understood as a situation in which a government regulatory agency is 'influenced',[324] or 'becomes dominated by',[325] the industry or interests it regulates. This includes a circumstance where public sector employees serve the interests of the private entities they are supposed to monitor.[326] It has also been described in this way:

> These terms ['co-optation' or 'regulatory capture'] refer to the interdependence that can emerge in the relationship between the gaming industry… and the formal oversight mechanisms. That is, regulatory personnel come to share a view that recognizes the importance of sustaining revenues that accrue to casino operators and their government masters …[327]

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322 Economist Intelligence Unit (2020), Cambodia economy: Quick view - Cambodian passes gambling law, EIU website, accessed 4 June 2021 [PUB.0007.0008.2599]; Inside Asian Gaming (2021), Cambodia sees Casino tax revenue halved in 2020, IAG website, accessed 4 June 2021 [PUB.0007.0008.2629].

323 Thompson L (7 June 2021) Papua New Guinea Divided Over Construction Plans for the Country's First Casino, Gambling News, accessed 16 June 2021; Kuku R (7 June 2021) Plans to build Papua New Guinea's first casino trigger fears over social problems, The Guardian, accessed 16 June 2021.

324 Nikomboria D (2006) 'The Political Economy of Competition Law: The Case of Thailand' Northwestern Journal of International Law & Business 26(3):597 [PUB.0007.0008.2301].

325 Solo A (2014) 'The Role of Copyright in an Age of Online Music Distribution' Media & Arts Law Review169 [PUB.0007.0008.2372].

326 Rorie M (2017) 'Regulating a "Pariah Industry:" The Need for a Responsive Approach to Gambling Markets' UNLV Gaming Research & Review Journal 21(1) [PUB.0007.0008.2324]; see also Cabot A (2014) 'Public Policy and Policy Goals', in Cabot A and Pindell N (eds) Regulating Land-Based Casinos: Policies, Procedures, and Economics, UNLV Gaming Press, Las Vegas p 30 [INQ.130.003.1667].

327 Campbell C (2018), 'Fifty Years of Legal Gambling in Canada: So What?' 30 Journal of Law and Social Policy 30:185 p 194 [PUB.0007.0008.2122].

322. The threat of regulatory capture has been noted in the United States, with one commentator observing:

> Once gambling begins, regulators are susceptible to interest alignment for a number of reasons. First, the people who are most knowledgeable about the gambling industry are often those with experience working on the private side of the industry. Years of contact with gambling operators may lead regulators to form impressions of gambling as an entirely benign business. They may view threats to gambling as threats to their own jobs, or may develop an interest in leaving the public sector for a higher-paying job in the industry.[328]

323. In light of the above, it might be said that there is an avenue for regulatory capture where the industry is able to persuade the regulator that the industry's interests are in fact the interests of the relevant government body.[329]

Regulatory capture as an extant strategic risk

324. The most obvious consequence of regulatory capture is that the regulator does not robustly and independently perform its role so as to hold the casino accountable for its conduct, or otherwise ensure that it conforms to its regulatory obligations. Were this risk to be realised at the Perth Casino it would have the potential to affect adversely the integrity of gaming, the effectiveness of regulation to mitigate social harms and the credibility and public perception of the regulator and the casino operator.

325. The risk of regulatory capture may be viewed as an extant strategic risk for the Perth Casino in this context.

Risks identified by the PCRC: further inquiry

326. From the outset, not surprisingly, new issues have emerged as the PCRC continues to build its knowledge base.

327. It is likely that as inquiries proceed through the Suitability ToR, the focus of risks already mentioned will be refined and additional extant and (or) emerging risks will be identified.

328 Etzel J (2012) 'The House of Cards is Falling: Why States Should Cooperate on Legal Gambling' (2012) New York University Journal of Legislation and Public Policy 15(1):199 [PUB.0007.0008.2074].

329 Cabot A (2014) 'Public Policy and Policy Goals', in Cabot A and Pindell N (eds) Regulating Land-Based Casinos: Policies, Procedures, and Economics, UNLV Gaming Press, Las Vegas [INQ.130.003.1667].

Chapter 5: Comparative analysis of regulatory responses to extant and emerging strategic risks

Purpose of this chapter

328. The purpose of this chapter is to discuss issues relevant to the PCRC's ongoing inquiry into the adequacy of the regulatory framework in Western Australia to address the extant and emerging strategic risks identified in Chapter 4, by comparing the Western Australian framework with the regulatory frameworks of other nominated jurisdictions which address the same risks.

Comparative analysis

329. For each strategic risk identified in Chapter 4, the methodology adopted in this chapter is to compare and analyse the Western Australian regulatory framework with other selected regulatory frameworks. That analysis is then used to identify and discuss issues relevant to the PCRC's ongoing inquiry within ToR 8 and which will be the subject of its Final Report. Consistent with Chapter 4, the Bergin Risks of money laundering, criminal infiltration and junkets are discussed on the basis that criminal infiltration has historically been associated with money laundering and junkets.

330. The comparison with other Australian jurisdictions sets out the way in which the Western Australian regulatory framework currently addresses the strategic risks identified in Chapter 4 and then outlines the way in which the regulatory frameworks in the following Australian jurisdictions (selected on the basis of perceived relevance to Western Australia) currently address those risks:

    a. New South Wales;

    b. Northern Territory;

    c. Queensland;

    d. South Australia;

    e. Victoria;

    f. Tasmania.

331. The comparison with other international jurisdictions undertakes a similar exercise in respect to the regulatory frameworks of Singapore, the United Kingdom, British Columbia and Canada. Singapore has been selected because it is a jurisdiction with a small number of casinos, which is perceived as having a highly prescriptive regulatory framework.[330] The United Kingdom has been selected because it represents a regulatory regime in which Crown operates and which has an established record of casino regulation.[331]

330 Bergin Report, vol 2 [BGN.0001.0001.0334] 606 [14].

331 Crown Resorts Limited, Annual Report 2020, report (2020) [PUB.0013.0001.1685] 10. See also Bergin Report, vol 1 [BGN.0001.0001.0001] 102 [8].

British Columbia has been selected because the Bergin Report referred to its 2018 policy reform requiring a 'Source of Funds' declaration for any cash transaction over a prescribed amount.[332] The focus of consideration of British Columbia's regulatory framework is therefore upon the way in which it addresses money laundering risks. This is a non-exhaustive sample of the potentially relevant international jurisdictions which may be considered by the PCRC in its further examination of these issues.

332. In the subsequent comparative discussion, the regulatory framework in another jurisdiction is considered if and to the extent that it is thought to assist the comparative analysis relevantly and materially with respect to a particular risk.

333. The regulatory regime relevant to the Perth Casino operates in the context of the other laws and administrative systems of Western Australia. Any comparative discussion of legislation and regulatory regimes from other jurisdictions is subject to the caution that direct translation to Western Australia needs to take account of the whole of the context, both in Western Australia and in that jurisdiction.[333]

Bergin Risks

Money laundering

334. As discussed in Chapter 4, money laundering is a process of legitimising or hiding proceeds or instruments of crime. Criminal infiltration of casinos is a risk associated with money laundering.

335. Casino operators in all Australian states and territories are subject to obligations under the federal AML/CTF Act designed to deter money laundering.[334] As providers of designated services,[335] casino operators must:

a. be entered on the Reporting Entities Roll;[336]

b. establish and maintain an AML/CTF program to help identify, mitigate and manage money laundering and terrorism financing risks;[337]

c. identify and verify their customer's identity and carry out ongoing customer due diligence;[338]

d. notify AUSTRAC of suspicious matters, threshold transactions and international funds transfers. Compliance reports must also be produced;[339] and

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332 Bergin Report, vol 2 [BGN.0001.0001.0334] 616-617 [74]-[79].

333 Cabot A, 'Public Policy and Policy Goals', in Cabot et al (eds), Regulating Land-Based Casinos: Policies, Procedures, and Economics (1st ed, 2014) [INQ.130.003.1667] 3-4.

334 See also the Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) [PUB.0016.0001.3952].

335 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 6 (Table 3).

336 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) Pt 3A.

337 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) Pt 7.

338 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) Pt 2, s 27.

339 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) Pt 3, Pt 5.

e. keep records of transactions, customer identification, electronic funds transfer instructions and details of AML/CTF programs.[340]

336. In Western Australia, neither the CC Act nor the GWC Act confer specific powers upon the GWC to regulate casino operations so as to prevent or reduce the risk of money laundering at a casino. The GWC's more general powers, such as the power to issue Directions under s 24 of the CC Act with respect to the internal controls and administrative and accounting proceedings that apply to the gaming operations of a casino, may permit it to implement practices to prevent or reduce the extent of money laundering and seek information as to compliance with AML/CTF programs.

337. The position is similar in New South Wales, Queensland and Victoria. In New South Wales and Victoria, a regulator may give a casino operator a written direction that relates to the conduct, supervision or control of operations in the casino.[341] The *Casino Control Act 1991* (Vic) also provides that a purpose of the Act is 'ensuring that the management and operation of casinos remains free from criminal influence or exploitation'.[342] In Queensland, the Minister may, by notice in writing, give directions to a casino licensee in relation to the management, supervision or control of any aspect of the operation of a casino.[343]

338. In South Australia, a casino licence contains conditions that the licensee must comply with directions given by the Liquor and Gambling Commissioner or an inspector about the movement or counting of money or gambling chips in the casino premises, and comply with instructions given by the Commissioner to facilitate the scrutiny by inspectors of operations involving the movement or counting of money or gambling chips in the casino premises.[344]

339. In the Northern Territory, the Director of Gaming Control may, from time to time, direct a licensee to provide such information relating to the business conducted in a casino as may be required by the Director.[345]

340. The AML/CTF Act contains provisions that limit the extent to which casino operators may inform state regulators of the information they provide to AUSTRAC,[346] and the extent to which AUSTRAC can share information obtained from casino operators with state regulators.[347] However, there are recently expanded mechanisms by which information might be shared between AUSTRAC and state regulators.[348]

341. The *Casino Control Act* (Singapore) imposes extensive, specific obligations upon casino operators to prevent money laundering at a casino, including an obligation that the

340 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) Pt 10.
341 *Casino Control Act 1992* (NSW) s 29; *Casino Control Act 1991* (Vic) s 23.
342 *Casino Control Act 1991* (Vic) s 1(a)(i). See also s 1(b), by which a purpose of the Act is to 'provide for actions that may be taken by the Chief Commissioner of Police with the aim of ensuring that the casino complex remains free from criminal influence or exploitation'.
343 *Casino Control Act 1982* (Qld) s 86.
344 *Casino Act 1997* (SA) s 39.
345 *Gaming Control Act 1993* (NT) s 31.
346 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 123.
347 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 121(2).
348 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ss 125, 126(1). See also the definition of 'designated agency' in s 5.

operator shall 'perform such customer due diligence measures to detect or prevent money laundering and the financing of terrorism as may be prescribed in regulations'[349] in various circumstances, such as when the casino operator:

a. opens a patron account;

b. enters into a cash transaction with a patron involving above a specified monetary sum in a single transaction;

c. receives an amount above a specified monetary sum in a single transaction to be deposited in a deposit account; or

d. has a reasonable suspicion that a patron is engaged in any money laundering or terrorism financing activity.[350]

342. The *Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations 2009* (Singapore) require a casino operator to develop and implement a framework for the prevention of money laundering and terrorism financing,[351] and ensure that the framework is approved by its board of directors, communicated to its employees and officers, and applies to it and all of its branch officers.[352] The framework must include measures relating to the implementation of customer due diligence measures, record-keeping requirements and the monitoring of the implementation of the framework.[353] A casino operator who fails to comply with any of these obligations is liable to disciplinary action by the Casino Regulatory Authority of Singapore.[354] Further, a casino operator must notify the Authority of single or multiple cash transactions above a prescribed amount,[355] and failure to do so amounts to an offence.[356]

343. The *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) apply to casino operators and prescribe the Gambling Commission of the United Kingdom as the supervisory authority for casinos.[357] The Gambling Commission is required to identify and assess the international and domestic risks of money laundering and terrorist financing arising from the operation of each casino subject to its jurisdiction,[358] including developing risk profiles for each casino it regulates.[359] Further, it must take appropriate steps to co-operate with other supervisory authorities, the Treasury and law enforcement authorities in order to counter money laundering and terrorist financing, and develop and implement policies to that effect.[360]

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349 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 139(1).
350 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 139(1).
351 *Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations 2009* (Singapore) reg 17(1).
352 *Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations 2009* (Singapore) reg 17(2).
353 *Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations 2009* (Singapore) reg 17(3).
354 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 139(4). Under s 54, disciplinary action may lead to cancellation or suspension of a licence, censure, or the imposition of a penalty.
355 *Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations 2009* (Singapore) reg 3(1).
356 *Casino Control (Prevention of Money Laundering and Terrorism Financing) Regulations 2009* (Singapore) reg 5(1).
357 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 7(d).
358 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 17(1).
359 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 17(4).
360 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 50(1).

It must also collect such information as it considers necessary for the purpose of performing its supervisory functions.[361]

344. Each casino in the United Kingdom is required to, amongst other things:

a. take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject;[362]

b. establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment undertaken;[363] and

c. ensure that the policies, controls and procedures are implemented.[364]

345. British Columbia requires casino operators to provide a 'Source of Funds' declaration, which requires the operators of casinos to obtain and certify a source of funds received directly from customers in relation to all cash or like transactions above a specified monetary sum, with the regulator to be notified if a customer refuses to provide the information or provides clearly suspicious information.[365]

346. In Singapore, the United Kingdom and British Columbia, reporting and compliance obligations concerning money laundering at casinos are imposed on casino operators and monitored by the casino regulators. In Singapore, the casino regulator is also able to take steps to discipline operators who fail to comply with the rules.

347. Like Singapore, the United Kingdom and British Columbia, the Australian regulatory framework (under the AML/CTF Act) imposes extensive reporting obligations on casino operators with respect to cash or cash-like transactions.

348. Under the Australian framework, the obligations, and monitoring of compliance with those obligations, arise from Commonwealth law, rather than from state and territory laws regulating the operation of casinos, and are administered by AUSTRAC subject to any directions by the Minister.[366]

349. The Bergin Report seeks to address the regulatory gap between state and territory casino regulators having responsibility over casino operations, and the Commonwealth's extensive AML rules, by recommending the amendment of casino licences to require licensees to monitor patron accounts, and imposing additional obligations to conduct customer due diligence (such as requiring a Source of Funds declaration) and engage independent compliance auditors to monitor compliance with those obligations, and obligations under Commonwealth laws.[367] As the Bergin Report also noted there must also be mechanisms in place within the casino operations to properly respond to the

361 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 51(1).
362 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 18.
363 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 19.
364 *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* (UK) reg 20.
365 See Bergin Report, vol 2, p 616-617 [74]-[79] [BGN.0001.0001.0334].
366 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) s 228 [PUB.0016.0010.0001].
367 Bergin Report, vol 2 [BGN.0001.0001.0334] 630-631, [74]-[75], [79]-[80].

statutory objects, including the object of ensuring that the casino is free of criminal exploitation.[368]

350. The recommendations of the Bergin Report have the advantage of enhancing the capacity of state regulators to monitor the adequacy of measures taken by casinos to prevent the use of their operations (including bank accounts) by third parties for money laundering. However, the recommendations may, in some respects, duplicate what is already required of casino operators under the AML/CTF Act, and as a result may mean that the state regulator is duplicating in part the role of AUSTRAC. A separately appointed auditor could provide evidence as to compliance with the AML/CTF Act – on the assumption that the state regulator was adequately resourced to review the outcome of such audit critically. On the other hand, depending upon the level of information provided, the audit might give rise to issues as to whether, in the absence of an information-sharing arrangement between AUSTRAC and the state regulator, the casino has complied with its secrecy obligations under the AML/CTF Act.

351. In Western Australia whilst there are no express duties or powers with respect to the GWC monitoring money laundering or compliance with the requirements of the AML/CTF Act, there are duties to regulate casino gaming operations and general powers to give directions to casino operators. Those directions could extend to requiring the casino operator to inform the GWC as to the casino operator's efforts to avoid its operations being the subject of money laundering activities, including the compliance by the casino operator with the customer and transaction monitoring requirements, and reporting requirements, of the AML/CTF Act. That information would not necessarily be obtained to duplicate the functions of AUSTRAC, but so that the GWC might be informed as to the casino operator's compliance with the relevant law, as well as any inquiries or recommendations by AUSTRAC in relation to the operations of the casino operator. For such a direction to operate fully, and not conflict with the secrecy provisions of the AML/CTF Act, it may be necessary for the GWC to enter into arrangements with AUSTRAC to have access to some of the information which could be the subject of the directions by GWC.[369]

352. The PCRC is inquiring into whether the GWC has statutory duties and powers that require it to regulate potential money laundering by imposing on the Perth Casino some or all of the obligations which are recommended by the Bergin Report and which exist in Singapore and the United Kingdom.

Junket operations

353. The CC Act provides for regulations to be made 'for and with respect to regulating or prohibiting' the 'conduct of junkets' and 'the offering to persons of inducements,

368 Bergin Report, vol 2 [BGN.0001.0001.0334] pp 629 [71].

369 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) ss 125, 126(1). See also the definition of 'designated agency' in s 5.

whether in the form of rebates or commissions or otherwise, to conduct or participate in junkets,'[370] including to:

a. require a person to provide information and documents to the GWC for the purposes of being approved by the GWC to conduct junkets;[371] and

b. require any contract or other agreement that relates to the conduct of a junket or the offer of an inducement to be approved by the GWC.[372]

354. The regulations made pursuant to this power were repealed in 2010.[373]

355. As stated in Chapter 3 the extension of credit facilities to junket players and operators is often a feature of junkets. Section 21(d) of the CBIA Act provides that it is a condition on any casino gaming licence that the casino operator shall not provide credit in any form to any person in connection with gaming at the Perth Casino, without the consent of the GWC. Since at least 2005, the GWC had given its consent to the provision to junket players of a Funds Advance Facility, which is a credit facility, subject to the conditions and requirements set out in the CM(Ops).[374] The conditions and requirements for a Funds Advance Facility are set out in s 20 of the CM(Ops).

