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2 December 2021

Solicitors Assisting the Perth Casino Royal
Commission
Corrs Chambers Westgarth
Level 6, Brookfield Place Tower 2
123 St Georges Terrace
Perth WA 6000

Attention: Kirsty Sutherland / David Yates

Dear Colleagues

Perth Casino Royal Commission (PCRC) – Further Submissions on Regulatory Framework

- 1 We refer to the PCRC's invitation to the interested parties on 10 November 2021 to make written submissions relating to the Regulatory Framework Discussion Paper (**Discussion Paper**).
- 2 We also refer to Crown's previous submissions dated 30 April 2021 relating to the regulatory framework as set out in paragraphs 8 to 11 of the Terms of Reference (**Initial Submissions**).
- 3 Crown understands that the Discussion Paper contains a high-level overview of issues relevant to Term of Reference 11 and is intended to provoke commentary about the current and future regulatory framework governing the casino in Western Australia.
- 4 Crown acknowledges the significance of these issues to the future of casino regulation in Western Australia. In light of the complexities involved, Crown is not currently in a position to provide its final submissions to the PCRC. There may be some topics that are more appropriate for the GWC and the Department to comment upon first. In that context, Crown respectfully reserves the right to address further aspects in greater detail as part of its closing submissions to the PCRC, particularly after having reviewed the PCRC's written closing observations to be provided by 17 December 2021.
- 5 Given the PCRC's request for immediate views, Crown wishes to take this opportunity to provide the PCRC with its preliminary broad based observations in response to the Discussion Paper, particularly in relation to the following key areas:
 - (a) Approach to regulation;
 - (b) Observations on regulatory models; and
 - (c) Specific topics raised by the Commission:
 - (i) risk assessment;
 - (ii) responsible gaming and harm minimisation;
 - (iii) inspectors;
 - (iv) funding;

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- (v) junkets; and
- (vi) remote betting.

6 In the event that the PCRC intends to provide this response to any other party, or to the public at large (via publication on the PCRC's website), Crown respectfully requests that it be given reasonable prior notice. Crown would be pleased to be afforded an opportunity to comment on the views of the GWC and the Department.

Approach to regulation

- 7 As set out in its Initial Submissions, Crown sees merit in a regulatory environment that:
- (a) has an independent, purpose-built, and well-resourced regulator;
 - (b) ensures the regulation of casino operations in Western Australia is consistent with global industry best practice;
 - (c) introduces a degree of unification and harmonisation of the regulatory environment across Australia, either holistically across state regulators or with respect to discrete issues such as licensing, ownership approval thresholds, and exclusion registers;
 - (d) critically, enables the regulatory regime to evolve consistently with the pace of change in technology, customer behaviour and the nature of threats from criminal activity; and
 - (e) improves and formalises information sharing between the casino operator and relevant law enforcement and government agencies.
- 8 Further to paragraph 7(c) above, Crown sees great merit in a regulatory environment in which the state regulators across Australia are encouraged to align policies and procedures in relation to:
- (a) licensing and accreditation of:
 - (i) employees, suppliers, and associated entities;
 - (ii) gaming equipment; and
 - (iii) operating systems;
 - (b) probity checks and processes; and
 - (c) information sharing between regulators and law enforcement agencies (e.g. patrons that may be on a blacklist).

Observations on Regulatory Models

Gaming and wagering industry wide regulator

- 9 There is merit in a framework where the regulator is responsible for gaming and wagering on an industry-wide basis. There are many regulatory issues that overlap the gaming and wagering areas. Having one regulatory body addressing both areas is likely to result in more efficient regulation with integrated risk-based compliance methodologies and risk mitigation. A regulator following the emerging technologies and their associated risk profiles across the breadth of the gaming sector will be better placed to assimilate its knowledge and learnings about those technologies into a comprehensive risk and control regime on an industry wide basis.
- 10 Implementing a stand-alone regulator raises issues about the regulation of the rest of the gaming industry in Western Australia; for example, online casinos and lotteries. How will these industries fit into the new regulation landscape? There is a risk of creating an inconsistent approach or outcome in regulation across the gaming and wagering industry.

