

IN THE PERTH CASINO ROYAL COMMISSION

WITNESS STATEMENT OF DUNCAN ST JOHN BERESFORD ORD OAM

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STATEMENT OF DUNCAN ST JOHN BERESFORD ORD OAM

I, MR DUNCAN ST JOHN BERESFORD ORD, c/- Level [17], Gordon Stephenson House, 140 William St, Perth WA 6000, Director General of the Department of Local Government, Sports and Cultural Industries, do say as follows:

1. This statement is provided in aid of the response to the notice to produce NTPPCRC-005, dated 3 May 2021 and issued under section 8A of the *Royal Commissions Act 1968* (WA), directed to the Department of Local Government, Sports and Cultural Industries (DLGSC) by the Perth Casino Royal Commission (**Royal Commission**).
2. This statement addresses paragraph 4(a)-(c) in the schedule to notice to produce NTPPCRC-005, which calls for the provision of:
'the Department's comments on paragraphs 8, 9, 10 and 11 of the Terms of Reference, and, without limitation, in particular, the Department's view on the following matters:
 - (a) *The extant and emerging strategic risks associated with the Perth Casino and casino gaming in Western Australia;*
 - (b) *Whether the existing regulatory framework is adequate to address those risks;*
 - (c) *Whether there are any inadequacies in the existing regulatory framework which need to be addressed and how they should be addressed.'*
3. Unless otherwise stated, the information in this statement comes from my knowledge, examination of the records held by the DLGSC or the advice of officers employed by it.

Extant and emerging strategic risks associated with the Perth Casino and casino gaming in WA

Overview

4. Critical to the maintenance of a mature casino business in any jurisdiction is strict regulation and oversight in order to prevent illegal

activities within, and criminal influence over, the business.¹ Some of the relevant factors motivating criminal interest include that:

- a. casino operations are substantially cash-based (even if this may be declining);
 - b. many transactions occur in the casino, some of which are very large; and
 - c. casinos normally are highly profitable;
5. In my view, the existence of a casino that is properly regulated reduces overall strategic risks, such as those arising from:
- a. illegal gambling; and
 - b. if a casino did not exist and legal gambling activities were further dispersed away from the central venue of a casino, the difficulty of monitoring and regulating dispersed activities consistently and effectively.

Extant Risks

Background checks and vetting

- 6. In my view a risk that has been and always will be significant is of the staff regulating or operating the casino being compromised through corrupt or fraudulent activities and/or inappropriate relationships and associations.
- 7. It seems to me this risk is best addressed by vetting, initially and in appropriate cases periodically, relevant Government and Crown employees, particularly those in key positions for decision-making and oversight.
- 8. The current regulatory system relies primarily on Police clearances, employment conditions to disclose conflicts of interest and, in cases such as the appointment of GW Commission members, more intensive background vetting.
- 9. I am not aware of any evidence showing that the above system is deficient.² However, I would welcome and consider any suggestions to improve the rigour of the framework.

¹ This concern has been understood since at least the 1940's as the materials cited in the November 1983 report of the Government Casino Advisory Committee demonstrate: PUB.0004.0002.0010.

² In my evidence to the Royal Commission on 10 May 2021 I described an instance where Crown employees were failing to report mandatory offences, which was addressed by the GW Commission: PCRC Transcript Day 03 20210510, pp 86-87. In my view, that issue arose from poor enforcement and communication of relevant requirements by Crown to its employees, and does not indicate a serious

10. I note that this aspect of the regulatory system has substantial economic relevance to Perth Casino's operations. If the system is plagued by delay or is unnecessarily onerous it will detrimentally affect employment and the efficiency of Perth Casino operations.
11. I note also that changes to this aspect of the regulatory system raise the philosophical issue (relevant to other aspects of the regulatory system) of the cross-pollination of employment as between casinos and regulators. That issue was touched upon in my evidence to the Royal Commission on 10 May 2021 and in the Witness Statement of Michael Connolly.³
12. That philosophical issue is difficult. I consider that it is not a black and white issue of either allowing cross-pollination with no limits or prohibiting it completely: as I indicated in my evidence to the Royal Commission, either approach comes with disadvantages.
13. Generally speaking, I sympathise with the view expressed in the Witness Statement of Michael Connolly⁴ that, at least in a State context, cross-pollination will tend to occur unless it is prohibited because of the niche status of casino regulation. In my view this is exacerbated here by Perth's relatively small population. I think that if casino regulation remains a primarily State-based rather than national regulatory area, difficulty would arise from a system that mainly prohibits, rather than controls and regulates, cross-pollination. The main difficulty would be that for some period of time the DLGSC and GW Commission would be unable to hire people who are skilled and talented in a niche field. This would affect the quality and efficacy of their operations.
14. Problem gambling is a massive risk to the community. Risks include the financial impact on individuals and the enormous impact on the

defect in the actual vetting process and procedure (the Commission through its own procedures became aware of the convictions that were not disclosed).