356. On 23 February 2021, the GWC issued DA/104 under the CC Act. It inserted Direction 23.1 which states: '[t]he Casino Operator shall not participate in the conduct of Junkets, Premium Player Activity or Privileged Player Activity.' [375]

357. Premium Player Activity is defined as:

> gaming activity limited to Table Games arising from a patron who is a non resident of Australia with whom the casino licensee has an arrangement to pay the patron a commission based on the patron's turnover of play in the casino or otherwise calculated by reference to such play. For the purpose of the definition 'non resident of Australia' means the holder of a foreign passport whose principal place of residence is outside Australia.[376]

358. Privileged Player Activity is defined as:

> means gaming activity limited to Table Games arising from a patron who is a non resident of Australia with whom the casino licensee has an arrangement for the provision of transport, accommodation, food, drink or entertainment, based on the patron's turnover of play in the casino or otherwise calculated by reference to such play.[377]

359. The *Casino Control Act 1992* (NSW) relevantly provides for regulations to be made with respect to regulating or prohibiting the promotion and conduct of junkets, or the offering to persons of inducements to take part in gambling at a casino.[378] The regulations may require the organiser of the junket to give ILGA advance notice of the

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370 *Casino Control Act 1984* (WA) s 25A(1). See Chapter 3 for the history of junket regulation in Western Australia.
371 *Casino Control Act 1984* (WA) s 25A(2)(c).
372 *Casino Control Act 1984* (WA) s 25A(2)(e).
373 See Chapter 3 for full details.
374 *Burswood Casino Directions*, dir 3F [GWC.0002.0012.0001].
375 *Burswood Casino Amendment Directions 2021* (DA/104) [GWC.0001.0006.0019].
376 *Burswood Casino Amendment Directions 2021* (DA/104), dir 3(2) [GWC.0001.0006.0019].
377 *Burswood Casino Amendment Directions 2021* (DA/104), dir 3(2) [GWC.0001.0006.0019].
378 *Casino Control Act 1992* (NSW) s 76(1)(a)-(b).

junket; impose restrictions on who may organise a junket; require any contract relating to the conduct of a junket to be approved by ILGA; and require the organiser to give specified information concerning the junket to ILGA.[379]

360. The *Casino Control Act 1991* (Vic) provides that a casino operator may provide chips on credit to a person who is not ordinarily resident in Australia for use while participating in a junket at the casino, if the casino operator and the person satisfy requirements and procedures approved by the VCGLR.[380]

361. In Queensland, the *Casino Control Act 1982* (Qld) provides for the Governor to make regulations about requirements relating to junket agreements.[381] Further, the relevant regulations require a casino operator to provide various information regarding junket operations to the regulator.[382]

362. The *Casino Control Act* (Singapore) prohibits the performance of the functions of an 'international market agent' at a casino without a valid licence to do so.[383] The functions of an international market agent are comparable to those of a junket operator under s 25A of the CC Act, although that section does not impose a mandatory requirement for a licence. By s 110B of the *Casino Control Act* (Singapore), the Casino Regulatory Authority of Singapore may license international market agents. It appears that there are currently no international market agents licensed by the Authority.[384]

363. The Bergin Report recommended that the *Casino Control Act 1992* (NSW) 'be amended to prohibit casino operators in New South Wales from dealing with Junket operators'. Alternatively, 'if this recommendation does not find favour then it is suggested that the model of regulation in Singapore discussed … be considered.'[385]

364. Three approaches to the regulation of casino dealings with junket operators emerge from the existing frameworks and the Bergin Report. Singapore imposes a legislative prohibition on such operations, with provision for licensing of junket operators by the Casino Regulatory Authority. Western Australia, Queensland and New South Wales contain no such legislative prohibition, but confer the power to make regulations, including for prohibiting or regulating junket operations. The Bergin Report's primary recommendation was an unconditional prohibition on New South Wales casino operators dealing with junket operators.[386]

365. An unconditional legislative prohibition on casinos dealing with junket operators, such as that recommended by the Bergin Report, would appear to take the approach that the risks associated with junkets (that is, money laundering and criminal infiltration of casinos) are too great and that no such activity should be permitted. However, a

379 *Casino Control Act 1992* (NSW) s 76(2).
380 *Casino Control Act 1991* (Vic) s 68(8). See also s 121, which requires a casino operator to obtain approval from the Victorian Commission for Gambling and Liquor Regulation for a system of internal controls and administrative and accounting procedures at the casino.
381 *Casino Control Act 1982* (Qld) s 127(2)(j).
382 *Casino Control Regulations 1999* (Qld) regs 31-34, 37-39.
383 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 110A(1).
384 Casino Regulatory Authority, international market agents, 10 June 2021 [PUB.0016.0001.2557].
385 Bergin Report, vol 2 [BGN.0001.0001.0334] 632 [88]-[89].
386 Bergin Report, vol 2 [BGN.0001.0001.0334] 632 [88].

complete prohibition does not allow for any possible benefits from junkets to be enjoyed by the State, including increased activity at the casino and taxation revenue.

366. The Singaporean approach of a legislative prohibition, with provision for the regulator to approve such dealings by way of the licensing of junket operators, seeks to address the risks associated with junkets by regulatory supervision. This approach offers flexibility, in that a licensing regime permits case-by-case evaluation of the risks associated with a particular junket operator. Where those risks are sufficiently mitigated, the public interest benefits of junkets are made available to the State. However, the adequacy and effectiveness of the licensing regime, in both structure and implementation, is all important. For example, a regulatory framework which incorporated a licensing regime for junket operators could impose certain minimum requirements, such as a requirement that there be a clear police record (both local and international) for each of the persons associated with a proposed operator, and stipulate that a licence will not be granted if the minimum requirements are not met.

367. The Western Australian, Queensland and New South Wales approach of providing a power to make regulations to prohibit or regulate casino dealings with junket operators allows for the regulatory requirements in respect of junkets to be adapted from time to time to suit the prevailing circumstances. The mechanism of making, repealing or amending regulations is more flexible than the requirement for substantive legislative amendment. However, the practical effect of this approach is that whether junkets are regulated at all, how they are regulated and to what extent may not attract the level of scrutiny that is desirable. This is an issue which the PCRC will continue to examine.

Risks identified by the PCRC

Problem gambling

368. In Western Australia, the legislative scheme is that casino gaming, including by EGMs, is permitted at the Perth Casino.[387] Chapter 4 considers problem gambling as an extant strategic risk, in the context of ToR 8.

369. The CC Act does not deal expressly with problem gambling, although the GWC Act:

a. requires the GWC to formulate and implement policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling;[388] and

b. empowers the GWC to take steps to minimise harm to the community, or any part of the community, caused by gambling.[389]

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387 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 22(4); *Gaming and Wagering Commission Act 1987* (WA) ss 42(1)(c), 42(1)(e)(iii), 46(2)(a); *Casino Control Act 1984* (WA) s 23(1).

388 *Gaming and Wagering Commission Act 1987* (WA) s 7(1)(ba).

389 *Gaming and Wagering Commission Act 1987* (WA) s 8(2)(da).

370. Each of those provisions may be understood to require the GWC to consider, monitor and minimise problem gambling at a casino.

371. Subject to regulations that may be made by the Governor under s 37, the GWC may give directions to a casino licensee regarding the internal controls and administrative and accounting procedures that apply at the casino (Directions).[390] The GWC may also give Directions to a licensee to adopt, vary, cease or refrain from any practice regarding the conduct of gaming operations or the playing of games at the casino.[391] The latter power may encompass the giving of Directions to cease a practice causing or contributing to problem gambling at the casino. It may also include directing the licensee to prepare, implement and audit a problem gambling program at the Perth Casino.

372. The *Casino Control Act 1992* (NSW) requires a casino operator to 'enter into arrangements for problem gambling counselling services to be made available to the patrons of the casino',[392] and provides for a responsible gambling levy and fund.[393] The regulator may give a casino operator a written Direction that relates to the conduct, supervision or control of operations in the casino, which includes a power to give a Direction to a casino operator to adopt, vary, cease or refrain from any practice in respect of the conduct of casino operations.[394] The power seemingly extends to Directions in relation to practices causing or contributing to problem gambling at the casino.

373. The *Casino Control Act 1991* (Vic) provides that an object of the VGCLR is to maintain and administer systems for the licensing, supervision and control of casinos, for the purpose of:

> fostering responsible gambling in casinos in order to (i) minimise harm caused by problem gambling; and (ii) accommodate those who gamble without harming themselves or others.[395]

374. The Act also requires an application for a casino licence to be 'accompanied by a Responsible Gambling Code of Conduct that the applicant intends to implement if the licence is granted'.[396] Repeated breaches by a casino operator of its Responsible Gambling Code of Conduct is a ground for disciplinary action (which may include the cancellation, variation of suspension of a licence or imposition of a fine).[397] The regulator may also give a casino operator a written Direction that relates to the conduct, supervision or control of operations in the casino. It includes a power to give a Direction to a casino operator to adopt, vary, cease or refrain from any practice in respect of the conduct of casino operations.[398] Part 5A of the *Gambling Regulation Act 2003* (Vic) also deals extensively with problem gambling, including banning irresponsible gambling products and practices.

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390 *Casino Control Act 1984* (WA) s 24(1).
391 *Casino Control Act 1984* (WA) s 24(2).
392 *Casino Control Act 1992* (NSW) s 72A(1).
393 *Casino Control Act 1992* (NSW) s 115.
394 *Casino Control Act 1992* (NSW) s 29(1), (4).
395 *Casino Control Act 1991* (Vic) s 140(c).
396 *Casino Control Act 1991* (Vic) s 8.
397 *Casino Control Act 1991* (Vic) s 20(2)(db).
398 *Casino Control Act 1991* (Vic) s 23(1), (3).

375. The *Casino Act 1997* (SA) provides that it is a condition of a casino licence that the licensee 'ensure that operations under the licence conform with the applicable responsible gambling codes of practice'.[399] Further, the *Gambling Administration Act 2019* (SA) provides that the Liquor and Gambling Commissioner's functions include to 'develop and promote strategies for reducing the incidence of problem gambling and for preventing or minimising the harm caused by gambling',[400] and to conduct research and community education programs concerning responsible gambling.[401]

376. In Tasmania, regulatory control is exercised by the Tasmanian Liquor and Gaming Commission, established under the *Gaming Control Act 1993* (Tas). The Commission has powers, among other things, to:

    a. issue a casino licence and the licence remains in force for the period specified in the licence, subject to earlier cancellation or surrender under the Act;[402]

    b. conduct investigations about licence holders and associates;[403] and

    c. cancel a licence as a disciplinary action;[404]

377. The Commission cannot grant a casino licence without the approval of the Minister. Before approving the grant of a licence, the Minister must give notice of intent to do so, to be laid before each House of Parliament and either House may pass a resolution directing the Minister not to approve the grant.

378. Under s 23(1), the Commission must not grant a licence unless satisfied that the applicant and each associate of the applicant is a suitable person to be concerned in or associated with the management and operation of a casino. The factors to be taken into account in determining suitability are set out in the Act.[405]

379. In the Northern Territory, the Director of Gaming Control must maintain in the agency's operating account a Community Benefit Fund that is to be applied for, amongst other things, the promotion of community awareness and education in respect of problem gambling and provision of counselling, rehabilitation and support services for problem gamblers and their families in the Territory.[406]

380. The *Casino Control Act* (Singapore) requires a casino operator to establish and implement a responsible gambling program approved by the Casino Regulatory Authority of Singapore which meets the responsible gambling requirements prescribed by regulations.[407] A failure to do so renders the casino operator liable to disciplinary action.[408]

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399 *Casino Act 1997* (SA) s 41B.
400 *Gambling Administration Act 2019* (SA) s 6(a).
401 *Gambling Administration Act 2019* (SA) s 6(b).
402 *Gaming Control Act 1993* (Tas) s16.
403 *Gaming Control Act 1993* (Tas) ss 112N, 112O.
404 *Gaming Control Act 1993* (Tas) ss 112S, 112T.
405 *Gaming Control Act 1993* (Tas) s 23(2).
406 *Gaming Control Act 1993* (NT) s 68A(1)-(2).
407 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 170B(1).
408 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 170B(2).

381. The Casino Regulatory Authority has the power to make regulations including for or with respect to applications for the approval of any part of a responsible gambling program,[409] or responsible gambling requirements The *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) require a casino operator to submit a responsible gambling program for its casino to the Authority for approval.[410] An approved program must be implemented within two months of receiving notice of approval.[411] A casino operator must conduct an annual review of its program, and submit the review to the Authority.[412] The Authority may require a casino operator to provide information or answer questions regarding its program,[413] and issue directions requiring an operator to change any part of its program.[414]

382. Singapore's Casino Regulatory Authority may at any time appoint an auditor to audit a casino operator's responsible gambling practices,[415] or issue a notice to an operator requiring it to appoint a person approved by the Authority as a special auditor of its responsible gambling practices.[416] Such auditors are required to submit a report to the Authority within 60 days of its completion.[417]

383. In the United Kingdom, the *Gambling Act 2005* (UK) empowers the Gambling Commission to issue codes of practice about the manner in which facilities for gambling are provided, including in relation to protecting vulnerable persons from being harmed or exploited by gambling and making assistance available to persons who are or may be affected by problems related to gambling.[418] The Secretary of State may make regulations requiring casino licensees to pay an annual levy to the Gambling Commission,[419] which the Commission shall use for, amongst other things, purposes related to addiction to gambling, other forms of harm or exploitation associated with gambling, or any of the licensing objectives (which include protecting children and other vulnerable persons from being harmed or exploited by gambling).[420] In considering an application for a casino licence, the Commission must have regard to the applicant's commitment to protecting vulnerable persons from being harmed or exploited by gambling, and to making assistance available to persons who are or may be affected by problems related to gambling.[421]

384. The above comparative discussion indicates that each of New South Wales, Victoria, South Australia, the Northern Territory, Singapore and the United Kingdom have varying, extensive and specific provisions seeking to address problem gambling and its resultant

409 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 200(2)(ja).
410 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) reg 5(2).
411 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) reg 6.
412 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) reg 8.
413 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) reg 10.
414 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) reg 11.
415 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 170C(1).
416 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 170C(2).
417 *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 170C(6).
418 *Gambling Act 2005* (UK) s 24.
419 *Gambling Act 2005* (UK) s 123(1).
420 *Gambling Act 2005* (UK) ss 1, 123(5).
421 *Gambling Act 2005* (UK) s 70(3).

harms. This is to be distinguished from Western Australia, where the legislative framework contains limited reference to problem gambling.

385. To varying extents, each of the jurisdictions acknowledge problem gambling by seeking to take steps to mitigate its occurrence and associated harm.

Specific issue: codes of practice

386. One issue which appears to distinguish the different jurisdictions' approach to problem gambling is the requirement for and derivation of a responsible gambling code of practice or code of conduct. The adoption of a code of practice is used as a means of addressing problem gambling and promoting responsible gambling.

387. Victoria and South Australia require the casino operator to comply with a responsible gambling code of practice. In South Australia, the Liquor and Gambling Commissioner may prescribe responsible gambling codes of practice by notice in the Gazette,[422] and it is also a function of the Commissioner to encourage the gambling industry and related professional associations to disseminate to their members, and enforce compliance with, responsible gambling codes of practice.[423] In Victoria, an application for a casino licence must be accompanied by a Responsible Gambling Code of Conduct,[424] and it is a condition of the licence that the casino operator implement such a code that complies with relevant regulations and directions applicable to the casino operator.[425]

388. The remaining Australian jurisdictions contain no express reference in the legislation to responsible gambling codes of practice, although New South Wales requires licensees to make problem gambling services available to patrons.[426] It is open to casino operators in those jurisdictions to voluntarily adopt codes of practice; for instance, the Perth Casino has a Responsible Gaming Code of Conduct. [427]

389. Singapore requires the implementation by casino operators of a responsible gambling program approved by the regulator, requires annual audits of compliance with the approved code and renders a casino operator liable to disciplinary action for failure to comply with the code.

390. The United Kingdom provides for the regulator to issue a responsible gambling code of practice with which casino operators must comply.[428] The jurisdiction is not prescriptive as to audits of compliance with the code.

391. In Western Australia, very general powers granted to the GWC appear to contemplate that it should monitor problem gambling. However, the Western Australian regulatory framework does not require a code of practice, which may assist in identifying and

422 *Gambling Administration Act 2019* (SA) ss 15(1)(b), (3).
423 *Gambling Administration Act 2019* (SA) s 6(f).
424 *Casino Control Act 1991* (Vic) s 8(3)(a).
425 *Casino Control Act 1991* (Vic) s 69.
426 *Casino Control Act 1992* (NSW) s 72A(1).
427 Crown Perth, Responsible Gaming Code of Conduct [PUB.0007.0008.0431].
428 *Gambling Act 2005* (UK) ss 24, 82.

monitoring problem gambling and the extent to which the Perth Casino mitigates that risk.

392. The lack of a specific power to require or approve a code of practice and to monitor compliance with it, as is the case in Western Australia, may give rise to a question as to whether relevant steps are available in the Western Australian regulatory framework to mitigate problem gambling, which may in turn affect public confidence in the regulatory framework.

393. Further, the content of a code of practice is not specified in the legislation of any of the jurisdictions considered. The effectiveness of a code of practice must necessarily depend upon its precise content. It may be that at least certain minimum matters required by a code of practice should be specified in the legislation. This might include general obligations such as a maximum continuous period of play for electronic gaming, or preventing access to ATMs or similar ready sources of cash. Alternatively the code may be required to be approved by the regulator. These and other statutory mechanisms to address problem gambling will be considered by the PCRC in the Final Report.

Interactive/online gambling

394. Interactive gambling, also known as online gambling, poses significant regulatory challenges to all countries that seek to regulate gambling within their jurisdictions.

395. As discussed in Chapter 4, interactive gambling is regulated by the IG Act, by which traditional interactive gambling with an Australian customer link is prohibited, subject to various exemptions.[429]

396. Under s 8B of the IG Act, an 'excluded gaming service' includes the provision of an interactive gaming service where the provider of the service holds a licence (however described) under a law of a State or Territory that authorises the provision of the service at that place.[430] Some Australian states and territories have enacted specific legislation, which prohibits the conduct of interactive gambling in the jurisdiction without a licence granted within the jurisdiction.[431]

397. To date, Western Australia has not licensed any interactive gaming service as permitted by the IG Act. A consequence of licensing an interactive gaming service in Western Australia is that the State could derive taxation revenue from the licensed activity. On the other hand, such licensing may provide greater access to interactive gambling, with potential harmful consequences including problem gambling.

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429 *Interactive Gambling Act 2001* (Cth) ss 15, 15A, 15AA (offences for provision of particular interactive gambling services), s 15C (offences for the provision of credit for particular interactive gambling services), Pt 7A (prohibition of advertising of designated interactive gambling services), s 5(3) (list of services which are excluded from the definition of 'prohibited interactive gambling service'). A gambling service has an Australian-customer link if, and only if, any or all of the customers of the service are physically present in Australia: *Interactive Gambling Act 2001* (Cth) s 8.

430 *Interactive Gambling Act 2001* (Cth) s 8B.