Independent well-resourced regulator

- 11 Having a regulator with more rather than less independence from the Department is beneficial from a resourcing perspective. Having the regulator reliant upon resources of the Department or the casino regulation function being embedded in the Department risks producing resourcing and budgetary constraints and conflicts, which may see the requirements of casino regulation subordinated to other focus areas within the Department from time to time.

Scale of operations

- 12 The Perth casino is not large enough to justify a stand-alone casino regulator. The Discussion Paper refers to both Victoria and Singapore as jurisdictions in which the stand-alone regulator model was (or will be) implemented. It should be noted, however, that Western Australia, as compared to Singapore and Victoria, has a significantly smaller casino and gaming landscape. Singapore has two large casinos, and Victoria has over 27,300 community gaming machines and over 500 independent gaming venues in addition to its large casino.
- 13 There will necessarily be duplication in the resources and increased costs needed to support a stand-alone regulator for wagering only, in addition to casino regulation.
- 14 Crown's preliminary observations on some of the specific elements of each of the models are as follows:

Objects and/or principles clause

- 15 The inclusion of an objects and/or principles clause in the regulatory framework would ensure all parties across the industry are working consistently towards the same objectives.
- 16 It is desirable that the same objects be adopted across the gaming and wagering industry. For example, specific gaming and wagering objects based on gaming integrity, responsible gaming in a safe environment, harm minimisation, maintaining the probity and integrity of persons engaged in the industry and preventing criminality in connection with gaming and wagering could be included as well as broader objects such as promoting tourism, employment and economic development generally in Western Australia.

Constitution of the regulator

- 17 In the interests of independence and accountability, there would be value in appointing a chairperson independent of the Department, and that such appointments (including appointments to the roles of the deputy chairperson, CEO, CFO and other members of a regulator) be subject to time limits to facilitate renewal and introduce members with fresh perspectives and expertise.
- 18 Whilst legal qualifications might be beneficial, for example with respect to the role of chairperson, it would also be desirable for individuals to possess broad regulatory and administrative expertise. With respect to other members of the regulator, a mix of regulatory, financial, human services and gaming and wagering industry experience is desirable.
- 19 Crown considers that additional competent resources to support the CEO and CCO would be beneficial (particularly where the roles cover the entire gaming and wagering industry) and it would be beneficial that the CCO be contactable by the public in relation to gaming concerns which would increase the regulator's accountability in accordance with community expectations.

Clear delegation of powers

- 20 There would be utility in any regulatory regime prescribing for the delegation of powers and the maintenance of a register of delegations to promote clarity in operations and engagement with the regulator, encouraging efficiency and enhancing transparency. There is benefit in such delegation of powers being articulated with precision in a written instrument setting out the scope, conditions,

content and purpose of the delegation. Preferably, the written instrument would be available to Crown so that in its dealings with the regulator it is aware of who holds and is exercising the relevant powers and functions.

Prescriptive legislation

- 21 It is desirable that flexibility be built into the regulatory framework rather than a prescriptive approach. Whilst a prescriptive approach to regulation has potential to deliver clarity and certainty, it naturally reduces the flexibility to accommodate changes in the industry and adopt improvements in global industry best practice and respond to emerging risks in a rapidly developing gaming landscape. This is particularly so in relation to responsible gaming and harm minimisation measures (discussed further below) as well as the benefits and challenges arising from technological developments including:
- (a) cash free systems, digital currency and block-chain payment systems;
 - (b) enhanced functionality of cards;
 - (c) improvements in security systems;
 - (d) evolution of data collection systems and data mining opportunities;
 - (e) developments in games and gaming delivery systems; and
 - (f) increases in cyber security risk.
- 22 Such flexibility could be supported by a defined set of principles and informed by regular risk assessment reviews conducted by the regulator with input from subject matter experts as discussed below. Crucial in the success of this element would be the need for individuals appointed to the regulator (or otherwise engaged by the regulator) to possess appropriate skills and experience necessary to identify emerging risks.

Post-implementation Review

- 23 Whichever approach is taken, Crown suggests that there should be legislative provision for a review of the model to be undertaken at a sensible time after implementation to consider the performance of the model against the objectives that led to its recommendation.