³ PCRC Transcript Day 03 20210510, pp 84-85; MCN.0001.0001.0031, [284]-[290].

⁴ MCN.0001.0001.0031, [284]-[290].

community in the form of health, social, crime and family related problems.

15. Increased reliance on technology including EFTPOS, cashless and mobile payment systems and mobile phone applications, interplayed with (online or traditional) reward systems are a significant risk. It is critical to ensure these are not used to incentivise problem gambling.
16. Whilst the issue of online casinos and gaming platforms appears, to my mind, to have been substantially addressed by recent Commonwealth legislation,⁵ it remains important to be cognisant of that risk.
17. As I stated in my evidence to the Royal Commission on 10 May 2021,⁶ whilst recent appointments to the GW Commission have brought welcome additional forensic, investigatory and financial experience to the Commission, there has concomitantly been loss of experience in problem gambling and related policy development. Additional resources and funding to reverse that decline may be an appropriate response.

Crown's business strategy of capturing the international VIP market

18. On reflection, Crown's aggressive push to capture a greater share of the international VIP market could have been better recognised as a strategic risk by the GW Commission, because there are well-demonstrated risks of organised crime influence on junket or international VIP activities.
19. The GW Commission's direction to Crown Resorts Limited, implementing a prohibition on, among other things, junket play at the Perth Casino, will in my view substantially address this risk. However, this is an interim measure and it is unclear to me how these controls will transition to a more permanent arrangement. I would not be surprised if, in future, the view were adopted that, having regard to its economic and tourism benefits, some international VIP/high roller activity should be allowed to occur in a strictly regulated environment.
20. In my First Witness Statement I have proposed that the GW Commission be additionally resourced to undertake, or to contract for

⁵ See, e.g., the *Interactive Gambling Act 2001* (Cth).

⁶ PCRC Transcript Day 03 20210510, pp 30-32.

the undertaking of, forensic analysis of individual Perth Casino gaming accounts.⁷

21. In my First Witness Statement I observed that the delineation of responsibilities between the GW Commission and relevant law enforcement agencies, such as AUSTRAC, remains unclear.⁸ This is not an issue that the Commission can resolve by itself, but it is a priority going forward.

Crown's status as a national enterprise

22. Crown's status as a national enterprise with assets in NSW and Victoria is a significant risk.
23. An earlier notice to produce received from the Royal Commission revealed that the Royal Commission uncovered a clause in the Victorian casino license providing that Crown Melbourne should be given preference over Crown Perth. The GW Commission did not know of the existence of that clause until receipt of that notice to produce.
24. As detailed in my First Witness Statement, the GW Commission is engaging with interstate regulators to develop appropriate national frameworks and understandings of these issues, with an initial meeting currently scheduled for 18 May 2021.⁹
25. It may be that an appropriately framed direction, or alternatively legislative amendment, requiring Crown to disclose matters with respect to its activities in other entities that, absent legal compulsion, Crown could refuse to disclose, is an appropriate way forward.

Corporate Governance and Propriety review of Casino operator

26. As detailed in my First Witness Statement,¹⁰ in my view historically the regulatory system has not been sufficiently focused on Crown Group's corporate governance. It may have been 'too operationally' focused.¹¹

⁷ DLG.0001.0002.0001_0035, [121].

⁸ DLG.0001.0002.0001_0033, [109].

⁹ DLG.0001.0002.0001_0030, [98].

¹⁰ DLG.0001.0002.0001_0036, [123].

¹¹ PCRC Transcript Day 03 20210510, p 89 [10].

27. This risk has been addressed in part by recent appointments to the GW Commission bringing skills in forensic analysis and accounting; in my view there remains a need for upskilling within the Commission in corporate legal and regulatory knowledge.
28. My First Witness Statement proposed consideration of a mandatory or discretionary periodic review of these matters.¹²

Need for more adversarial and proactive regulation

29. It has become clear to me, having compared the matters raised within the Bergin Report with the assurances and representations received by officers of the Crown group, that future assurances and representations, depending on their content and significance, should be interrogated more closely and not accepted on their face. It seems to me that, historically, the GW Commission viewed the Perth Casino as a sophisticated and mature business that had strong governance and self-regulation controls in place. While that may be true for many areas of the Casino's operation, it has been shown to be wrong in some. This is at least in part due to the complex corporate structure that exists behind the local leadership positions within Crown Perth.
30. One way to address this is to adopt a regulatory culture of requiring corroboration by Crown of relevant assurances.
31. My First Witness Statement notes that the GW Commission has resolved to increase the randomisation and unexpectedness of certain inspections and audits of the Perth Casino, which if implemented would in my view materially change the tone of the regulatory relationship.