431 *Interactive Gambling Act 1998* (ACT); *Gaming Control Act 1993* (NT); *Interactive Gambling (Player Protection) Act 1998* (Qld); *Gaming Control Act 1993* (Tas); *Gambling Regulation Act 2003* (Vic) Chapter 7.

398. Similar legislation to the IG Act, consisting of a prohibition of interactive gambling and exemptions for licensed operators, has been enacted in Singapore[432] and the United Kingdom.[433]

399. The Western Australian legislative framework does not expressly address interactive gambling. However, it has been suggested that the practice is unlawful in Western Australia due to the general prohibition of gaming that is not authorised by a casino licence or a gaming permit.[434] Even if that is so, where an interactive gaming service is provided by an operator who is located outside the State, particularly outside Australia, enforcement of the prohibition against the operator is likely to present practical difficulties. The PCRC will consider these and related issues in the Final report.

Competitive markets

400. The risk of international casinos taking the patronage of international players away from the Perth Casino is discussed in Chapter 4.

401. There does not seem to be any obvious regulatory power to address the emergence of such competition. The Perth Casino is already well-protected, as it is the only licensed casino in Western Australia and is the sole operator of EGMs in the state.[435] Conceivably, the regulatory framework could be loosened, for example, by removing restrictions on junkets, or by increasing the number or variety of EGMs in the Perth Casino (which may increase domestic demand). However, these measures could increase social harm from gambling, or increase the risk of criminal infiltration of the casino.

Regulatory capture

402. Regulatory capture (also known as 'industry capture') has been described in Chapter 4. One means of addressing regulatory capture is for a regulatory system to have safeguards to prevent interest-group influences.[436]

403. Scrutiny and accountability of casinos and their regulators may identify regulatory capture, and therefore tend to mitigate its risk. Such scrutiny might take place through public reporting, whether through a parliamentary process or by requirement to publish public data. A process of inquiring into or reporting on a casino operator, which is

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432 *Remote Gambling Act 2014* (Singapore) ss 8–13 (offences for the provision of remote gambling services); ss 15, 17 (offences for advertising or promoting remote gambling). As to the considerations involved in granting an online gambling operator licence and the legislative intent behind the remote gambling regime: Singapore, Parliamentary Debates, 10 October 2016, vol 94, no 25 (Mr T Chuan-Jin, Minister for Social and Family Development**)** [PUB.0016.0001.0060];] 2; Singapore, Parliamentary Debates, 7 November 2016, vol 94, no 26 (Mr K Shanmugam, Minister for Home Affairs) [PUB.0016.0001.3833] 99.

433 *Gambling Act 2005* (UK) ss 33, 36, 41, 44 (offences for remote gambling); ss 67, 89 (operating licences for remote gambling) [PUB.0016.0001.2066]. For a recent analysis of the regulatory framework in the UK for gambling, including online gambling, see United Kingdom Government, Review of the Gambling Act 2005 Terms of Reference and Call for Evidence, report (2021) [PUB.0016.0001.3809].

434 See *Gaming and Wagering Commission Act 1987* (WA) ss 42(1)(c), 42(1)(e)(iii), 46(2)(a), discussed in LexisNexis, Law of eCommerce (online at 21 January 2021) Gambling and Gaming, 'Casino-style Gambling: The State and Territory Positions' [210, 213].

435 *Casino (Burswood Island) Agreement Act 1985* (WA) Sch 1, cl 22(4).

436 Cabot A, 'Public Policy and Policy Goals', in Cabot et al (eds), Regulating Land-Based Casinos: Policies, Procedures, and Economics (1st ed, 2014) [INQ.130.003.1667] 29.

formalised by regulation, may also increase the level of accountability and therefore tend to mitigate regulatory capture.

404. In Western Australia, the Minister may, where it appears that it is in the public interest to do so, direct the GWC to arrange for an inquiry to be carried out as to the affairs of a casino or related matters,[437] including whether or not it is in the public interest that a casino complex agreement or a casino gaming licence remain in force.[438] Such an inquiry is to have the powers of a Royal Commission.[439] Upon receiving the report from such an inquiry, the Minister may (after giving notice to the casino licensee and any other person likely to be affected, and receiving submissions from such persons within 14 days):

a. censure the licensee;

b. suspend or revoke the casino gaming licence (with the prior approval of the Governor); or

c. serve a notice of termination of any agreement (other than a casino complex agreement) relating to the management or operation of the casino.[440]

405. Other than a requirement to report the fact and the terms of any inquiry, there is no obligation for the findings of the inquiry to be made public.[441]

406. There is no provision in the existing Western Australian regulatory framework for a regular review of a casino licence, by the Minister or the GWC, to ascertain whether or not a casino licensee is a suitable person to give effect to the casino licence, and whether it is in the public interest that the casino licence should continue in force.

407. The legislation in New South Wales and Victoria provides for regular reviews by the regulator of casino licences to ensure that continuation of the licence remains in the public interest. The *Casino Control Act 1992* (NSW) provides that ILGA must, at intervals not exceeding five years, review a casino licence by investigating and forming an opinion as to whether or not the casino operator is a suitable person to give effect to the casino licence, and it is in the public interest that the casino licence should continue in force.[442] The *Casino Control Act 1991* (Vic) provides that not later than three years after the commencement of operations in a casino, and thereafter at intervals not exceeding five years, the VCGLR must investigate and form an opinion as to, amongst other things, whether or not the casino operator is a suitable person to continue to hold the casino licence, whether or not the casino operator is complying with the legislation and whether or not it is in the public interest that the casino licence should continue in force.[443] In addition, in Victoria, the reports of the five-yearly reviews of the casino operator and

437 *Casino Control Act 1984* (WA) s 21A(5).
438 *Casino Control Act 1984* (WA) s 21A(6)(d).
439 *Casino Control Act 1984* (WA) s 21A(9).
440 *Casino Control Act 1984* (WA) s 21B(3). Section 21C contemplates that when a casino complex agreement is terminated, the Minister may (with the Governor's approval) revoke any casino gaming licence granted to a party to the casino complex agreement.
441 *Casino Control Act 1984* (WA) s 21A(8).
442 *Casino Control Act 1992* (NSW) s 31(1).
443 *Casino Control Act 1991* (Vic) s 25(1).

licence are made public.[444] The VCGLR has noted the benefit of the 'transparency arising from the obligation to report to the responsible Minister'.[445]

408. South Australia does not provide for regular reviews but the licence is granted for a fixed term with negotiations for renewal (which renewal is granted by the Governor) but 'the licensee is to have no entitlement to, or legitimate expectation of renewal'.[446] In South Australia applications for renewal are made to the Commissioner[447] who must not recommend the grant or renewal of a license unless satisfied the applicant is a 'suitable person'.[448] Neither the legislation nor the casino licensing agreement appear to provide a clear basis for termination or cancellation.

409. In Queensland, whilst there is no specific provision for regular review or for a fixed term, there is a procedure for the Minister to cause an investigation into the suitability of the casino licensee, lessee or casino operator and associated persons to satisfy the Governor in Council as to the suitability of those persons and where the Governor in Council is not satisfied there is a procedure which may lead to termination or suspension of a licence.[449] The investigation is to provide information to the Governor in Council about a detailed range of prescriptive matters including such things as financial stability, character, honesty and integrity.[450]

410. In the Northern Territory, a casino license is granted until terminated in accordance with the relevant agreement, surrendered or cancelled.[451] The licence is granted by the Minister having regard to specified financial and integrity factors.[452] The Minister has a discretion to cancel or suspend a casino licence but only if the Minister is satisfied that one of a number of circumstances has occurred including failure to comply with the licence or laws applicable to casinos, or has committed an offence or acted in a manner which brings disrepute to the casino licence.[453]

411. In the United Kingdom, the Gambling Commission may initiate a review of any matter connected with the provision of facilities for gambling as authorised by an operating licence if, amongst other things, it has reason to suspect the conditions of the licence have not been complied with, or for any reason suspects that the licensee may be unsuitable to carry on the licensed activities or thinks that a review would be appropriate.[454]

412. There are obvious differences between the Western Australian approach to monitoring licensee compliance with obligations imposed by legislation and licence conditions and those of New South Wales and Victoria, where reviews of whether a licence should

444 Victorian Commission for Gambling and Liquor Regulation, Melbourne Casino, 18 June 2021 [PUB.0016.0012.0001].
445 Victorian Commission for Gambling and Liquor Regulation, Sixth Review of the Casino Operator and Licence, 18 June 2021 [PUB.0004.0009.0001] 17.
446 *Casino Act 1997* (SA) s 9.
447 *Casino Act 1997* (SA) s 3.
448 *Casino Act 1997* (SA) s 21.
449 *Casino Control Act 1982* (Qld) ss 30, 31.
450 *Casino Control Act 1982* (Qld) s 20.
451 *Gaming Control Act 1993* (NT) s 19.
452 *Gaming Control Act 1993* (NT) s 18.
453 *Gaming Control Act 1993* (NT) s 20.
454 *Gambling Act 2005* (UK) s 116.

continue are mandatory at regular five yearly intervals. The positions in Queensland and the Northern Territory may be seen to be not dissimilar from the regime in Western Australia. South Australia is different again with a fixed term to which is attached a renewal and review process.

413. Regular reviews by an independent regulator (rather than the Minister) of the compliance of licensees with obligations imposed by the statutes and licences arguably lessen the risk that the regulatory framework operates to favour the regulated parties. The same result may also be achieved by a body independent of the day-to-day regulator (which body might be the relevant government department) carrying out regular reviews. The benefits of regular reviews may be enhanced by those reports being made public, as is done in Victoria, with the consequential benefit of public scrutiny.

414. By contrast, there is no requirement under the CC Act to regularly review licences. The absence of regular scrutiny and accountability through such review processes may diminish the effectiveness of the framework in seeking to ensure the robust regulation of casino operations without the risk of regulatory capture. These are issues to be examined further by the PCRC.

Chapter 6: Appropriateness, effectiveness and capability

Purpose of this Chapter

415. The purpose of this chapter is twofold. First, to examine, within the context of ToR 9 and ToR 10, the appropriateness, capability and effectiveness of the GWC to discharge its statutory duties and exercise its statutory powers in relation to casino regulation. Secondly, to examine the capability and effectiveness of the Department in supporting the GWC. These examinations will include a consideration of whether the GWC and the Department capably and effectively identify and address any actual or perceived conflicts of interest by officers involved in casino regulation.

General observations about the GWC

416. In Western Australia, the responsibility for the administration of gaming, including casino gaming, rests with the GWC. The GWC is a part-time board, comprised of up to seven people from disparate backgrounds with varying experience and qualifications. They meet monthly.

417. The GWC's primary statutory responsibilities originate from five pieces of legislation.[455] Its responsibilities are large, complex and are not confined to casino gaming. Its duties and powers to regulate casinos are found primarily in the GWC Act and the CC Act.

418. Despite the complex regulatory framework, the preamble to the CC Act provides the GWC with little strategic direction and purpose in administering the CC Act, other than to state that the legislation is 'for the control of gaming operations' in a Western Australian casino and 'incidental matters'.

419. Since the Perth Casino was established, the focus of the GWC has been on the integrity of gaming activities, the licensing of casino employees and the collection of the casino tax.[456]

Powers and duties of the GWC

420. The history and content of the legislative framework are examined in Chapter 3. However, for this chapter it is important to identify the GWC's duties and powers relevant to ToR 9 and ToR 10.

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455 *Betting Control Act 1954* (WA); *Casino (Burswood Island) Agreement Act 1985* (WA); *Casino Control Act 1984* (WA); *Gaming and Wagering Commission Act 1987* (WA); and *Gaming and Wagering Commission (Continuing Lotteries Levy) Act 2000* (WA).

456 GWC, statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A [QNE.0001.0001.0001] 3.

Powers and duties pursuant to the Gaming and Wagering Commission Act

421. The GWC's duties under the GWC Act include to:

a. administer the law relating to gaming;

b. keep under review, the conduct, extent and character of gaming;

c. keep under review the provision, use and location of gaming facilities;

d. formulate and implement policies for the scrutiny, control and regulation of gaming, taking into account the community as a whole and the need to minimise harm caused by gambling;

e. administer all matters relating to any casino complex, licensed casino, casino key employee, casino employee or gaming in a casino, pursuant to the CC Act and any casino complex agreement;

f. cause licences, permits, approvals, authorisations and certificates, as appropriate, to be issued in relation to persons, casinos, gaming and other equipment and gambling operations;

g. advise the Minister, either of its own motion or upon the request of the Minister, as to any matter relating to gambling;

h. make recommendations to the Minister in relation to the control or supervision of particular kinds of gambling, and the making of regulations relating to gambling; and

i. enforce, and to prosecute persons contravening, the laws relating to gambling.

422. In carrying out its duties the GWC is required to ensure, so far as is practicable, that the revenue derived pursuant to the GWC Act, the CC Act, and under any other written law relevant to its duties, is sufficient to provide for its operating, administrative and other costs.[457]

423. An issue for consideration in the Final Report will be whether 'gaming' and 'gambling' when referred to in the GWC Act includes casino gaming. The issue arises because the definition of 'gaming' in the GWC Act states:

> Gaming, subject to section 39(2)(d) and (e), means the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or money's worth or not.

424. 'Gambling' is defined to mean 'gaming' or 'wagering'. Wagering is not relevant to the PCRC.

425. Section 39(2)(d) of the GWC Act, in part, states that for the purpose of the GWC Act and except in so far as s 44 or s 45 applies, the playing of a game of chance or participation in any activity which is an authorised game as defined by the CC Act played in accordance with rules approved under that Act in a licensed casino does not constitute

457 *Gaming and Wagering Commission Act 1987* (WA) s 7.

gambling contrary to the provisions of the GWC Act. Relevantly, s 44 creates an offence of cheating in gaming and s 45 creates offences in relation to permitted gaming.

426. These provisions can be interpreted as meaning that casino gaming is to be regarded as gaming and gambling under the GWC Act, except that it does not constitute gambling contrary to the provisions of GWC Act, except in so far as ss 44 or 45 of the GWC Act apply. The fact that there is lack of clarity in the meaning of these provisions may indicate that the statutory language should be changed. The GWC Act also sets out the relevant powers of the GWC, which include all powers necessary to carry out its duties relevant to casino regulation, including the powers to:

a. formulate and implement policies for the administration and control of the conduct of gaming in the State;

b. approve, or withhold approval from, persons, premises, facilities, gaming or other equipment, games and wagering operations under the CC Act;

c. formulate and impose prohibitions or conditions to be applicable to, or in relation to –

i. the conduct of gambling;

ii. the games which may or may not be played; and

iii. the rules under which games are to be played;

d. grant or issue and amend or revoke, subject to the CC Act, licences relating to casinos and the employment of persons in casinos;

e. take steps to minimise harm to the community, or any part of the community, caused by gambling;

f. seek, receive, disseminate, or publish information relevant to gambling and the incidence of gambling and its effect in the community; and

g. make prescribed changes and impose prescribed charges and fees.

427. The GWC may institute and carry out any necessary investigations before approving or recommending a course of action relevant to the powers described above.[458]

Powers and duties under the Casino Control Act

428. In contrast to the GWC Act, the CC Act does not contain a specific division that sets out the duties and powers of the GWC. Rather, the duties and powers which enable the administration of the CC Act and casino regulation are found either in the GWC Act (as described above) or in various provisions scattered throughout the CC Act, CC Regs, CBIA Act and the State Agreement.

458 *Gaming and Wagering Commission Act 1987* (WA) s 8(3).

429. Under the CC Act, the GWC has duties and powers in relation to a casino complex agreement and the grant of a casino licence, which include:

a. the duty to carry out investigations as it sees fit for the purposes of satisfying itself that the public company which intends to enter into a casino complex agreement and each associate of it are a suitable person to be concerned in or associated with the organisation and conduct of casino gaming;[459]

b. the duty to submit a report to the Minister after conducting the above investigations;[460]

c. the power to provide the Minister with advice that a person is not, or no longer, a suitable person to be associated with casino gaming;[461]

d. duties to carry out investigations and report to the Minister about whether an applicant for a casino licence has complied with preliminary requirements;[462] and

e. the duty, in accordance with the decision of the Minister, to grant or refuse an application for a casino licence,[463] and fix or alter the area to which the licence relates.[464]

430. It appears that the power in (c) above to advise the Minister that a person is no longer a suitable person to be associated with casino gaming can be exercised at any time. This power is to be considered against the background that a casino licence is not granted for a fixed term and the CC Act does not provide for regular reviews of the licence, as is the case in some other jurisdictions.[465]

431. In relation to the collection of revenue, the GWC has the power to impose any statutory penalties for late payment of the casino licence fee or casino tax and to remit those penalties.[466]

432. Arguably, the GWC has a duty to use the casino licence fee for the administration of the CC Act and the regulation of the Perth Casino and that any funds remaining may be used for other costs of the GWC.

433. Under the CC Act and the CC Regs, the GWC has extensive inquiry and investigative powers relating to premises, property and persons the subject of a casino complex agreement and the casino complex.[467]

434. The GWC has power to require the casino licensee to produce gaming instruments, books and equipment for inspection,[468] to enter casino premises,[469] investigate and deal

459 *Casino Control Act 1984* (WA) s 19(1a).
460 *Casino Control Act 1984* (WA) s 19(2b).
461 *Casino Control Act 1984* (WA) s 19B(1).
462 *Casino Control Act 1984* (WA) s 21(2).
463 *Casino Control Act 1984* (WA) s 21(4).
464 *Casino Control Act 1984* (WA) s 21(4a).
465 See discussion in Chapter 5.
466 *Casino Control Act 1984* (WA) s 20A(1)-(2).
467 *Casino Control Act 1984* (WA) s 21A(1).
468 *Casino Control Act 1984* (WA) s 21A(2)(a).
469 *Casino Control Act 1984* (WA) s 21A(2)(b).

with casino patron complaints,[470] and may perform 'such other functions' as are prescribed by or under the GWC Act.[471]

435. As an adjunct to the GWC's inquiry and investigative powers, the GWC may authorise the issue of infringement notices by officers, requiring the payment of a penalty for an alleged offence.[472] An example of an offence that may give rise to the issuing of an infringement notice is a patron entering the casino whilst the subject of a banning notice.[473]

436. The GWC is authorised to institute proceedings for an offence under the CC Act.[474] An example of an offence by the casino licensee that may give rise to a prosecution is the casino licensee contravening a Direction of the GWC.[475]

437. Games of chance and gaming equipment used at casino premises must be authorised by the GWC and the rules under which they are played must be approved by the GWC.[476]

438. The GWC has the power to declare any game to be an authorised game (except a game played with poker machines) and approve the rules of the game.[477] Therefore, it controls which games are permitted to be played at the casino. This extends to giving the licensee a Direction to alter the rules of the game.[478]

Directions and Casino Manual

439. The GWC may give the casino licensee a Direction regarding the system of internal controls, administration and accounting procedures that apply to the gaming operations of the casino licensee.[479] 'Gaming operations' are defined to mean:[480]

a. the conduct and playing of games in the casino;

b. the management, supervision or surveillance of the conduct and playing of games in the casino;

c. money counting, accounting or advertising in relation to the conduct and playing of games in the casino;

d. the use of storage areas in relation to the conduct and playing of games in the casino; or

e. any other activities incidental to or connected with –

i. the conduct and playing of games; or

470 *Casino Control Act 1984* (WA) s 21A(3)(c).
471 *Gaming and Wagering Commission Act 1987* (WA) s 7(1)(j).
472 *Casino Control Act 1984* (WA) Part VB.
473 *Casino Control Act 1984* (WA) s 26(1d).
474 *Casino Control Act 1984* (WA) s 36.
475 *Casino Control Act 1984* (WA) s 33.
476 *Casino Control Act 1984* (WA) s 22.
477 *Casino Control Act 1984* (WA) s 22(1), (2).
478 *Casino Control Act 1984* (WA) s 22(3).
479 *Casino Control Act 1984* (WA) s 24(1).
480 *Casino Control Act 1984* (WA) s 3(1), definition of 'gaming operations'.

ii. the provision of facilities or services in relation to the conduct and playing of games in the casino.