Preliminary consideration of specific topics and areas of regulation

Risk assessment

Regulator-driven risk assessments and risk management plans for the Perth Casino

- 24 Crown considers that there are two separate types of risk assessment areas:
- (a) first, the "internal" risk assessment undertaken within the operator in accordance with its risk management policies and procedures (which addresses 'business' risks including financial crime risk, customer risk and operational risk); and
 - (b) second, the risk assessment undertaken by the regulator, ideally with an external third party (with a focus on developing its own policies, guidelines and appropriate resource allocation needed to regulate the industry and operator).
- 25 As to the internal risk assessment, Crown is of the view that responsibility for the conduct of the internal risk assessment should be undertaken and managed by the operator. Operator driven risk assessment is most efficient in addressing specific internal nuances of the business.
- 26 An industry wide risk assessment, conducted by the regulator (or by an external party with appropriate skills), should inform particular principles and rules to be applied by the industry. Crown

considers that this kind of risk assessment would be beneficial to the wider gaming industry, and would usefully function in parallel with the separate and distinct operator-run risk assessment.

- 27 Further, it would be beneficial for such assessment to be conducted by an independent external party rather than the regulator, to avoid compromising the regulator's independence as well as the effectiveness and objectivity of any assessment and risk management plan.

Licensee-driven risk assessments and risk management plans subject to regulatory approval

- 28 Crown considers that there would be challenges in a regulatory framework prescriptively legislating for a licensee to undertake risk assessments which would be subject to approval by the regulator. This is because, first, the independence of the regulator may be compromised. Secondly the operator 'owns' its risks and must manage those risks in accordance with its risk management strategy, policies and procedures (and in alignment with applicable international standards). The operator has the greatest exposure to those risks and has an intimate understanding of the ways in which it can address those risks (in its broader business context). This is consistent with the risk assessment approach currently required under Australia's Anti-Money Laundering/Counter-Terrorism Financing Act and Rules. Thirdly, Perth casino is part of an integrated resort complex as well as being part of a larger corporate group. The gaming risks related to the casino part of the business are integrated to varying degrees with the risks of the resort complex and the risks of the broader corporate group. This integration need to be understood and taken into account in the risk management process. Ultimately, the Board of the operator and each of its directors have responsibilities under the Corporations Act for deciding the nature and extent of risks to which the company is prepared to be exposed and must be able to discharge those responsibilities within an appropriate regulatory framework.

- 29 Crown considers that the role of the regulator should be independent and quite separate from the operator's internal management of its risk management strategy, policies and procedures. The regulator's role is to set the standards to which the operator is to comply and monitor and enforce compliance with those standards. There is scope for a regulator to have an oversight role where the regulator requires the operator to have a risk management framework with certain specified elements, and conduct an audit function to periodically ensure the effective operation of that framework. This would not be inconsistent with the regulator maintaining independence, and would save unnecessary duplication in regulatory cost.

Responsible gaming and harm minimisation

- 30 Crown recognises that, as community standards and expectations evolve and ongoing research is conducted, best practice in relation to responsible gaming and harm minimisation measures continues to evolve. Due to the rapidly changing gaming environment, regulation in this area should be informed by the following:
- (a) evidence-based research and expert assessment to ensure that a regulator is equipped to identify and address gaming harm effectively;
 - (b) the opportunities to develop and deliver data for the purposes of data-based research (for internal and external consumption);
 - (c) ongoing data monitoring to avoid potential pitfalls of assuming that current programs are effective;
 - (d) active engagement with experts to ensure best practice; and
 - (e) evaluation of gaming harm in the context of broader public policy, including the consideration of norms, values and culture in the community.

31 Whilst it is desirable to articulate objects and principles in this area, Crown considers that regulation should not be prescriptive as it is likely to constrain the flexibility of the regulator and the operator to respond quickly and appropriately to the developments in this area as they emerge from the evidence gathered and analysed by experts over time. At the very least, regulation in this area should not be prescriptive until the necessary evidence-based research and expert assessment has been undertaken.