Emerging Risks

Pressure on Casinos to find alternative revenue

32. The current prohibition on junket play, and the impacts of Covid-19, mean that casinos are exploring alternative (presumably, domestic) markets and opportunities for revenue.
33. Obviously this risk could inform developments which encourage problem gambling, but as Crown is a sophisticated business in my view it is necessary to consider this risk more broadly.

¹² DLG.0001.0002.0001_0036, [124].

34. This risk could lead to increased domestic (not international) organised crime involvement in Perth Casino.
35. This risk could be addressed by an enhanced forensic capacity within the GW Commission to analyse where Perth Casino revenue is coming from, followed by appropriate directions or interventions with respect to problematic sources of revenue. It also can be addressed by redoubling our efforts with respect to problem gaming.
Capacity to undertake probity audit of parties interested in Crown assets
36. Another emerging risk is of the GW Commission having insufficient capacity to undertake or procure a proper and comprehensive probity audit of any of the parties who have expressed, or may in future express, an intention to acquire interests in, or assets from, the Crown Group (e.g., the Blackstone Group or, very recently, Star Entertainment Group).
37. The DLGSC has been placed under a significant burden by Covid-19 matters which in turn affects the capacity of the GW Commission.
38. As I indicated in my evidence to the Royal Commission on 10 May 2021, this risk has not materialised at this time, but I apprehend it might, and I am comfortable that there are budgetary steps I could take to meet this need if it exceeded the Department's capacity.¹³

Whether the existing regulatory framework is adequate

39. In my view the regulatory framework is largely fit for the purposes of consumer protection, accurately collecting casino tax and fees payable, ensuring that the casino operation maximises tourism and the amenity of the surrounding area and ensuring gaming integrity. Those and related purposes have, since the inception of the Commission, been the core known or understood purposes of the framework.
40. In my view, the GW Commission clearly was not established as a comprehensive law enforcement or 'crime fighting' body. This is an important fact to bear in mind in considering the appropriateness of the existing regulatory framework.

¹³ PCRC Transcript Day 03 20210510, p 63 [10]-[20].

41. At this stage I cannot see real merit in any proposal to substantially reconstitute the GW Commission or a successor agency as a law enforcement body or a body having many of those powers. It seems to me, at least, that such a change would be unnecessarily extensive having regard to the powers of existing law enforcement agencies and that the more pressing issue here seems to be a lack of clarity in the responsibilities of the various agencies regulating Crown.
42. As I observed in my First Witness Statement and in my evidence to the Royal Commission on 10 May 2021, until recently the purpose of the regulatory framework was unduly narrow with respect to RISKS.¹⁴ In my First Witness Statement I said that in my view the particular circumstances before the GW Commission were such that there was not sufficient cause for it to review the propriety of Crown of its own volition, but if the Commission had better understood the surrounding circumstances I may have thought differently.¹⁵
43. In my experience the GW Commission has had a good relationship with WA Police, but on reflection there may be room for improvement in that space. Some possible improvements could be the creation of a formal memorandum of understanding (potentially alongside the Australian Transaction Reports and Analysis Centre) and of a working group comprising WA Police, DLGSC and GW Commission officials.
44. In my First Witness Statement and my evidence to the Royal Commission on 10 May 2021 I said that I could not see real merit in establishing an independent casino (only) regulator. Beyond the reasons I gave then for that view,¹⁶ I add now that my opinion, reaffirmed by my experience of the 2017 Machinery of Government changes, is that regulators should not be 'siloed'. The Machinery of Government changes required me to bring together regulators from

¹⁴ Defined in Schedule 1 to the Witness Summons of 23 April 2021 that is addressed to me as '[r]isks associated with junket operations, money laundering, cash and electronic transactions at the Perth Casino and criminals infiltrating casino operations'; PCRC Transcript Day 03 20210510, p 63 [10]-[20].

¹⁵ DLG.0001.0002.0001_0036 to DLG.0001.0002.0001_0037.