440. The GWC also has the power to direct a casino licensee to adopt, vary, cease or refrain from any practice in respect of the conduct of gaming operations.[481]

441. The GWC has given Directions to the Perth Casino licensee and these have been consolidated as the Burswood Casino Directions.[482] The Directions require the Perth Casino to maintain two documents being:

a. The Casino Manual (Games Procedures) (CM(Games)) containing the rules by which authorised table games must be conducted;[483] and

b. The CM(Ops) containing the rules in accordance with which the records and accounts of the Perth Casino must be kept,[484] and the rules relating to surveillance, security and information technology.[485]

442. The Casino Manual (CM(Games) and CM(Ops) together) is the basis for the current regulation of casino operations. Inspectors check the games and operational procedures in the manual, including game rules.[486]

443. The CM(Ops) contains at least 20 sections which in turn contain many sub-sections requiring the Perth Casino to conduct gaming operations in particular ways. The CM(Ops) provisions extend beyond the matters referred to in (b) above and are concerned with basic operational matters also such as roles and responsibilities relating to the collection of gaming revenue during shifts and cage operations.

444. It is a condition of the Perth Casino licence that the licensee comply with the Directions.[487] It is also an offence for a licensee to contravene these Directions.[488] Consequently, it is a breach of the Perth Casino licence and an offence for the licensee to fail to comply with a Direction or any provision of the CM(Games). However, there may be parts of the CM(Ops) that are not subject to GWC oversight because they are not the subject of a Direction. There appears to be no Direction from the GWC requiring the casino licensee comply with the entire CM(Ops).

445. Given that the Directions limit the obligations of the Perth Casino licensee to comply with only parts of the CM(Ops), there remains uncertainty as to whether or how Perth Casino is required to comply with the Casino Manual in its entirety. The PCRC is continuing to investigate the Casino Manual and the Directions to which it relates, to understand how the Casino Manual is enforced and how it has changed over time.

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481 *Casino Control Act 1984* (WA) s 24(2).
482 *Burswood Casino Directions* [GWC.0001.0006.0020] consolidated as at 23 February 2021.
483 *Burswood Casino Directions*, dir 2.1 [GWC.0001.0006.0020] 4 consolidated as at 23 February 2021.
484 *Burswood Casino Directions*, dir 3.1 [GWC.0001.0006.0020] 4 consolidated as at 23 February 2021.
485 *Burswood Casino Directions,* dir 7.10, 8.5, 8A.4 [GWC.0001.0006.0020] 15, 19, 20 consolidated as at 23 February 2021.
486 Sargeant, transcript [TRA.0001.0001.0001] 136.
487 *Casino Control Act 1984* (WA) s 24(5).
488 *Casino Control Act 1984* (WA) s 33.

446. Prosecutions for offences under the CC Act may be instituted by, among others, a person authorised in writing by the GWC. In its inquiry to date, the PCRC has not been able to identify a prosecution of the Perth Casino licensee for a breach of the Directions.

ToR 9: preliminary observations

447. ToR 9 directs the PCRC to report on 'the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged by the GWC under State and Commonwealth laws'.[489]

448. This part discusses ToR 9 and whether the manner in which the GWC discharged its duties and exercised its powers was efficacious in achieving the objective of regulating the Perth Casino under State and Commonwealth laws. Contrastingly, ToR 10 is (in part) concerned with whether the GWC met the objective of regulating the Perth Casino effectively. A regulatory system may be appropriate but, for reasons external to the system itself, may fail effectively to regulate a casino. ToR 9 is only concerned with appropriateness.[490]

449. ToR 9 requires consideration of the appropriateness of the manner in which the GWC acted under Commonwealth laws as well as State laws. So far, the PCRC has not identified any Commonwealth laws that impose duties or powers on the GWC in relation to casino regulation. Consequently, this Interim Report focuses on Western Australian laws.

450. At this stage of the PCRC's inquiry, some preliminary observations relevant to the appropriateness of the GWC's processes can be made. The PCRC notes that the GWC is constituted in accordance with the GWC Act and that it meets regularly, usually at monthly intervals, other than in January. Its formal processes appear on their face to be orderly, including the preparation of formal agendas and agenda papers, the consideration of each agenda item at properly convened meetings, the recording of its decisions and the maintenance of its records. The members of the GWC approve its budgets, receive regular, brief financial reports and its accounts and financial statements are audited.

451. The GWC has processes for authorising games, licensing casino employees and training casino employees. It has audit and inspection programs. It has given Directions with which the Perth Casino is required to comply.

452. The evidence to date suggests that the members of the GWC appointed by the Minister have endeavoured to discharge their responsibilities. The current members of the GWC have expressed, in different ways, their desire to see the GWC operate efficiently and effectively.

453. The PCRC is continuing to inquire into the appropriateness of the way that the GWC has, with respect to casino regulation, discharged its duties and exercised its powers. The

489 Perth Casino Royal Commission Terms of Reference, recital 9. Published in Western Australia, Government Gazette, No 45 (12 March 2021) 1080.

490 For more detail, see Chapter 2.

evidence that the PCRC has heard to date relevant to ToR 9 has raised 10 broad issues relevant to its inquiry into the appropriateness of the manner in which the GWC has acted and, in some cases, continues to act. Other issues may be identified as inquiries continue.

Induction and ongoing training

454. The first issue is training for incoming GWC members and continuing education on casino regulation for longer term members. Apart from Mr Barry Sargeant, who is a former casino regulator and Director General of the Department,[491] no GWC member had experience with casino regulation before becoming a GWC member.

455. The current GWC members have diverse experience including auditing and accounting[492] and law enforcement experience.[493] The PCRC has been impressed with the depth of experience of current members of the GWC. However, it would appear to be common for GWC members to lack prior experience of the regulation of casinos and casino gaming.[494]

456. The evidence presented to date indicates that the induction of recent GWC members is limited and variable in quality in relation to casino regulation. Induction packs included copies of applicable legislation; a document prepared by the Department of Premier and Cabinet about the role of government board members; the GWC's Conflict of Interest Code; a document produced in the late 1990s entitled 'History of Gaming in Western Australia' and an oral briefing by departmental officers.[495]

457. The PCRC is considering whether a comprehensive induction program, including information about the underlying regulatory philosophy and approach, the role of the GWC in casino regulation, the operation of the Perth Casino, the manner in which the GWC functions, the way the GWC regulates the Perth Casino and the roles of key departmental and Perth Casino staff should be a minimum requirement for new members. The PCRC is also considering a requirement for members to participate in continuing education on current and emerging issues concerning casino regulation.

Internal management policies and procedures

458. The second issue is internal management policies and procedures. The GWC does not appear to have a strategic plan or legislative compliance plan in relation to casino regulation which identifies its legislative duties. At a minimum, such a plan may outline its powers to discharge those duties, its method to do so, the time frame for meeting its obligations, and methods of evaluating whether it has met its obligations. Some examples of other documents which may be appropriate, include a risk assessment for

491 Sargeant, transcript [TRA.0001.0001.0001] 127.
492 Meadows, transcript [TRA.0001.0001.0001] 515; Fiorentino, transcript [TRA.0001.0001.0001] 573.
493 Dobson, transcript [TRA.0001.0001.0001] 465.
494 Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [10]; Harrison transcript [TRA.0001.0001.0001] 656.
495 Ord, transcript [TRA.0001.0001.0001] 47; Meadows, transcript [TRA.0001.0001.0001] 517; Fiorentino transcript [TRA.0001.0001.0001] 574, 576, 577; Prowse transcript [TRA.0001.0001.0001] 629; Harrison transcript [TRA.0001.0001.0001] 658.

casino regulation, a skills matrix for new members, a program for regularly reviewing and updating the regulatory program, and agreements or memoranda of understanding with key partners; such as the Department, the Perth Casino, law enforcement agencies and interstate casino regulators.

Financial systems and resources

GWC and the Department

459. The third issue is the GWC's financial systems.

460. One question is whether the GWC has had a process for determining whether its income is sufficient to meet the costs of regulating the Perth Casino to the standard expected by the community, and, if not, a process for seeking additional income from the State Government to enable it to do so.

461. The Department charges service fees to the GWC for assistance it provides to the GWC in carrying out its functions. The PCRC has not seen a formal written agreement with the Department for it to provide an appropriate and consistent level of resources to the GWC, or the cost of those services. The PCRC is inquiring into how the fees for the Department's services were calculated.

462. The evidence to date suggests a number of gaps in the GWC's financial systems that impact on the GWC's ability to determine the cost of casino regulation, including:

a. departmental staff appear not to keep records that enable clear measurement of hours spent supporting the GWC functions in relation to casino gaming; and[496]

b. cost allocation is not identified between casino, wagering and liquor regulation categories.

463. There are also some questions about how the Department has charged the GWC for its services. For the financial year to 30 June 2006, the actual service cost paid to the Department by the GWC was $2,538,000.[497] Over the next six years the service fee increased by 89% so that in the financial year to 30 June 2012, the actual service cost paid by the GWC was $4,811,000.[498] The PCRC will continue to investigate the increase in service costs and particularly whether the Department has recouped its total expenses for services provided to GWC since 30 June 2007 at a rate that appeared to substantially mirror the totality of funds available to GWC from the annual casino gaming licence fee paid in quarterly instalments.

464. In August 2015, the GWC accepted a Department proposal to reduce resources allocated to casino gaming inspections by removing the dedicated Inspectors present on the gaming floor.[499] Despite the reduction in resource allocation to departmental inspections, the costs charged to the GWC did not show a reduction.

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496 Ord, transcript [TRA.0001.0001.0001] 73.
497 Department Annual Report 2005-2006 [PUB.0008.0004.0661] 83
498 Department Annual Report 2011-2012 [PUB.0004.0006.0167] 65.
499 GWC, agenda paper [GWC.0002.0016.0155] 17-25.

465. The GWC does not appear to have requested detailed information from the Department as to any fees charged for the provision of services to the GWC for casino regulation, even though the GWC approves the budgets presented by the Department.[500]

466. A related issue is the information provided to the GWC about how the Department spends GWC revenue. From an analysis of the GWC's past agenda papers, the members receive a brief financial report at the end of each monthly agenda. The PCRC has been unable to identify between 2014-2017 any discussion during meetings by the GWC of annual budget estimates during the budget setting period. Minutes of meetings in that period have noted 'approve the budget for submission to the Minister' or simply 'to note the report'.

467. In the most recent budgetary period, when approving the 2019-2020 budget in late June 2019 the members asked that:

> the CFO or an appropriate proxy attend the next commission meeting to provide more detailed information in relation to the GWC budget process including deadlines and requirements for Ministerial approval.[501]

468. This appears to indicate that the newer GWC members wish to have more input into the GWC's financial arrangements.

469. The PCRC is continuing to inquire into what funds are available to the GWC, the origin of the funds, how the funds are administered and how the GWC accounts for its income and expenses.

GWC and the Perth Casino licensee

470. The legislative framework imposes two sets of financial obligations on the Perth Casino licensee. The casino licensee is required to pay a casino gaming licence fee to the GWC at a rate determined annually. In addition, the licensee is required to pay to the State tax at a specified rate on the monthly revenue from EGM (12.42%), a specified rate on the monthly revenue from table games (9.37%), ATG (12.92%) and revenue from International Commission Business (1.75%).[502]

471. The casino gaming license fee is discussed in Chapter 3. There is an issue as to whether the annual CPI increase that has occurred since 1990 takes account of the changing requirements of casino regulation.

472. Pursuant to the CC Act,[503] it is possible for both the rate of the casino gaming licence fee and the rate of tax paid by the licensee to be reviewed jointly by the Minister and the licensee. The PCRC has not heard evidence that the GWC has requested the Minister to review the casino gaming licence fee.

473. Section 14 of the CC Act expressly states that the funds available for the administration of that Act consist of moneys that may be appropriated from Parliament; casino gaming

500 Hodson-Thomas, transcript [TRA.0001.0001.0001] 424–427.
501 GWC, minutes [GWC.0002.0016.0279] 5.
502 *Casino Control Act (WA)* s 20(1); *Casino (Burswood Island) Agreement Act 1985* (WA) Sch C.
503 *Casino Control Act 1984* (WA) s 20(2).

licence fees paid by the Perth Casino licensee; and all other moneys lawfully received by the GWC. The evidence to date is that the GWC has not sought or received an appropriation for casino regulation.

474. It is a question for inquiry as to whether the casino gaming licence fee has been used as Parliament intended. Some GWC members expressed a view that the casino licence fee formed part of the Department's 'general revenue'[504] and therefore was able to be used across the entirety of the Department's functions.

Key Performance Indicators

475. The fourth issue is the appropriateness of the GWC's key performance indicators (KPIs). The KPIs measure the Department's performance of the compliance and audit inspection function undertaken by officers on behalf of the GWC.[505] The number of audits and investigations undertaken are measured against target numbers and a cost allocation assigned.[506]

476. One GWC member gave evidence that when, in August 2018, the Department proposed that the GWC approve target KPIs for the 2018/2019 financial year, she queried whether the KPIs were 'fit for purpose'.[507]

477. From about then[508] and through 2019, the GWC sought the assistance of the Department to prepare an overarching risk management framework to measure whether legislative outcomes were being achieved at a strategic rather than transactional level.

478. In December 2019 RiskWest was engaged to carry out this task; however, the task stalled due to the COVID-19 and the availability of departmental officers to assist with the task.[509]

479. In the intervening period, the Auditor General had identified that the GWC's KPI targets may be inappropriate.[510]

480. The Department subsequently recommended that the proposed KPI targets for 2020/21 be approved by GWC subject to the outcome of the broader review to be undertaken, mentioned above.[511] The GWC appears to have deferred doing so until receipt of external advice and guidance.[512]

504 Hodson-Thomas, transcript [TRA.0001.0001.0001] 424; Ord, transcript [TRA.0001.0001.0001] 89.
505 Sargeant, transcript [TRA.0001.0001.0001] 154.
506 GWC, agenda paper [GWC.0002.0016.0239] 497.
507 Fiorentino, witness statement [GWC.0003.0003.0006_R] 38.1.
508 Fiorentino, transcript [TRA.0001.0001.0001] 615.
509 Meadows, transcript [TRA.0001.0001.0001] 524-525.
510 GWC, agenda papers [GWC.0002.0016.0289] 192-196.
511 GWC, agenda papers [GWC.0002.0016.0345] 426.
512 GWC, minutes [GWC.0004.0004.0001] 7.

Operational relationship with the Department

481. The fifth issue is the GWC's operational relationship with the Department. There are at least three sub-issues to consider:

a. The number and extent of delegations of power from the GWC to departmental officers;

b. Whether the GWC gives sufficient direction to the Department about the training, duties and conduct of departmental officers involved in casino regulation; and

c. Whether there is sufficient oversight by the GWC of the work of departmental officers who are involved in casino regulation.

The number and extent of delegations of power from the GWC to departmental officers

482. As a statutory agency, the GWC is required to act independently and objectively in performing its legislative duties and exercising its powers as the casino regulator. It is not simply an advisory body or community reference group.

483. The legislative framework does not bestow any significant duties and powers in relation to casino regulation on the Department. During the PCRC inquiry, it has become apparent that the GWC substantially relies on the Department and its officers to assist in regulating the Perth Casino. The GWC does not have its own staff or resources (including a dedicated meeting space). It utilises departmental officers to perform administrative, advisory and operational roles on behalf of the GWC.[513] Some of those officers are 'authorised officers' appointed to carry out enforcement powers under the GWC Act.[514] The assistance has extended to nearly every aspect of operations, from providing inspectorial staff and setting meeting agendas to providing a meeting room and administrative support. The Department set the inspection and audit program of the casino operations which was undertaken by the Inspectors. [515]

484. Speaking generally, the GWC obtains the information upon which it makes decisions from the following sources:

a. the Department, either through agenda papers or attendance by departmental officers in person at GWC meetings; and

b. direct communication from the Perth Casino during attendances at GWC meetings and any written correspondence annexed to agenda papers.

485. In the past, requests or submissions to the GWC from the Perth Casino were assessed and considered initially by departmental officers. The officers responded to them, presumably acting pursuant to a delegation of power from the GWC, or referred them to the GWC. When Mr Mark Beecroft took over the role of CCO in 2021, written

513 Harrison, transcript [TRA.0001.0001.0001] 666. Ord, transcript [TRA.0001.0001.0001] 84.
514 *Gaming and Wagering Commission Act 1987* (WA) s 21.
515 Halge, transcript [TRA.0001.0001.0001] 910.

communications from the Perth Casino were received by Mr Duncan Ord in his then capacity as Chair of the GWC.[516]

486. The evidence heard to date raises a question whether the GWC received sufficient information about some matters. Examples that prompt that inquiry are described below.

487. In April 2012, the GWC was given an agenda paper[517] recommending that the GWC delegate to the CCO several significant powers to:

a. be able to declare a game an authorised game;

b. approve amendments to rules of authorised games; and

c. issue a Direction or amendment Direction pursuant to the CC Act.[518]

488. The agenda paper explained that the effect of the delegation would be that when submissions were received from the Perth Casino, the GWC would have the opportunity to comment on them and that the delegated power would not be exercised by the CCO until the GWC had given its support to the submission.