Inspectors

32 Crown believes that there are advantages in inspectors being regularly present on the casino gaming floor. The inspector's role could include the following responsibilities:

- (a) attending to customer management, for example assisting with the resolution of disputes (as required) and assisting with security incidents;
- (b) conducting casino audits;
- (c) monitoring the integrity of the gaming, for example observing table games; and
- (d) identifying and appropriately escalating issues to Crown so that risks identified can be addressed quickly and efficiently.

33 It would be desirable that:

- (a) the scope of the inspectors' roles and powers be clearly defined and prescribed;
- (b) there be a prescribed list of required experience, skills and training necessary for employment as an inspector; and
- (c) any expansion of inspectors' functions to include ascertaining whether particular criminal activity is occurring and removing a person's licence to remain at the casino as raised in the Discussion Paper be considered with caution. If inspectors observe harmful or risky activities they should notify the operator of their concerns with the operator retaining the responsibility to act on those concerns by making any operational decisions including, for example, any decision to bar a patron. This is more in keeping with the operator's role and responsibility as licensee who might be expected to have greater information and systems in place to assess such behaviour as a whole.

Funding

34 Crown submits that regulatory efficiency is best promoted by requiring casino regulators to obtain their funding from appropriations which are subject to both Ministerial and public audit oversight and accountability.

35 The appropriations can be taken from the funds received by the State from licence fees and casino revenue tax.

36 Allocating licence fees as the sole means of funding the regulator in combination with the regulator fixing those fees creates a real risk of inflating the costs of regulation. A requirement to proceed through a normal appropriations process justifying its expenditure to the Minister and being subject to public audit is most likely to lead to the regulator being appropriately resourced.

37 The level of licence fees is more appropriately set by Government (i.e. the Minister) after appropriate consultation with, at the very least, the licensee and could be expected to take into account the casino revenue tax being recovered, the overall tax burden of the operator as well as broader economic policy considerations for Western Australia (and not just the cost of regulation).

38 Seeking to prescriptively define the circumstances in which the licence fee may be altered risks constraining the responsiveness of the licence fee to unforeseen and emerging situations.

Junkets

- 39 As noted in the Discussion Paper, the Casino Control Act provides for regulations to be made for and with respect to regulating or prohibiting the conduct of junkets. Regulations relating to junkets were repealed in June 2010.
- 40 On 17 November 2020 Crown issued a release to the ASX stating that the Board had determined that Crown will permanently cease dealing with all junket operators, subject to consultation with gaming regulators in Victoria, Western Australia and New South Wales. It is also noted that Crown will only recommence dealing with a junket operator if that junket operator is licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates.
- 41 On 23 February 2021 the GWC issued a direction proscribing the operator from participating in junkets, Premium Player Activity or Privileged Player Activity.
- 42 As noted in the *Interim Report on the Regulatory Framework* dated 30 June 2021 at [365]-[366], an unconditional legislative prohibition on junkets does not allow for any possible benefits from junkets to be enjoyed by the State, including increased activity at the casino and taxation revenue. A more balanced approach is represented by the Singaporean approach which provides for the regulator to approve specified dealings with junkets by regulatory supervision. The advantage of this approach is that it offers flexibility in that the licensing regime permits a case-by-case evaluation of the risks associated with a particular junket operator. Retaining the flexibility in the regulatory regime to allow the regulator to accommodate any future developments in this area would be sensible. The regulator would need to be convinced that the risks associated with such activities are addressed.
- 43 In relation to Premium and Privileged players, Crown considers that the activities of those players possess quite a different risk profile to junkets and junket operators. A broad prohibition without flexibility in the legislation would deprive the casino and Western Australia of the benefits of these foreign visitors in the future. Crown considers that in the future there may be utility in developing an enhanced due diligence regime (and other controls) in consultation with, and approval of, the regulator to manage the risks around Premium and Privileged players.

Remote betting

- 44 Crown considers that remote gaming poses great risks to gaming integrity, particularly where remote betting enables gaming by agents on behalf of unidentified and unverified third parties. Crown sees merit in a legislative prohibition on remote betting or betting by agent.

Yours sincerely



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