¹⁶ Including that the scale of the Western Australian market does not seem to justify a single bespoke regulator; and that it seems more efficient to simply increase the resources and capacity of the GW Commission or any successor agency emerging after this Royal Commission: DLG.0001.0002.0001_0033, [111] - DLG.0001.0002.0001_0034, [117]; PCRC Transcript Day 03 20210510, p 83 [10].

racing, gaming and liquor, local government, arts, sport and communities. I have found that development to be positive in numerous respects, such as inspiring the transfer of knowledge and creation of new efficiencies.

45. Accordingly, in my view, provided it is adequately resourced it is better for the GW Commission or a successor agency to regulate gaming and wagering activity generally. The creation of two (or more) gaming and wagering regulators, with at least one dedicated to casino regulation, entails the risk of further 'siloing' an already niche regulatory field.

Whether there are inadequacies in the existing regulatory framework which need to be addressed and how they should be addressed

46. To the extent that I have answered this question in discussing extant and emerging risks, by identifying inadequate areas in the regulatory framework and proposing solutions or improvements, I repeat those remarks here.

Legislative amendments to relevant legislation

47. The DLGSC is reviewing the amendments to NSW legislation proposed by the Bergin Report and assessing whether comparable, similar or additional amendments should be made to the relevant WA legislation.
48. This analysis is not complete. However, at a preliminary stage, it seems a number of the amendments proposed in the Bergin Report may be transferrable to this jurisdiction in comparable or similar form.

Independent Chairperson

49. I have proposed in my First Witness Statement and my evidence to the Royal Commission on 10 May 2021 that the role of Chairperson of the GW Commission should ideally be an independent role, or in any event not tied *ex officio* to the role of Director General of the DLGSC.¹⁷ Some of the issues informing this view are:
 - a. the possible conflict of interest in the Chairperson advocating for the GW Commission where its interests do not align with those of the DLGSC; and

¹⁷ DLG.0001.0002.0001_0016, [50]; PCRC Transcript Day 03 20210510, pp 23 [45], 79-80.

- b. the fact that an independent Chairperson could devote greater time and capacity to their duties.

Enhanced GW Commission independence

- 50. I anticipate that the independence of the GW Commission, in particular the degree to which it is bound to comply with a Ministerial direction or seek Ministerial approval for a decision(s), will be assessed during the course of the Royal Commission.
- 51. At this stage I have no firm view, and have not specifically turned my mind to whether, the GW Commission or a successor agency should be fully independent, or just substantially more independent than is currently the case.
- 52. I note that such a question raises the broader philosophical issue of the degree to which control and regulation of an important State institution (here, the casino) should be left to the administrative and/or political branches of government.
- 53. In my view, as presently informed, the amount of the GWC's independence is and was not a relevant, or materially relevant, causative factor of the issues presently being examined by the Royal Commission. However, even if that view is correct, there may be some other reason why the GWC's independence should or should not be adjusted.
- 54. It seems likely that the question of the proper independence of the GW Commission or its successor should to some degree be considered on a case-by-case basis by assessing each provision providing for Ministerial control or approval in its statutory and practical context.

Miscellaneous matters

- 55. A reform that could reduce overall risk is a stricter cap on cash deposits into gaming accounts or cage transactions, for instance to under \$10,000. Any such cap in my view needs to be supported by economic analysis so that it does not unnecessarily adversely affect Perth Casino revenue and consequentially its viability as an important Western Australian business.
- 56. Fines and penalties for breaches of the regulatory system could be enhanced.
- 57. The inspectorial presence at the Perth Casino could be revisited to ensure it is optimal, noting that such a reform would be unlikely to deal with RISKS specifically but might improve the culture of compliance.

58. The GW Commission could benefit in my view from periodic consulting, training or upskilling in modern criminal methods, so that it can keep up with the increased (particularly technological) sophistication of illegal activities.
59. As the Royal Commission may be aware, I am retiring later this year. The incoming Director General, Lanie Chopping, is likely to develop the views of the DLGSC on casino regulation including the work referred to at paragraph [47] of this statement. The Royal Commission may wish to confer with her about those matters in the future.

Register of Gifts and Interests

60. Paragraph [129](b) of my First Witness Statement refers to a register of gifts and hospitality which I caused to be maintained. A copy of the register up to 30 June 2020 is attached to this statement.¹⁸

I declare that this statement is true and correct to the best of my knowledge and belief and that I have made this statement knowing that if it is tendered in evidence I will be guilty of a crime if I have wilfully included in this statement anything which I know to be false or that I do not believe is true.

Contains sensitive information

Witnessed at Perth

On 23.06.2021 at 9.40am

Contains sensitive information

¹⁸ See document DLG.0001.0002.0010.