489. The intent of the recommendation appeared to be that the delegation would not be exercised unless the GWC knew about the proposal first and had seen the documentation outlining the proposal.[519]

490. The terms of the delegation that was granted were not so qualified.[520] The CCO was given the powers to exercise delegated powers without providing information to the GWC first. The PCRC has seen examples of the CCO acting under this or subsequent delegations where it is not explicit that the action has been first referred to the GWC.[521]

491. In September 2020, the then CCO was provided with the Australian Commission for Law Enforcement Integrity, Report 08/2020: Operation Angove – An investigation into possible corruption issues regarding the Department of Home Affairs and its interactions with Crown Casino (Operation Angove Report)[522] into allegations of corrupt conduct between officers from the Department of Home Affairs and Australian Border Force. The allegations concerned the approval of visas for Crown VIPs who wished to travel to Australia to take part in junket activity. Whilst no corruption was found, there were findings concerning an arrangement between Department of Home Affairs officers and Crown Resorts regarding a high level of support given by Crown to visa applicants. The report found that the officers processing the visa applications had placed too much weight on the Crown support.

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516 Beecroft, transcript [TRA.0001.0001.0001] 367.

517 GWC, agenda paper [GWC.0002.0016.0056_E0001].

518 *Casino Control Act 1987* (WA) s 24.

519 Beecroft, transcript [TRA.0001.0001.0001] 370-371.

520 GWC, agenda paper [GWC.0002.0016.0056_E0001] 9–14.

521 Connolly, letter, 12 January 2016 [CRW.707.010.1115]; Connolly, letter, 11 April 2017 [CRW.707.010.1101]; Connolly, letter, 9 May 2016 [CRW.707.010.1197].

522 Australian Commission for Law Enforcement Integrity, Report 08/2020: Operation Angove - An investigation into possible corruption issues regarding the Department of Home Affairs and its interactions with Crown Casino, [GWC.0001.0010.0006] 6-7.

492. This raises a question whether the finding might have been relevant to the GWC because the visa application process was considered to be part of a vetting process for international junket players coming to the Perth Casino which justified the removal of junket regulations in 2010.

493. There is evidence to the effect that the CCO gave the GWC an oral briefing on the Operation Angove Report findings.[523] However, it is not clear whether he provided members with a copy of the Operation Angove Report. The GWC meeting minutes do not record the content of the oral briefing.

494. A further example is that it seems that the GWC were unaware that the Department received bank statements from the Perth Casino. In early 2021, the GWC became aware that the Department had been receiving bank statements, including monthly statements of the Riverbank account. At the same time, the GWC became aware that the Bergin Inquiry had a query concerning the statements in December 2020 and the Department had responded to the query without informing the GWC.[524]

495. On another occasion a media release was issued on 17 February 2021 from the GWC.[525] It was not drafted by the GWC, nor seen by all members before it was released.[526] It was drafted by the then CCO, with assistance from officers of the Department.[527]

496. Another issue identified by the PCRC during witness examinations is the nature of the information given to the GWC about the compliance and audit work undertaken by the inspectors at the casino. The GWC presumably should have sufficient, timely and accurate information about the nature and extent of the compliance and enforcement measures undertaken on its behalf in order to assess whether the regulatory framework is working effectively.

497. The PCRC is considering whether the monthly reported statistics may have required more contextual information for the statistics to be relevant and useful to GWC members. The GWC's monthly agenda papers included a one-page summary of standard reporting on compliance and audit activities undertaken by Inspectors. Other than the number of inspections undertaken, the GWC had little information upon which to assess the effectiveness of the inspection regime.

498. In relation to the number and extent of delegations from the GWC to departmental officers, the GWC has a power to delegate all or any of its powers or duties, save for the power of delegation itself. A delegation may be given to a member of the GWC, a sub-committee of the GWC, the CCO, an inspector or a specified person or persons of a specified class or persons holding a specified office or class of office.[528] Effectively, the GWC may delegate a power or function imposed on the GWC by written law to any person or persons they wish, if they fall within these classes.

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523 GWC, minutes [GWC.0002.0016.0333] 2.

524 Meadows, transcript [TRA.0001.0001.0001] 549; Connolly, email, 4 December 2020 [GWC.0001.0007.0390].

525 GWC, media release, 24 February 2021 [GWC.0002.0016.0348].

526 Meadows, transcript [TRA.0001.0001.0001] 550.

527 Beecroft, transcript [TRA.0001.0001.0001] 390.

528 *Gaming and Wagering Commission Act 1987* (WA) s 16; *Interpretation Act 1984* (WA) s 59.

499. The PCRC is considering whether the GWC has as a matter of routine, and for extended periods, delegated all powers and duties to multiple persons. The language of s 16 of the GWC Act is consistent with empowering the GWC to regulate the way powers were delegated so that all could be exercised by a single office holder.

500. The power delegated may be in general form, or it may be a qualified delegation as provided in the instrument of delegation. A qualified delegation would allow the GWC to limit the reach of the delegation so that the holder may only exercise the delegation in specified circumstances.

501. Appendix 3 to this report is a table that summarises the most relevant delegations made by the GWC.

502. Despite no qualified delegations being made (as discussed above), some delegations have been recommended by the Department to the GWC on the basis that they are qualified. However, the delegation instrument has contained no such qualification.[529] Some members held the opinion that a delegated power still required GWC 'approval' before it was exercised.[530]

503. Once a delegated power is exercised within the parameters of the instrument of delegation, the exercise of power is by law deemed to have been exercised by the GWC itself.[531] The exercised power has all the authority of the GWC. It cannot easily be overturned.

504. In most cases it seems that an agenda item detailing an exercise of delegated power was not included for the purposes of 'approval' but for information only. Little contextual information on the exercise of delegated power was given to the GWC in agenda papers.[532] There does not appear to have been a method of establishing with certainty that all exercises of delegated power were reported to the GWC since no policy requiring disclosure was in place.[533]

505. As a result, the GWC may be unaware of the exercise of delegated power by a departmental officer that conflicted with other responsibilities of that officer.[534] The PCRC is considering whether:

    a. members of the GWC have had and/or have a proper understanding of the way in which the delegation system operates; and

    b. the number, nature and extent of the GWC's delegations was appropriate.

529 GWC, agenda paper [GWC.0002.0016.0056_E0001] 9-14.
530 Harrison, transcript [TRA.0001.0001.0001] 670, 696; Fiorentino, transcript [TRA.0001.0001.0001] 619.
531 *Gaming and Wagering Commission Act 1987* (WA) s 16(2).
532 GWC, agenda paper [GWC.0002.0016.0155] 99; Harrison transcript [TRA.0001.0001.0001] 708.
533 Hodson-Thomas, transcript [TRA.0001.0001.0001] 417.
534 Hodson-Thomas, transcript [TRA.0001.0001.0001] 417-418.

GWC directions to the Department; training, duties and conduct of departmental officers

506. The PCRC is inquiring into whether the GWC gives sufficient directions to the Department about the training, duties and conduct of departmental officers involved in casino regulation. During witness examinations, the PCRC was told that there is no formal training for the departmental officer appointed to the CCO position. It has been an adjunct role to a senior departmental position. For example, former CCO, Mr David Halge, was also Director Operations at the Department.[535] Ms Janine Belling was simultaneously the Director Licensing at the Department[536] The former CCO, Mr Connolly, was also the Deputy Director of the Department when he was appointed in 2012. Another CCO, Mr Beecroft was substantively the Director of Strategic Regulation in the Department.

507. The evidence suggests that the dual nature of the CCO position creates an inherent tension; the GWC may find it difficult to determine whether the CCO is performing a function as an advisor to the GWC (as a departmental officer) or performing powers and functions as an officer of the GWC.[537]

508. Regardless of who is occupying the role of CCO, it appears necessary for them to receive training in casino regulation and continuing education to ensure that they are aware of extant and emerging risks in casinos and the means of regulating them.

509. Practically, the functions performed by the person holding the office of CCO have changed depending on the person performing it. One former CCO stated that she 'provided administrative support and other regulatory services' to the GWC.[538] Another CCO stated that he either wrote or vetted all submissions to the GWC on casino matters[539] and that it was his decision as to which matters were referred to the GWC.[540] Another person who occupied the office of CCO expressed the view that it was a titular role[541] that was 'important but limited' and that he tended to act on the authority of the GWC in his departmental role of Deputy Director General.[542] Chapter 4 of this report further explores the historical legislative framework giving rise to the changes in the role of the CCO.

510. The PCRC notes that in practice the role of CCO demanded regular interaction and communication with the casino operator. As mentioned earlier in this chapter, the PCRC is inquiring into whether communications from the casino operator were made to the CCO representing the Department or the GWC. Whilst the CCO may have informed the GWC of the exercise of a delegation, it was invariably, or at least usually, after the fact and with the provision of little detail.

535 Halge, witness statement [WIT.0004.0001.0001] 5.
536 Belling, witness statement [DLG.0001.0005.0001_R] 10.
537 Harrison, transcript [TRA.0001.0001.0001] 667.
538 Belling, witness statement [DLG.0001.0005.0001_R] 11.
539 Halge, witness statement [WIT.0004.0001.0001] 7.
540 Halge, transcript [TRA.0001.0001.0001] 1005.
541 Connolly, witness statement [MCN.0001.0001.0001_R] 45.
542 Connolly, witness statement [MCN.0001.0001.0001_R] 45–47.

511. The PCRC has not located any formal written role description for the CCO position. One witness expressed the view that the GWC had no role in identifying the job description, qualifications and experience required of the person fulfilling the role despite the CCO's duties and powers under the CC Act.[543]

512. The absence of a formal role description may mean that the occupant of the position of CCO is unaware of the obligations and duties expected. Further, the occupant cannot be held to account for failing to meet an expected standard.

513. There are issues for inquiry as to whether the GWC has given directions to the Department about the content of inspections, the quality and frequency of inspections, and the number and expertise of Inspectors. The PCRC is inquiring into GWC oversight of Departmental officers who are involved in casino regulation. As these officers are engaged in work on behalf of the GWC there may be an expectation that the GWC would make a significant contribution to the content of their work and the way in which it was carried out. It might further be expected that the GWC would have in place policies and procedures relating to the performance of duties by Departmental officers engaging in work on behalf of the GWC, including a policy to review the performance of authorised casino officers.[544]

The GWC's understanding of its role and powers

514. The sixth issue is the GWC's understanding of its role and powers. The evidence to date from former and current GWC members and Departmental officers has suggested that the GWC saw its role as being limited to the following matters, primarily:

a. regulating the integrity of gaming by ensuring that only authorised games and EGM were played at the Perth Casino and that they were played according to the approved rules;

b. ensuring that gaming revenue was calculated and casino tax was assessed accurately;

c. licensing casino employees; and

d. implementing some harm minimisation and responsible gambling practices, procedures and programs.

543 Sargeant, transcript [TRA.0001.0001.0001] 151.

544 Hodson-Thomas, transcript [TRA.0001.0001.0001] 421; Sargeant, witness statement [GWC.0003.0002.0001] 70.

515. Consistently with this approach, the GWC did not seek to detect or prevent money laundering either by Western Australian or overseas casino patrons. The evidence to date suggests that the GWC members have not seen their role as to ensure that the Perth Casino has appropriate policies in place to comply with AML/CTF obligations. The PCRC is continuing to inquire into whether and to what extent the GWC focussed on other statutory responsibilities such as:

    a. formulating and implementing policies for the scrutiny, control and regulation of casino gaming;

    b. making recommendations to the Minister in relation to casino gaming; and

    c. keeping under review the conduct, extent and character of casino gaming.

516. Based on the evidence heard to date, it appears that the GWC members may have approached their role in operational or transactional terms. Operational matters were approached from the perspective of ensuring 'fairness' in gaming. It appears fairness was considered in the transactional sense; that is, that fairness meant following the approved game rules and ensuring all Perth Casino employees were licensed.[545] It was a matter of import to the GWC that the Perth Casino is 'a significant employer in Western Australia'.[546]

517. In the latest GWC Annual Report[547] the GWC's role was described as delivering 'services' to ensure 'lawful gambling activities' in Western Australia. The 'Outcome Based Management Framework' detailed in the Annual Report refers to the GWC being concerned with delivering only two 'services':

    a. evaluation and determination of licensing applications; and

    b. conduct of compliance audits and inspections.

518. More is said elsewhere in this Interim Report about extant and emerging risks, including the risk of money laundering at the Perth Casino. It is sufficient to say here that the GWC's limited view of its role, duties and powers and its operational focus may have impacted on the appropriateness of the manner in which it exercised its powers and discharged its obligations and responsibilities. This is a significant issue and is the subject of ongoing inquiry.

GWC's relationship with the Perth Casino licensee

519. The seventh issue is the GWC's relationship with the Perth Casino licensee. The PCRC is continuing to inquire into whether the GWC took appropriate measures to question, assess, evaluate and determine applications and other requests made to it by the Perth Casino licensee. The PCRC has heard evidence about, and will continue to inquire into, such matters as the number of successful applications made to the GWC by the licensee,

545 Sargeant, transcript [TRA.0001.0001.0001] 130, 143, 144, 211; Dobson, transcript [TRA.0001.0001.0001] 510; Meadows, transcript [TRA.0001.0001.0001] 521; Connolly, transcript [TRA.0001.0001.0001] 219.

546 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A, 22 April 2021 [QNE.0001.0001.0001] 5.

547 GWC, 2019—20 Annual Report [PUB.0002.0001.0468] 7.

the attitude of members and former members of the GWC to submissions from the licensee and the GWC's criteria for obtaining independent expert reports about matters for decision concerning casino regulation. It is uncertain whether the GWC had processes in place objectively and expertly to test submissions made to it by the licensee.

520. An example of the attitude of the GWC to submissions from the Perth Casino arises from the arrest of Crown employees in the Peoples' Republic of China during 2016. A representative of the Perth Casino was asked to attend a GWC meeting to provide information about the arrests.[548]

521. The information provided by the Perth Casino was considered by the GWC to be satisfactory. No independent investigation was undertaken by the GWC nor were any Directions made by the GWC.

522. The PCRC will inquire into whether the GWC conducted a risk assessment in relation to the Perth Casino licensee or its conduct. The PCRC is considering whether, in the past, the GWC placed trust in the Perth Casino licensee to comply with the regulatory requirements. The PCRC is inquiring into whether the GWC's approach was, and is, appropriate for a strong and watchful casino regulator.

Conflicts of interest

523. The eighth issue is the manner in which the GWC addressed the issue of conflicts of interest. As this issue is mentioned specifically in ToR 10, both the appropriateness of GWC's processes to identify and deal with conflicts of interest, as well as the effectiveness of those processes, will be discussed under that heading.

Regulatory changes over time

524. The ninth issue is the extent to which the GWC has altered and, arguably, relaxed the regulatory oversight of the Perth Casino without assessing adequately the effects of key regulatory changes.

525. Evidence obtained thus far has indicated several key regulatory changes over the last two decades. In summary these changes include the following:

a. reduced physical presence of Inspectors at the Perth Casino;

b. use of a risk-based inspection and audit program as the regulatory method; and

c. relaxation of obligations requiring provision of information and authorisation of junket operators, representatives and participants.

548 Duckworth, transcript [TRA.0001.0001.0001] 1264.

526. The key regulatory 'change events' identified thus far by the PCRC are:

    a. inspection-related issues:

        i. removal of Inspectors from the casino gaming floor as a permanent presence by mid-2015. This appears to have been motivated, in part, by budgetary constraints and to have been an initiative of the Deputy Director General, Mr Connolly, who put the proposal to the GWC for approval.[549]

        ii. change in focus of Inspector's skill set from casino gaming specialist skills to more generalist skills, as the role of Inspectors broadened within the Department;

        iii. a decision to devolve regulatory risk over time onto the Perth Casino, as the focus of regulation moved from proactive inspection to reactive audit and inspection functions;[550]

    b. changes around 2003 to 2006 in the method of accounting GWC's income stream;

    c. loss of external specialised expertise when a law enforcement (policing) position was removed from the Perth Casino;

    d. deregulation of junket operations over the period from 2009 – 2017 and absence of audit or inspection of junket operations since 2010.[551]

    e. significant delegations of GWC power to the CCO, the GWC Chair and Deputy Chair; and

    f. dilution of casino regulation expertise when the Department was expanded to include local government regulation, sports and cultural issues, in addition to regulation of liquor, gaming and wagering.

527. Aspects of these events are expanded below.

528. In the period from the commencement of the Perth Casino up until 2002, Inspectors were rostered to work in shifts at the casino premises for 24 hours of every day of the year. There were five Inspectors rostered for each shift.[552]

529. Inspectors physically attended at significant internal casino control events, such as jackpot payments, EGM software upgrades and repairs, soft and hard count processes as well as the inspection of manual registers for cheque credits then used for junket players.[553] A 'soft count' is counting the revenue from gaming tables whereas a 'hard count' is counting the revenue from EGM.[554]

549 GWC, agenda paper, [GWC.0002.0016.0155] 17.
550 GWC, agenda paper, [GWC.0002.0016.0155] 18.
551 DLGSCI statement of information pursuant to *Royal Commission Act 1968* (WA) s 8A, 22 April 2021 [QNE.0001.0001.0001].
552 GWC, agenda paper [GWC.0002.0016.0155_E0001] 2.
553 GWC, agenda paper [GWC.0002.0016.0155] 17.
554 Toyne, transcript [TRA.0001.0001.0001] 1003.

530. Changes were made from 2002. By 2015 an Inspector was physically present at the Perth Casino between the hours of 7:30 am and 3:00 am allowing for a continuous presence for 19.5 hours per day. Most inspectorial activity was compliance and audit based, and therefore planned. Responsibility was placed on the casino licensee to follow procedures to report lawful or unlawful activity.

531. Between 2004 – 2008 there were 18-21 Inspectors involved in casino gaming regulatory work. The PCRC has heard evidence that currently, there are about 12 Inspectors involved in all areas of departmental regulation, not only casino gaming.[555]

532. By 2012, the regulatory approach to casino gaming revolved around the development of procedures and controls to maintain an audit program. A monthly compliance meeting determined the priorities for activity.

533. By the end of 2015, four significant practical changes in the regulation of casino gaming had been implemented.

534. First, the Department changed the tax auditing software to the system in current use. The current software was developed to unify the Departmental system across all regulatory areas and was not designed to independently calculate payable casino taxes and verify casino accounts.[556] Reliance is now placed on the Perth Casino to collate financial information for the Department's purposes. Hard and soft counts done by casino staff are unsupervised.[557] The casino licensee manages the collection, validation, reconciliation and reporting of information relating to gross revenue.[558]

535. Secondly, Inspectors ceased attendance at junket 'buy-ins' (to commence junket activity) and junket financial settlements at the end of junket activity.[559]

536. Thirdly, the GWC had approved a reduction in table game supervision levels in person at the casino due to the ability to supervise 'control points' by surveillance technology.[560]

537. Fourthly, the GWC endorsed the Department's proposal to remove a dedicated inspectorial presence for 19.5 hours a day at the casino.[561] It was proposed that Inspectors would be allocated tasks and functions across all the industries regulated by the Department and that Inspectors would no longer be specifically rostered on to attend the casino. The Department advised the GWC that this would have the effect of reducing the time that Inspectors were physically present at the casino but that it should not reduce the total number of audits, inspections and investigations that were conducted. The team from the Department to be tasked with developing the audit

555 Radis, transcript [TRA.0001.0001.0001] 1302-1303.
556 The current system is 'Navigate'; Radis, transcript [TRA.0001.0001.0001] 1316.
557 Radis, transcript [TRA.0001.0001.0001] 1344-1346.
558 DLGSCI statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A, 22 April 2021 [QNE.0001.0001.0001].
559 Radis, transcript [TRA.0001.0001.0001] 1340.
560 GWC, agenda paper [GWC.0002.0016.0150] 57.
561 GWC, agenda paper [GWC.0002.0016.0155] 17.

and inspection program was the Strategic Regulation Team, consisting of three officers.[562]

538. Inspectors expressed concern at the time that the changes would impact Inspector activities to the extent that the level of casino gaming surveillance would reduce. The move away from a permanent inspectorial presence at the casino was seen as a fundamental and detrimental change by some Inspectors.[563]

539. The GWC were informed that a major motivation for these changes was 'continuing pressures relating to the allocation of scarce inspectorate resources and in managing salary and operational budgets'.[564] The Department may have considered that the risk-based approach was more cost-effective. Another motivation was the availability of technological surveillance as a method of maintaining a casino 'presence'.[565]

540. Importantly, the GWC were informed that the cost pressures were on the cost of salaries across the entire Department, not just in the casino regulation area. The change the GWC accepted was that Inspectors who had concentrated on casino gaming regulation were now required to undertake activities across all the regulated industries in the Department. The GWC accepted the recommendation to change the regulatory approach. Although arguably, it was not apparent that it would assist the GWC to regulate casino gaming. The PCRC is inquiring into the reasons for the change.

541. The PCRC is considering whether the GWC and/or the Department assumed that the casino licensee could be relied on to accept more regulatory responsibility. This assumption may have been based on the fact that the casino licensee was required under 'pre-existing processes in place to ensure the Department is advised of any lawful or unwanted activity in periods when the Inspectors are not on site.'[566] If so, significant trust was placed in the Perth Casino to have their own controls in place so that the regulator only needed to ensure compliance with those controls.[567]

542. The changes approved in 2015 allowed for the transition from a prescriptive approach to a risk-based approach to casino regulation. This change was fully implemented in 2017. The PCRC is yet to sight any risk assessments on which the audit and inspection program should be based.

562 Radis, transcript [TRA.0001.0001.0001] 1305.
563 Radis, transcript [TRA.0001.0001.0001] 1312.
564 Duckworth, transcript [TRA.0001.0001.0001] 1258; Sargeant, transcript [TRA.0001.0001.0001] 197; GWC, agenda paper [GWC.0002.0016.0155] 19.
565 Duckworth, transcript [TRA.0001.0001.0001] 1259.
566 GWC, agenda papers [GWC.0002.0016.0155] 21.
567 Sargeant, transcript [TRA.0001.0001.0001] 198.

543. The PCRC understands the focus of the current inspection regime undertaken by Inspectors is on:

a. monitoring of EGM, particularly to ensure machines are calibrated to ensure a level of 'fairness'[568] for the player, the 'signature' matches the GWC approved signature[569] and that the correct revenue is paid to the State;[570]

b. calculation of gaming revenue and assessment of casino tax;[571]

c. checking play at gaming tables proceeds under the relevant game rules, and the gaming pits are adequately supervised;[572] and

d. dealing with patron disputes on the gaming floor. This requires the Perth Casino to advise the on-duty inspector of any dispute.[573]

544. There is, at present, no evidence of audits or inspections of the following areas:

a. problem gambling program;[574]

b. AML and counter terrorism program;[575]

c. AML requirement to report suspicious transactions;[576] and

d. the Funds Advance Facility by which the Perth Casino may provide credit to international players.[577]

545. The areas that are inspected or audited are programmed to be reviewed either weekly, fortnightly or monthly. For example, in 2017 an audit of chip credits was done for the purposes of verifying tax on a weekly basis. Surveillance operations were audited monthly. An inspection of the Pearl Room local membership was conducted annually. The 2017 program has been maintained to the present but with adjustments in frequency.[578]

546. Since 2017 a compliance activity frequency chart and risk compliance activity sheet have been used as the basis for collating and assessing inspector activity and identified areas of compliance or non-compliance.[579] The Inspectors use a risk compliance activity sheet upon which they enter the date, type of audit and the outcome, brief commentary and risk rating from zero to three.[580]

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568 'Fairness' is used here in the sense that there is a requirement for EGMs in Western Australia to have a 'return to player' of 90 cents in the dollar: Sargeant, transcript [TRA.0001.0001.0001] 130.
569 The HMAC-SHA1 signature. Radis, transcript [TRA.0001.0001.0001] 1304.
570 Sargeant, transcript [TRA.0001.0001.0001] 130-131.
571 Radis, transcript [TRA.0001.0001.0001] 1296.
572 Sargeant, transcript [TRA.0001.0001.0001] 135.
573 Radis, transcript [TRA.0001.0001.0001] 1296-1297.
574 Radis, transcript [TRA.0001.0001.0001] 1349.
575 Radis, transcript [TRA.0001.0001.0001] 1324-1325.
576 Radis, transcript [TRA.0001.0001.0001] 1325-1326.
577 Radis, transcript [TRA.0001.0001.0001] 1347-1348.
578 Radis, transcript [TRA.0001.0001.0001] 1306-1307.
579 Radis, transcript [TRA.0001.0001.0001] 1306; GWC, Compliance Frequency Activity Chart [GWC.0001.0007.0209_E0001].
580 Radis, transcript [TRA.0001.0001.0001] 1306–1307.

547. Subsequent to the 2015 decision to remove a dedicated inspectorial presence for 19.5 hours a day at the casino, from approximately January 2017 the manager of regulation, Mr Leigh Radis, made the decision to roster an Inspector at the casino for 9.5 hours per day. He said he did this to increase the visible presence of Inspectors at the Perth Casino and to ensure that casino audit and inspection duties were not subsumed by other departmental duties.[581] The PCRC will need to consider whether this action indicated that the removal of dedicated casino shifts for Inspectors was a backward step in casino regulation.

548. The focus of the audit program was said to be confined to ensure:

a. casino gaming revenue was recorded accurately so that casino tax payable was known; and

b. all processes, procedures operations of the casino licensee and staff were in accordance with the Casino Manual.[582]

549. The PCRC is still considering whether there has been an accurate record made of casino gaming revenue and an accurate assessment of casino tax. Matters to be included in this inquiry include whether inappropriate deductions were made from gross gaming revenue, the Inspector's absence from the hard and soft counts and whether the GWC's reliance on the software used by the casino licensee to calculate the casino tax payable have resulted in an inaccurate record of casino gaming revenue and assessment of casino tax.

550. The PCRC has not formed any view as to whether the trend towards less regulation was a considered strategy of the GWC. It may have been the outcome of incremental shifts over time, acting on Departmental advice rather than a GWC Direction. The trend commenced with the reduction in the Inspectors' presence at the casino since 2002[583] but was advanced significantly by developments in 2015.

551. The PCRC is considering whether this move was guided by a regulatory philosophy and done to further the purpose of achieving broader public policy objectives related to control of casino gaming operations.[584] It is also considering whether the move was accompanied by risk assessments that would appear to be required to move to an appropriate risk-based approach to casino regulation.

581 Radis, transcript [TRA.0001.0001.0001] 1316.
582 Radis, transcript [TRA.0001.0001.0001] 1308.
583 GWC, agenda paper [GWC.0002.0016.0155] 18.
584 Mr Barry Sargeant stated it was an incremental move. Sargeant, transcript [TRA.0001.0001.0001] 196.

552. Other possible influences contributing to shifts in regulatory behaviour may include one or more of the following:

a. lobbying by interested parties (such as the casino licensee);

b. a perception that the GWC's powers were limited,

c. acceptance of departmental advice without due inquiry by the GWC;

d. a perception of shrinking or finite financial resources; and

e. regulatory behaviour changes as a result of 'regulatory capture'.

Harm minimisation, problem gambling and socially responsible gambling

553. The tenth issue is the appropriateness of the GWC's actions to discharge its responsibilities in relation to harm minimisation at the Perth Casino by addressing problem gambling and maintaining socially responsible gambling. The evidence so far has only touched on this issue. It will receive greater attention in the second part of the PCRC's inquiry and in the Final Report.

554. The GWC has overseen harm minimisation measures at the Perth Casino such as the use of banning notices to exclude problem gamblers from Perth Casino, placing limits on the placement of ATM, and limiting the amount of money that can be withdrawn from an ATM.[585]

555. The GWC does not have a strategic harm minimisation strategy to address problem gambling. The Victorian Auditor General published a report[586] in the second half of 2017 recommending the implementation of a socially responsible gambling program at the Melbourne Casino. This does not appear to have prompted the GWC to develop its own program or strategy, or to increase the harm minimisation programs already in place. There is evidence that the GWC considered that the Perth Casino had adequate measures to address problem gambling.[587]

556. The GWC helps fund the PGSSC.[588] The PGSSC provides funds to help to support a gambling hotline, face to face counselling services and online counselling.[589] Industry representatives, including the Perth Casino, are members of and financially support the PGSSC. A PGSSC special purpose account is reported in the GWC financial statements, and the balance of those funds are ostensibly controlled by the GWC as restricted cash.

557. If it is a true sub-committee of the GWC, the PGSSC requires a member of the GWC to sit on the sub-committee.[590] Despite this, the membership of PGSSC was not well known

585 In the Final Report the PCRC will consider whether the use of EFTPOS machines at the gaming tables may undermine the effectiveness of GWC's policy in respect to ATM placement.
586 Victorian Auditor General, February 2017, Regulating Gambling and Liquor, [PUB.0004.0008.000].
587 Duckworth, transcript [TRA.0001.0001.0001] 1286-1287.
588 Beecroft, transcript [TRA.0001.0001.0001] 343.
589 GWC, Annual Report 2019—2020 [PUB.0004.0004.0001] 24-27.
590 *Gaming and Wagering Commission Act 1987* (WA) s 15(3).

by some current GWC members.[591] There are also remaining questions for the PCRC about the funding of the PGSSC, the way in which it funds problem gambling services and the assessment of the effectiveness of those services.

ToR 10 - preliminary observations

558. ToR 10 requires inquiry into the capability and effectiveness of the GWC to discharge its duties and powers, and the capability of the Department to support the GWC to discharge its duties and powers.

559. The specific subject matter identified in ToR 10, both in relation to the GWC and the Department, is their capability and effectiveness in identifying and addressing any actual or perceived conflicts of interest.

560. The 10 issues discussed earlier in this chapter in respect of ToR 9 have the potential to and can, if they are continuing, affect the capability and effectiveness of the GWC.

561. The PCRC is considering also whether the existing regulatory framework has hampered the capability and effectiveness of the GWC, even if through no fault of the GWC. The preliminary view of the PCRC is that the capability and effectiveness of the GWC may have been hampered particularly by matters such as the GWC's:

    a. lack of training for its members;

    b. lack of internal plans, policies and procedures;

    c. narrow appreciation of its duties, powers, resources and function; and

    d. over-reliance on the Department to manage and direct it.

562. The evidence to date may indicate that these matters considered together, could have affected adversely the quality of casino regulation in Western Australia. These consequences will be discussed fully in the Final Report, which will consider whether these matters have affected the:

    a. quality of day-to-day supervision of the operations of the Perth Casino;

    b. regulation of financial transactions at and in relation to the Perth Casino, which may have permitted money laundering to occur;

    c. regulation of international junket activity at the Perth Casino, which may have permitted junket operators and participants with links to criminals to participate in junkets at the Perth Casino;

    d. focus on minimising the harm caused by casino gaming in Western Australia;

    e. Perth Casino licensee assuming significant control over its regulation; and

    f. existence of a strategic direction for casino regulation in Western Australia.

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591 Fiorentino, transcript [TRA.0001.0001.0001] 621; Prowse, transcript [TRA.0001.0001.0001] 643; Carr, transcript [TRA.0001.0001.0001] 991; Dullard, transcript [TRA.0001.0001.0001] 748.

563. The Department has done many things to lend appropriate support to the GWC to discharge its statutory duties and powers. This includes providing administrative support to the GWC, providing staff (such as Inspectors) to carry out tasks to discharge the GWC's duties, being the day-to-day contact point between the GWC and the Perth Casino licensee, and providing advice to the GWC on many and varied issues related to casino regulation.

564. The PCRC is continuing to inquire into whether the Department properly understood its statutory obligation to support the GWC and, in doing so, to act on behalf of the GWC and at its direction. Evidence to date appears to show that the Department may have taken the lead in the relationship between the two entities and taken the lead role in casino regulation.

565. This issue emerged very early in the PCRC's inquiry when the GWC responded to the first PCRC issued NTP. In its response, the GWC stated that the responses were collated and compiled by the Department. The GWC said that it did not have the 'administrative or technical capability' to respond to the NTP. The attached document containing the information requested by the PCRC was on departmental letterhead and signed by Mr Ord in his role as the then Director General of the Department.[592]

566. It is the PCRC's preliminary view of the statutory scheme that when the Department provides administrative and technical support to the GWC it does not act on its own behalf, but rather acts on behalf of the GWC. This is reflected in the fact that the Department charges the GWC for the cost of the work done on its behalf.

567. If this approach is correct, the GWC has the 'administrative or technical capability' to respond to the NTP and has the capability to perform its statutory duties because it chooses to engage the Department to act on its behalf to exercise its powers. In practice, if this is the correct approach, the GWC's response to the NTP should have been sent on GWC letterhead and signed by Mr Ord in his role as Chair of the GWC, even if departmental officers physically collated and compiled the response.

568. An indication of the assumption of responsibility for casino regulation by the Department is contained in its 2019—20 Annual Report, which describes the Departmental remit with minimal mention of supporting the GWC. In its description of its business areas, the Department mentions the work of the regulation division as providing:

> a licensing service for the … gambling industries and applications are considered and determined on their merits in accordance with the relevant legislative requirements. Audits and inspections are conducted to verify that the provision of gambling is conducted in a responsible and lawful manner.[593]

569. The inference is that the Department provides these services, rather than the GWC. It is not until page 92 of the Annual Report that the Department acknowledges and states

592 GWC, Statement of Information pursuant to *Royal Commission Act 1968* (WA) s 8A, 15 April 2021 [QNE.0001.0001.0024].

593 DLGSCI, Annual Report 2019-2020 [PUB.0004.0004.0001] 88-91.

that 'audits and inspections' are undertaken 'on behalf of the GWC.'[594] However, on the same page it refers to the 'Department's enforcement programs'.[595]

570. The casino regulatory role belongs to the GWC, supported by the Department. The GWC has a statutory responsibility to ensure compliance by the casino licensee and to enforce non-compliance in the operation of all aspects of the casino.

571. There are some emerging issues related to the support of the GWC by the Department that require further inquiry and will be reported on in the Final Report. These include the following matters:

a. the adequacy of the training and expertise of departmental officers involved in supporting the GWC;

b. the Department's assumption of responsibility for appointing GWC officers such as the CCO and Inspectors;

c. whether the way in which the Department has charged the GWC for the services which it has provided to the GWC has negatively impacted the quality of GWC's regulation of the Perth Casino;

d. the quality of the briefing papers and advice to the GWC on matters concerning casino regulation;

e. the quality of the financial advice and support given to the GWC by the Department; and

f. the quality of the risk-based regulatory method it has recommended to the GWC and implemented on behalf of the GWC.

572. In identifying these issues, the PCRC is aware of the evidence given by some GWC members to the effect that they regarded the advice and support given by the Department to the GWC in positive terms. Most also said that they did not feel that they were obstructed in the discharge of their duties and felt free to disagree with recommendations made to them by departmental officers.[596]

573. In summary, the PCRC is inquiring into whether the Department usurped part of the GWC's role as casino regulator, as opposed to supporting the GWC capably and effectively to perform the GWC's role as casino regulator.

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594 DLGSCI, Annual Report 2019-2020 [PUB.0004.0004.0001] 92.

595 DLGSCI, Annual Report 2019-2020 [PUB.0004.0004.0001] 92.

596 Ord, witness statement [DLG.0001.0002.0001] 140; Sargeant, witness statement [GWC.0003.0002.0001] 18; Prowse, witness statement [GWC.0003.0006.0003_R] 20; Harrison, witness statement [GWC.0003.0008.0003_R] 30, 31; Cogan, witness statement [GWC.0003.0010.0001_R] 20, 21; Dullard, witness statement [GWC.0003.0011.0001_R] 24, 25; Hayward, witness statement [GWC.0003.0004.0001_R] 26; Carr, witness statement [WIT.0005.0001.0001_R] 9.

Conflicts of interest

574. ToR 10 requires the PCRC to consider the GWC's capability and effectiveness in identifying and addressing any actual or perceived conflicts of interest and the capability and effectiveness of the Department in supporting the GWC in these matters.

575. At the October 2020 GWC meeting Mr Connolly, who had been the CCO since 2012, informed the GWC that he has a friendship with Mr Claude Marais, the then General Manager, Legal and Compliance at the Perth Casino.[597] That friendship commenced in about 2012. Mr Connolly attended Perth Casino Operations Division meetings in his capacity as CCO and Mr Marais attended the same meetings in his role as a Perth Casino employee.[598] Mr Connolly says that the pair regularly went on fishing trips, whilst occupying their respective professional positions.[599]

576. Mr Connolly has also given evidence that he has friendships with two former Perth Casino employees being Mr Paul Hulme (retired) and Mr Jon Nichols (retired). Mr Connolly says that Mr Sargeant, Mr Ord and various members of the GWC were aware of all three friendships and that he never hid them.[600]

577. By the time, the GWC met in February 2021,[601] Mr Connolly was no longer performing duties as the CCO. On 12 February 2021 Mr Beecroft was temporarily appointed CCO.[602] However, although Mr Connolly was no longer performing the role of CCO he appears to have still held the position as Deputy Chair of the GWC. Theoretically, he could still exercise delegated power, although in March 2021 he was directed by the Department not to be involved in any work associated with the Perth Casino.[603]

578. Evidence to date has revealed that there were other personal relationships, including at least one marriage, between Departmental staff and Perth Casino employees.[604]

579. The PCRC is continuing to investigate these alleged conflicts of interest and makes no findings in respect of them in the Interim Report.

580. It is of interest to the PCRC that the Perth Casino Operations Division meetings are recorded as being a regular meeting between the Department and Perth Casino representatives to discuss operational matters of interest including casino employee licensing, inspector surveillance levels and Crown game proposals. The minutes are kept by the Perth Casino. There appear to be no formal reporting mechanism of the Operations Division meetings outcomes to the GWC and it is not provided with the minutes, despite casino regulation being the only purpose of the Operation Division

597 GWC, minutes, 27 October 2020 [GWC.0002.0016.0333] 1.
598 Connolly, witness statement [MCN.0001.0001.0001] 310.
599 Connolly, witness statement [MCN.0001.0001.0001] 319–324.
600 Connolly, witness statement [MCN.0001.0001.0001] 254–256, 269.
601 The GWC met on the 16 February and 23 February 2021.
602 Beecroft, witness statement [DLG.0001.0001.0001] 10.
603 Connolly, witness statement [MCN.0001.0001.0001] 348.
604 Toyne, transcript [TRA.0001.0001.0001] 1121–1122.

meetings. The Chair appears to be a Perth Casino employee and the minutes are on Crown letterhead.[605] It is unclear for how long the meetings have occurred.

581. The evidence received to date has raised a number of issues for further consideration.

582. First, whether in the past, the GWC appreciated its role to ensure that Departmental officers who were performing duties on its behalf declared conflicts of interest to the GWC. Further, whether the GWC had a duty to investigate declarations and determine what action should be taken in respect to them. It is a matter for investigation whether the GWC has a process for assessing and managing any conflict of which it becomes aware, in a timely manner.

583. Secondly, there is an issue as to whether the GWC appreciated the importance of declaring and acting on non-pecuniary conflicts of interest declared by its members. The PCRC does not suggest that there is any current evidence to suggest that any GWC member had or has a conflict of interest of concern.

584. However, the PCRC notes that the GWC's agenda papers have historically required members to disclose pecuniary interests only. The change to the inclusion of an agenda item relating to the disclosure of any interest appears to have occurred in about May 2017. It may be open to conclude that the GWC has appreciated the import of its Code of Conduct when this change occurred.[606]

585. An updated GWC Code of Conduct was approved by the GWC in March 2021.[607] The GWC had no role in the development of the updated Code.[608] The revision required GWC members to fill in a Declaration of Conflict of Interest Form and a register to be maintained. This seems to have been the first occasion on which these requirements were imposed.

586. In relation to the Department's capability and effectiveness in identifying and addressing any actual or perceived conflicts of interest as a means of supporting the GWC, there are serious questions to be considered. Regardless of the details of Mr Connolly's and other Departmental officer's personal relationships with Perth Casino employees, a question for consideration is whether, prior to the establishment of the PCRC, the Department had an informal, if not lax, process for declaring, investigating and acting on conflict of interests between Departmental officers involved in casino regulation and Perth Casino employees.

587. There has been evidence given to the PCRC which contends that such relationships are unavoidable due to the small number of people employed in casino management and regulation and the large number of Perth Casino employees.[609] The PCRC will have to consider this contention. Even if it is difficult to avoid such conflicts, there is still a need

605 Examples: Operations Division Meeting Minutes, 6 March 2020 [CRW.700.003.0306_R]; 29 August 2019 [CRW.700.001.0210].
606 Duckworth, transcript [TRA.0001.0001.0001] 1289.
607 GWC, Code of Conduct, 23 March 2021 [GWC.0001.0011.0002].
608 Hodson-Thomas, transcript, [TRA.0001.0001.0001] 430–431.
609 Beecroft, transcript [TRA.0001.0001.0001] 386; Toyne, transcript [TRA.0001.0001.0001] 1121.

to have in place procedures to ensure that conflicts are declared, investigated and managed.

588. The capacity for such relationships to affect adversely the proper regulation of the Perth Casino is obvious. The Department and the GWC have the responsibility to ensure on behalf of the public of Western Australia that this does not occur.

Chapter 7: Adequacy of the existing regulatory framework

Purpose of this chapter

589. The purpose of this chapter is to provide a broad overview of the work the PCRC has undertaken on the issues raised in ToRs 8 and 11, namely (and in summary), the adequacy of the existing regulatory framework in relation to casinos and casino gaming to address extant and emerging risks and the identification of matters that might enhance that framework. It outlines the key matters that will be the subject of further exploration in coming months, culminating in recommendations in the Final Report.

Regulatory framework: potential inadequacies

590. Chapter 3 of the Interim Report identifies that the PCRC is not the first inquiry, rather the most recent of several inquiries over the last 50 years or so, into casinos in Western Australia. To varying degrees, each of those inquiries has recognised that there are two particularly potent risks associated with casinos; the attraction of criminal activity (in particular, money laundering) to the casino and the fostering of problem gambling amongst casino patrons. At the same time, earlier inquiries have recognised the considerable benefits that a casino brings to Western Australia, particularly in the form of taxation revenue, employment and stimulus to the local economy.

591. It seems to have been universally accepted by earlier inquiries that a casino operation, once established, required strict regulation to mitigate the associated risks and safeguard the associated benefits. One particular aspect of that strict regulation has been the continued prohibition upon poker machines in Western Australia.

592. Against this background, it is interesting to observe the similarities and differences of the factual context of the PCRC inquiry to earlier inquiries.

593. The most obvious difference is that the PCRC's inquiry examines issues of risk and regulation, not in any theoretical or abstract sense, but in the context of over 30 years of operation of the Perth Casino and regulation by the state regulator (that is, the Control Committee and then the GWC). It is an obvious benefit to this inquiry to be able to examine these issues on the basis of evidence and experiences that speak to the reality of operating and regulating a casino in Western Australia.

594. In terms of similarities, the particular risks of criminal activity and problem gambling identified in previous inquiries remain an important focus of the PCRC, albeit in a modern context. Junket activity was of little relevance to the Perth Casino when it was first established in December 1985, but has in recent years (until the ban imposed by the GWC earlier this year) become a substantial part of Perth Casino's business. It is well understood that junkets are vulnerable to exploitation by criminals and for money laundering purposes. The introduction, and increasing sophistication of, EGMs since 1984 is of particular relevance to an examination of problem gambling issues.

595. The fact that there are community concerns about such matters, sufficient to warrant the establishment of the PCRC, raises an immediate question about the adequacy and effectiveness to address these risks of both the regulator and the regulatory framework within which it operates. It is hardly surprising therefore that the Regulatory Framework ToR focuses upon these issues. They draw attention to how important proper regulation of the Perth Casino is in the public interest.

596. It is too early in the inquiry to comment definitively on the deficiencies in the current regulatory framework. To do so would be unfair on the witnesses who have yet to give or complete their evidence and on the parties who are yet to make submissions, after hearing all the evidence.

597. Nevertheless it is possible for the PCRC to identify some areas of the regulatory framework that have been the subject of evidence and express some preliminary observations about their adequacy. It is also possible to express some preliminary observations about enhancements which could be made to ensure that the Perth Casino is regulated to the standard which instils public confidence in the credibility, integrity and stability of the Perth Casino.

Casino Control Act 1984 issues

598. The CC Act is the primary Act providing for casino regulation in Western Australia. It does not articulate the objects of casino regulation. This may have contributed to a lack of clarity of the purpose of the CC Act and the purpose of the GWC in administering it. The inclusion of an objects clause may clarify these matters.

599. There are other issues which have been raised about the content of the CC Act. These include the lack of clarity and/or ambiguities in the provisions relating to the:

a. relationship between the GWC and the Department;

b. employment status of the CCO;

c. funding of the GWC for casino regulation; and

d. role of the GWC to monitor the suitability of a casino gaming licensee.

600. It is not uncommon for modern regulatory statutes to include a clear enunciation of the regulatory objectives. This provides a benchmark against which the need for controls over specific matters can be assessed. The PCRC is considering whether such an approach will enhance the regime for casino regulation in Western Australia. This could be done by an objects clause that sets out, with clarity, a regulatory philosophy and that provides a framework to the approach to the task assigned to the regulator.

601. Related issues have been raised about the absence of provisions in the CC Act such as provisions;

a. defining 'poker machine';

b. defining suitability of a licensee and close associates to hold a casino gaming licence;

c. requiring a periodic review of a casino gaming licensee and associated entities;

d. prescribing a periodic review of the method of calculation of the casino gaming licence fee;

e. requiring a licensee to develop a responsible gambling code and program; and

f. identifying the responsibilities of the GWC in relation to casino gaming.

602. The relationship between the GWC and the Department and the related issue of responsibility for and accountability of, GWC officers has been a topic canvassed in the first part of the PCRC's inquiry. The PCRC is yet to hear evidence from Perth Casino employees about their interactions with the GWC and the Department. This evidence will assist in assessing whether changes ought to be made to better identify and distinguish between the responsibilities and roles of the GWC and the Department. Efficient and effective casino regulation can occur only if these matters are expressed with clarity and precision.

603. The PCRC's inquiries into the prohibition on poker machines in Western Australia and the lack of a definition of a poker machine in the CC Act are in their very early stages. The PCRC will consider the prohibition and whether the prohibition can or should be enhanced by the inclusion in the CC Act of a definition of poker machine.

604. The legislation does not provide for a periodic statutory review of a casino gaming license, nor does it contain a definition of suitability to be a licensee or to be a close associate of a licensee. This means that, save for probity checks on the occasion of an effective change of ownership in 2004, since the Perth Casino licence was issued there has not been an investigation or review of the continuing suitability of the licensee and its close associates or of the way in which the licensee conducts the gaming and gaming related activities at the Perth Casino. It is at least possible that had there been a process of regular review, some of the extant and emerging risks discussed in this Report might have been identified and confronted.

605. There are a number of issues relating to the adequacy of the casino gaming licence fee. These include whether CC Act provisions relating to use of the fee should be clarified and, if the fee is to be used solely for the purpose of casino regulation, whether there should be statutory directions to the GWC about its obligation to determine and ensure that it is sufficient for that purpose.

606. A question arises whether it is desirable to include in the CC Act a list of responsibilities for the GWC in relation to casino gaming regulation. The absence of such a list leaves considerable discretion to the GWC to determine how and in respect of which risks the

Perth Casino is regulated. This may be advantageous because it enables the GWC to change its focus as regulatory risks emerge or subside. On the other hand it may also mean that the GWC does not regulate some risks.

607. There are specific matters that fall for consideration in relation to the regulatory function, including, but not limited to, whether the legislation should:

a. prohibit junkets except when approved in accordance with the regulations;

b. require any junket operators to be approved by the GWC;

c. require the GWC to play a role in minimising the risk of money laundering and other forms of criminal infiltration at the casino; and

d. provide for the monitoring and regulation of other extant and emerging risks to ensure the socially responsible, lawful and efficient operation of the Perth Casino.

608. The CC Act prescribes some offences. It will be necessary to inquire as to whether the penalties for them are at a level that is sufficient to serve the ends of general and personal deterrence.

609. Against the background of poker machine/EGM regulation described in Chapter 3, a particular focus of the PCRC's inquiry going forward in respect of the Regulatory Framework ToR will involve:

a. An examination of the guidelines adopted by the GWC with respect to the approval of EGMs and games to be played on EGMs;

b. Whether those guidelines properly distinguish between EGMs which come within the meaning of the term 'poker machine' as it appears in s 22(1) of the CC Act and those that do not;

c. The appropriateness and effectiveness of the steps GWC takes in fact in deciding whether to approve the playing of games on EGMs;

d. Separately, whether the GWC in approving the use of EGMs and the playing of games on EGMs correctly distinguishes between the playing of games on poker machines, which is prohibited, and the playing of games on other EGMs, which is not; and

e. More generally, a consideration of the adequacy of the regulatory framework in respect of the regulation of EGMs and poker machines.

610. The PCRC is investigating the above matters and determining whether the regulatory framework will be enhanced by the clarification of and/or inclusion of further provisions in the CC Act.

Gaming and Wagering Act 1987 issues

611. Under the existing regulatory framework the GWC is comprised of five to seven people appointed by the Minister, in addition to the Director General of the Department. Its

members are remunerated on a part time basis despite the statutory responsibilities of the GWC being large and complex. There are no qualification requirements for members so that any person and any combination of people may be appointed to the GWC even if their skill set is already represented on the GWC or is not highly desirable for a member of the Commission.

612. The Director General of the Department is, *ex officio*, the Chair of the GWC. The Director General has duties and responsibilities as head of the Department which potentially conflict with the role of chair of the GWC, as the GWC has some, albeit limited, independence from government.

613. There are several issues that the PCRC will need to consider in relation to the GWC. They include, but are not limited to:

a. whether, and if so how and to what extent, the GWC should be independent from other arms of the executive government;

b. whether a case can be made for a regulator dedicated solely to casino regulation and, if so, how this would affect other regulatory functions presently within the remit of GWC;

c. other issues related to the existence, composition, size, membership and leadership of the GWC.

614. The GWC Act requires the GWC to formulate and implement policies for the scrutiny, control and regulation of gaming, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling. In carrying out this duty, the GWC interacts with the PGSSC. However, there is no statutory requirement for the GWC to develop a gaming harm minimisation plan or program. The PCRC is inquiring into whether it should be the statutory responsibility of the casino gaming regulator to prepare and implement such a plan for casino gaming, and whether a casino gaming licensee should be required to contribute to the cost of preparing and implementing the plan.

615. The GWC Act imposes general duties and powers on the GWC in relation to gaming. There is a lack of clarity between the GWC's duties and powers in relation to gaming generally, and those specific to casino gaming. This may not be conducive to efficient casino regulation. The relationship between the CC Act and the GWC Act and how any uncertainty identified can be resolved by amendment to either or both Acts is an ongoing part of the PCRC's inquiry.

Other issues

616. The CBIA Act and the State Agreement confer some duties and powers on the GWC. These include the requirement that it be a condition of a casino gaming licence that a licensee is prohibited from providing credit to a player, without the consent of the GWC.

617. There is an issue as to whether, because of their complexity, it is preferable to consolidate these duties and powers into the CC Act.

Conclusion

618. In their statement at the commencement of the evidentiary hearings on 10 May 2021, the Commissioners said:

> Clause 11 of the Terms of Reference requires us to recommend ways to enhance the regulatory framework. This will be one of the most significant and long-lasting contributions that this Royal Commission can offer the public of Western Australia. We want to make sure that we have a complete understanding of myriad issues, including the way the regulator and the casino licensee see the current regime, what the evidence and material tendered … suggests are deficiencies in its formulation or application and what experts in the field can tell us about best practice, nationally and internationally in casino regulation. With this in mind, the Interim Report may take the form of a discussion paper identifying issues for consideration. This will afford an opportunity for interested parties and the public generally to make submissions to assist us in devising a fully informed set of recommendations for inclusion in the final report.

619. The Commissioners remain of that view. It has guided the work of the PCRC to date and explains the structure and content of this Interim Report. The views expressed above will continue to guide the work of the PCRC through to the completion of the Final Report.

Appendix 1: The Commission

Western Australia

Commission

appointing a Royal Commission to inquire into and report on the affairs of the Crown Casino Perth and related matters.

To: **The Honourable Neville John Owen**

The Honourable Carolyn Frances Jenkins

Mr Colin Murphy PSM

RECITALS

1. The Gaming and Wagering Commission has functions and duties in relation to gaming, wagering and the operations of casinos under legislation including the *Gaming and Wagering Commission Act 1987* (WA) and the *Casino Control Act 1984* (WA). Its duties include, among other things: –

    a. administering relevant laws and keeping relevant matters under review;

    b. formulating and implementing policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling;

    c. administering all matters relating to any casino complex, licensed casino, casino key employee, casino employee or gaming in a casino, pursuant to the *Casino Control Act 1984* (WA) and any casino complex agreement;

    d. causing relevant licences, permits, approvals, authorisations and certificates, as appropriate, to be issued;

    e. advising the Minister as to any matter relating to gambling and to make recommendations to the Minister in relation to the control and supervision of gambling and other matters; and

    f. enforcing, and prosecuting persons contravening, the laws relating to gambling.

2. Crown Perth is the trustee of the Burswood Property Trust and holder of the casino gaming licence in respect of the Crown Casino Perth granted under and subject to the provisions of the *Casino Control Act 1984* (WA). Crown Perth is a wholly-owned subsidiary of Crown Resorts Limited ACN 125 709 953.

3. The Bergin Inquiry concluded that Crown Sydney Gaming Pty Ltd (a wholly-owned subsidiary of Crown Resorts Limited) was not a suitable person to continue to give effect to the restricted gaming licence to operate a restricted gaming facility in premises located at Barangaroo on the Sydney Harbour foreshore and that Crown Resorts Limited was not a suitable person to be a close associate of the person holding that restricted gaming licence.

4. The Bergin Inquiry also found, among other things, that Crown Resorts Limited: –

    a. facilitated money laundering through the accounts of Southbank Investments Pty Ltd ACN 075 088 327 and Riverbank Investments Pty Ltd ACN 103 254 619 unchecked and unchanged in the face of warnings from its bankers;

    b. disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and

    c. entered into and/or continued commercial relationships with Junket operators who had links to Triads and other organised crime groups.

5. Some of the conduct considered by the Bergin Inquiry related to the Crown Casino Perth and other conduct related to the casino operated in Melbourne by Crown Melbourne Limited ACN 006 973 262 (which is also a subsidiary of Crown Resorts Limited).

OPERATIVE PART

By this commission under the Public Seal of the State, I, the Governor, acting under the *Royal Commissions Act 1968* (WA) and all other enabling powers and with the advice and consent of the Executive Council –

(a) appoint you to be a Royal Commission to inquire into and report upon the following matters: –

SUITABILITY

A. The following affairs of the Crown Casino Perth, and related matters: –

1. whether Crown Perth is a suitable person: –

    i. to be concerned in or associated with the organization and conduct of the gaming operations of a licensed casino; and

    ii. to continue to hold the casino gaming licence for the Crown Casino Perth;

2. whether Crown Resorts Limited is a suitable person to be concerned in or associated with the organization and conduct of the gaming operations of a licensed casino;

3. whether Burswood Resort (Management) Limited ACN 009 396 945 is a suitable person to be concerned in or associated with the organization and conduct of the gaming operations of a licensed casino;

4. whether Burswood Limited ACN 075 071 537 is a suitable person to be concerned in, or associated with, the organization and conduct of the gaming operations of a licensed casino;

5. in the event that the answer to (1)(i), 1(ii), (2), (3) or (4) above is no, what, if any, changes would be required to render that entity suitable;

6. the adequacy of communications by Crown Perth and/or any Crown Perth Associates with the Gaming and Wagering Commission, including responses and disclosures to the Gaming and Wagering Commission, prior to and during the Bergin Inquiry in relation to matters related to or connected with the Bergin Report and any matters referred to therein; and

7. any matter reasonably incidental to these matters.

REGULATORY FRAMEWORK

B. The following affairs of the Crown Casino Perth and related matters: –

8. the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address extant and emerging strategic risks identified in the Bergin Report, or otherwise by this inquiry, including in relation to junket operations, money laundering, cash and electronic transactions and the risk of infiltration by criminal elements into casino operations;

9. the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged by the Gaming and Wagering Commission under State and Commonwealth laws;

10. the capability and effectiveness of the Gaming and Wagering Commission in discharging its regulatory functions and responsibilities, and the Department in supporting the Gaming and Wagering Commission, including in relation to identifying and addressing any actual or perceived conflicts of interest by officers involved in casino regulation; and

11. matters which might enhance the regulatory framework and the Gaming and Wagering Commission's and Department's future capability and effectiveness in addressing any of the matters identified above, including any policy, legislative, administrative or structural reforms or changes, including additional regulatory controls.

(b) declare that, for the purposes of your inquiry and recommendations, you are to have regard, in particular, to the following matters: –

    i. the Bergin Report including any matters referred to therein (including the allegations, issues, findings, observations, materials and recommendations referred to therein);

ii. public transcripts of evidence before the Bergin Inquiry and such other materials provided to or otherwise considered by the Bergin Inquiry, to which the Commission may obtain access and consider it appropriate to have regard;

iii. communications between Crown Perth and/or Crown Perth Associates, and the Gaming and Wagering Commission (including responses and disclosures to the Gaming and Wagering Commission) prior to and during the Bergin Inquiry in relation to matters related to or connected with the Bergin Report and any matters referred to therein; and

iv. such further or other evidence and materials to which the Commission may consider it appropriate to have regard in order to satisfy the terms of reference;

(c) declare that in your report you may make any recommendations you consider appropriate;

(d) declare that, to facilitate the proper and expeditious conduct of the inquiry, you are not required to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a proceeding;

(e) appoint you, the Honourable Neville John Owen, to be the Chairman of the Commission;

(f) declare that, by virtue of this commission, you may in the execution of this commission do all the acts, matters and things and exercise all the powers that a Royal Commission may lawfully do and exercise, whether under the *Royal Commissions Act 1968* (WA) or otherwise;

(g) declare that the *Royal Commissions Act 1968* (WA) section 18 applies to this Commission;

(h) declare that in this commission: –

Bergin Inquiry means the Inquiry by the Honourable PA Bergin SC under section 143 of the *Casino Control Act 1992* (NSW) established on 14 August 2019 resulting in the publication of the Bergin Report;

Bergin Report means the report of the Inquiry by the Honourable PA Bergin SC under section 143 of the *Casino Control Act 1992* (NSW) dated 1 February 2021;

Crown Casino Perth means the casino in respect of which a casino gaming licence has been granted under section 21 of the *Casino Control Act 1984* (WA) (and described in the Casino (Burswood Island) Agreement the subject of the *Casino (Burswood Island) Agreement Act 1985* (WA) as Burswood Casino);

Crown Perth means Burswood Nominees Ltd ACN 078 250 307 the trustee of the Burswood Property Trust and holder of the casino gaming licence in respect of the Crown Casino Perth;

Crown Perth Associates means any person concerned in or associated with the organization and conduct of the gaming operations of the Crown Casino Perth;

Department means the Department of Local Government, Sport and Cultural Industries and relevantly any predecessors and includes any current or former officers, employees, persons engaged under contracts for services by, or agents of the Department or relevantly any predecessors;

Gaming and Wagering Commission means the Gaming and Wagering Commission of Western Australia established under the *Gaming and Wagering Commission Act 1987* (WA) and includes any current or former delegates, officers, employees, persons engaged under contracts for services by, or agents of the Gaming and Wagering Commission;

Suitable person means suitable person to engage in, or be concerned in or associated with, the relevant activity and, without limiting the generality of the foregoing, the matters to which the Commission may have regard include: –

(a) the reputation, character, honesty and integrity of the person;

(b) the competence and adequacy of the knowledge, qualifications, experience and ability of the person to engage in, or be concerned in or associated with, the relevant activity;

(c) the financial status and financial background of the person;

(d) governance processes and arrangements;

(e) the creation and maintenance of public confidence and trust in the credibility and integrity of licensed casino operations; and

(f) such other matters as the Commission sees fit;

(i) declare that you are to begin your inquiry as soon as practicable;

(j) declare that you are to make your inquiry as expeditiously as possible;

(k) declare that you are to submit to me an interim report in relation to paragraphs 8 to 11 of the Operative Part that you consider appropriate by no later than 30 June 2021; and

(l) declare that you are to submit to me a report of the results of your inquiry, and your recommendations, by no later than 14 November 2021.

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Issued under the Public Seal of the State

at Perth on 5 March 2021.

Governor

Premier

Appendix 2: List of defined terms

ACMA	Australian Communications and Media Authority.
ACMS	Approved Casino Management System.
AML	Anti-Money Laundering.
AML/CTF Act	*Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).
AML/CTF Rules	*Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (Cth).
ATG	Fully automated table games.
AUSTRAC	Australian Transaction Reports and Analysis Centre.
Barangaroo Casino	The Crown Casino Sydney.
Barangaroo Licensee	Crown Sydney Gaming Pty Ltd.
Bergin Inquiry	The inquiry by the Honourable PA Bergin SC under s 143 of the *Casino Control Act 1992* (NSW) established on 14 August 2010.
Bergin Inquiry Period	The period from 27 July 2019 to 28 February 2021.
Bergin Report	The Bergin Inquiry (as defined) Report published by the Honourable PA Bergin SC on 1 February 2021.
Bergin Risks	The three broad strategic risks identified in the Bergin Report relating to casinos and casino gaming (being money laundering, criminal infiltration and junkets).
BL	Burswood Ltd ACN 075 071 537, a nominated close associate of BNPL.
Blackstone	Blackstone Group (Australia) Pty Ltd the company that made a takeover bid on behalf of The Blackstone Group Incorporated and its affiliates together known as 'Blackstone'.
BNPL	Burswood Nominees Pty Ltd, the licensee of Crown Perth Casino and the trustee of the Burswood Property Trust).
BRML	Burswood Resort (Management) Ltd ACN 009 396 945, a nominated close associate of BNPL.
Casino Manual	CM(Games) and CM(Ops).
CBIA Act	*Casino (Burswood Island) Agreement Act 1985* (WA).
CC Act	*Casino Control Act 1984* (WA).
CC Regs	*Casino Control Regulations 1999* (WA).
CCBILE Regs	*Crown Casino (Burswood Island)(Licensing of employees) Regulations 1985* (WA).

CCO	Chief Casino Operator appointed under the CC Act.
CM(Games)	Casino Manual (Games Procedures).
CM(Ops)	Casino Manual (Operations).
Control Committee	Casino Control Committee.
CPH	Consolidated Press Holdings.
CPI	Consumer Price Index.
CRL	Crown Resorts Ltd ACN 125 709 953, a nominated close associate of BNPL and the ultimate holding company.
Crown	Crown Resorts (as defined) and some or all of its subsidiaries depending on context.
Crown Entities	Crown Resorts Ltd; Burswood Limited; Burswood Nominees Limited; Burswood Resort (Management) Limited; Crown Sydney Gaming Pty Ltd; Southbank Investments Pty Ltd; Riverbank Investments Pty Ltd and Crown Melbourne Limited.
Crown Resorts	Crown Resorts Limited ACN 125 709 953.
Department	The Department of Local Government, Sport and Cultural Industries or its predecessors depending on context.
Direction or Directions	Directions made under s 24 CC Act.
EGM	Electronic Gaming Machines.
FATF	Financial Action Task Force.
Final Report	Report of the PCRC to be submitted by 14 November 2021.
Gaming Inquiry Committee	Government Gaming Inquiry Committee of 1984 Report of the Committee appointed to inquire into and report upon gaming in Western Australia.
GC	Gaming Commission of Western Australia (being the predecessor to the Gaming and Wagering Commission)
GC Act	*Gaming Commission Act 1987* (WA)
GWC	Gaming and Wagering Commission.
GWC Act	*Gaming and Wagering Commission Act 1987* (WA).
GWC Regs	*Gaming and Wagering Commission Regulations 1988* (WA).
ICC	Independent Casino Commission.
IG Act	*Interactive Gambling Act 2001* (Cth).
ILGA	New South Wales Independent Liquor and Gaming Commission.

ILGA Inquiry	The Inquiry undertaken by the New South Wales Independent Liquor and Gaming Authority addressing the matters raised in the Bergin Report.
Interim Report	The report of the PCRC presented to the Governor on 30 June 2021.
International Commission Business	As defined in the State Agreement.
Inspector	Means a Department or Government Inspector as defined in s 3 of the CC Act.
IT	Information Technology.
Junket Activity	As defined in the State Agreement.
Manager	Manager under the State Agreement.
Melbourne Casino	The Crown Casino Melbourne.
Minister	The Minister responsible for the Department (as defined) including its predecessors.
NSW CCA	*Casino Control Act 1992* (NSW)
NTP	Notice to Produce issued pursuant to ss 8A and 8B of the *Royal Commissions Act 1968* (WA).
Oaktree	Oaktree Capital Management.
PCRC	Perth Casino Royal Commission.
Perth Casino	The Crown Casino Perth.
PGSSC	Problem Gambling Support Services Committee.
Regulatory Framework ToR	Terms of Reference B: 8 – 11.
Riverbank account	An account or accounts in the name Riverbank Investments Pty Ltd ACN 103 254 619.
RTP	Return to Player.
Singapore CCA	*Casino Control Act* (Singapore) (Chapter 33A, revised edition 2007).
Southbank account	An account or accounts in the name of Southbank Investments Pty Ltd ACN 075 088 327..
Star Casino	The Star Event Centre (Sydney).
Star	Star Entertainment Group Ltd.
State Agreement	The Casino (Burswood Island) Agreement the subject of the *Casino (Burswood Island) Agreement Act 1985* (WA) entered into on 20 February 1985 between the State of Western Australia, West Australian Trustees Limited and Burswood Management Limited for the establishment of

	the Perth Casino (and depending on context, point in time versions).
Suitability ToR	Terms of Reference A: 1 – 7.
Trustee	Trustee under the State Agreement.
ToR	The individual numbered paragraphs of the operative part of the Term of Reference.
VCGLR	Victorian Commission for Gambling and Regulation.
VCRC	Royal Commission into the Operator and Licence in Victoria, referred to in this report as the Victorian Casino Royal Commission.
Victoria CCA	*Casino Control Act 1991* (Vic).
Victorian Regulatory Review	The review commissioned by the Victorian Minister for Consumer Affairs, Gaming & Liquor into Victorian Commission.

Appendix 3: Chronology of GWC delegations

Date	Delegation to holder of position of	Signed by	Description of powers delegated	Recommendation	Comment
23 Mar 2010	Director Licensing[i] Deputy Director Licensing[ii]	Chair and five other members	• approve permits • provisionally approve junket operator/junket representative applications • approve one-off junket applications • other licencing approvals • approve permitted trading hours for the casino liquor licence • grant applications for casino employee/key employee licences	19 Mar 2010 Agenda paper to delegate authority for exempting betting operators from providing an annual audited return to licencing staff[iii]	Delegation to Deputy Director Licencing is marginally the same as to the Director on the same date, but Director can withdraw infringement notices under s 36(7) of the GWC Act and authorise replacement of video lottery terminals that have GWC approval Repealed 22 June 2010
22 Jun 2010	Director Licensing[iv]	Chair and four other members	• removal of the power to approve junket operators/representatives and one-off junket applications	15 Jun 2010 Agenda paper[v] stated the delegation is no longer applicable after the Regulations were amended to remove the requirement that the GWC approve junket operators and representatives[vi]	Repealed previous delegation to Director Licensing 23 March 2010 Repealed by delegation to Director Licensing 29 July 2011
24 Apr 2012	CCO[vii]	Chair and five other members.	• declare a game an authorised game under s 22 of the CC Act • approve amendments to approved rules of games • issue a direction or amendment direction under s 24 of the CC Act	12 April 2012 Agenda paper[ix] indicated delegation in the context of Departmental restructure and to facilitate timely and efficient processes	Replaced previous delegation to Director Licensing dated 29 July 2011 To take effect 22 June 2012

Date	Delegation to holder of position of	Signed by	Description of powers delegated	Recommendation	Comment
	Deputy Director General[viii]		• affix the Commission's seal to the instruments to effect (a)–(c) • Deputy Director General to issue a direction or amendment direction under s 109G of the GWC Act and affix the Commission's seal to the relevant instrument		This delegation was rescinded by subsequent delegation 18 Dec 2012 to the Deputy Chair[x]
22 Jun 2012	Director Gambling Regulation[xi]	Chair and five other members	• withdraw infringement notices • direct configuration of table games, EGMs, count rooms, cages and facilities • approve purchase requests for gaming and chips • approve variations to casino policy and procedures and employee licences • approve permitted trading hours of the casino liquor licence • approve gaming permits	22 May 2012 Agenda paper[xii] does not contain new authorisations – only reflects new position titles	Repealed previous delegations to: • Deputy Director Licensing 29 July 2011 • Director Compliance 26 June 2007
18 Dec 2012	Chair[xiii] and Deputy Chair[xiv]	Deputy Chair and five other members	All GWC powers (other than the power of delegation itself) with respect to: • *Betting Control Act 1954* • *Gaming and Wagering Commission Act 1987* • *Casino Control Act 1985* • *Racing and Wagering Western Australia Act 2003*	6 Dec 2012 Agenda paper[xv] consistent with the merging of the Departmental areas of licencing and regulation with racing and gaming	Repealed previous delegation dated 2 Feb 2004 and increases the previous delegation by adding the *Racing and Wagering WA Act 2003* Repealed delegation to Deputy Director General dated 24 April 2012
16 Dec 2014	CCO[xvi]	Chair and five other members	Suite of delegations in same terms as delegation dated 22 June 2012	4 Dec 2014 Agenda paper[xvii] stated it was left out of the previous delegation that took effect 22 June 2012[xviii]	Repealed previous delegation to Chief Casino Officer 22 June 2012

Date	Delegation to holder of position of	Signed by	Description of powers delegated	Recommendation	Comment
			The only new power is to approve suppliers of gaming equipment to Crown Perth casino		Repealed by subsequent delegation to Chief Casino Officer 27 June 2017
27 Jun 2017	CCO[xix] Director Industry Regulation and Education[xx] Director Licensing and Industry Services[xxi]	Chair and three other members	Suite of delegations including: • revoke EGMs that fail 90% RTP • declaring a game to be an authorised game • issue directions to alter approved rules of a game • issue directions regarding casino licensee's system of internal controls • affix seal with respect to instruments/documents • issue directions to vary positions and configurations of table games • approve purchase requests for gaming chips/equipment • grant employee licences (under probity assessment policy) • powers under reg 9(4) of the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985*	13 June 2017 Agenda paper[xxii] necessary to amend position titles and spread the delegations between positions affected by the Departmental restructure[xxiii]	Replaces previous delegation 16 Dec 2014 Replaces previous delegation to Director Liquor and Gambling 24 March 2015 the powers in this delegation have been significantly reduced Repealed previous delegation to Director Liquor & Gambling 24 March 2015 substantially the same but removes power to withdraw infringement notices under s 36(7) GWC Act
23 Oct 2018	Director (and Deputy) Licensing and Industry Services[xxiv]	Deputy Chair and one member	• issue directions for the configuration of table games, pit configurations, EMGs, count rooms, cages, facilities and IT services • approve purchase requests for gaming equipment and chips • approve permitted trading hours for the casino liquor licence • grant, issue and amend permits and employee licences	16 September 2018 Agenda paper[xxv] stated reason was to streamline processes[xxvi]	Repealed previous delegation to Director Licensing and Industry Services 27 June 2017 with the addition of the s 104(3)(k) GWC powers In all other ways this delegation was the same as the previous delegation made 27 June 2017

Date	Delegation to holder of position of	Signed by	Description of powers delegated	Recommendation	Comment
28 Apr 2020	Deputy Director General[xxvii]	Chair and six other members	All GWC powers (other than the power of delegation itself) with respect to: • *Betting Control Act 1954* • *Gaming and Wagering Commission Act 1987* • *Casino Control Act 1985* • *Racing and Wagering Western Australia Act 2003*	8 April 2020 Agenda paper[xxviii] to facilitate new wagering licensee to operate WA TAB operation and approvals outside of scheduled GWC meetings	
16 Feb 2021	Director Strategic Regulation[xxix]	Chair and four other members	All the GWC powers (other than the power of delegation itself) with respect to: • *Betting Control Act 1954* • *Casino Control Act 1985* • *GWC Act 1987*	16 Feb 2021 Agenda paper[xxx]	Reason for delegation – Deputy DG standing aside (deputy DG currently held all the delegations as CCO)

Endnotes to Appendix 3

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[i] [GWC.0004.0003.0022].
[ii] [GWC.0004.0003.0014] 1.
[iii] [GWC.0002.0016.0002] 2.
[iv] [GWC.0004.0003.0021].
[v] [GWC.0002.0016.0006] 419.
[vi] [GWC.0002.0016.0006] 420.
[vii] [GWC.0004.0003.0005] 1.
[viii] [GWC.0004.0003.0012] 3.
[ix] [GWC.0002.0016.0056] 349.
[x] [GWC.0002.0016.0082] 204.
[xi] [GWC.0004.0003.0018].
[xii] [GWC.0002.0016.0058] 698.
[xiii] [GWC.0001.0007.0175].
[xiv] [GWC.0004.0003.0011]
[xv] [GWC.0002.0016.0082] 201.
[xvi] [GWC.0004.0003.0004].
[xvii] [GWC.0002.0016.0121] 207.
[xviii] [GWC.0002.0016.0121] 207.
[xix] [GWC.0004.0003.0006].
[xx] [GWC.0004.0003.0020].
[xxi] [GWC.0004.0003.0025].
[xxii] [GWC.0002.0016.0223] 100.
[xxiii] [GWC.0002.0016.0208] 5.
[xxiv] [GWC.0004.0003.0024].
[xxv] [GWC.0002.0016.0256] 282.
[xxvi] [GWC.0002.0016.0256] 282.
[xxvii] [GWC.0004.0003.0013].
[xxviii] [GWC.0002.0016.0298] 351.
[xxix] [GWC.0004.0003.0027].
[xxx] [GWC.0002.0016.0349] 5.