



Department of
Local Government, Sport
and Cultural Industries

Submission – Perth Casino Royal Commission Discussion Paper – Regulatory Framework

Date of submission: 6 December 2021

Executive Summary

1. The Department of Local Government, Sport and Cultural Industries (the **Department**) understands that effective regulatory frameworks are underpinned by solid legislative foundations, with clear purpose, objects and principles. Contemporary regulatory models adapt and evolve with the sectors they regulate and respond to emerging risks and issues. They are clearly articulated through policy, guidance and standards and are administered consistently with the principles of better regulatory practice, in that they are transparent, risk-based, outcomes-focused, efficient and evidence-based.
2. The type of regulatory delivery model (how the regulator is structured) required to implement a regulatory framework is typically informed by the size and complexity of the regulated sector. There is no one size fits all model. Ensuring contemporary and robust regulatory practice in applying a regulatory model is fundamental to effective delivery and achieving anticipated outcomes. The correct regulatory culture, governance and supporting processes, procedures, capabilities, and digital information systems are needed to ensure the regulatory framework is effective in delivering the outcomes expected by the community.
3. The Department participates in regulatory reform programs at a State and National level, including 'Streamline WA' and the National Regulators Community of Practice. In addition to supporting the Gaming and Wagering Commission (**GWC**), in regulating the gaming and wagering sectors, the Department regulates the liquor and local government sectors in Western Australia. The Department is cognisant of, and guided by, the recommendations arising from the 2017 State Government Service Priority Review, into the public sector in respect of regulation.
4. The legislative framework in Western Australia for a casino is unique. It is the only State or Territory which regulates casino operations and related gaming through a sole licensee or, in effect, a statutory monopoly. While insights can be gained from other jurisdictional frameworks, any revised regulatory framework and supporting regulatory delivery model, needs to be tailored to the Western Australian context.



5. The Department acknowledges that the current legislative framework is established under multiple legislative instruments, complicated and could greatly benefit from review and modernisation. The inclusion of clear objects and principles in a consolidated contemporary legislative framework will set a solid foundation, from which to rebuild an effective and efficient regulatory framework.
6. The Department remains committed to effective and efficient regulation and working collaboratively with the GWC to strengthen governance, accountability, performance, and culture.
7. The GWC and the Department have progressed a range of forward work programs,¹ including in governance and regulatory reform, to address the issues identified by the Royal Commission in its *Interim Report on the Regulatory Framework* (the **Interim Report**). As these reforms progress, it has become apparent, that many of the issues identified in the Interim Report could be managed by simplifying the legislative framework for casino regulation, clearly articulating the supporting regulatory model, refining the regulatory delivery model and implementing more contemporary governance and regulatory practices.
8. In light of this, the Department considers that any of the regulatory delivery models or hybrids of those models proposed by the Royal Commission, could be effective in regulating the casino sector in Western Australia, provided that the right regulatory model, funding, governance and regulatory practice is adopted.
9. The regulatory delivery model, whereby departments are responsible for the administration of State legislation and supporting regulatory frameworks, is currently the most common regulatory delivery model across the Western Australian public sector. The Western Australian public sector effectively regulates a range of sectors under this kind of model.

Limitations

10. This submission is made by the Department and does not represent the views of the broader Western Australian public sector, or the current or intended policy directions of the State Government.
11. This submission does not represent the considerations of the GWC, which is represented separately before the Royal Commission.
12. The Department is informed by existing regulatory frameworks and public sector policy including the Machinery of Government changes in 2017 and regulatory reform processes. In particular the Machinery of Government reforms and regulatory reforms are informed by the

¹ Statement of Lanie Chopping, 31 August (DLG.0001.0009.0235) [24], [43]-[45], [56]-[64]; GWC Strategic Work Programme 2021-2022, (DLG.0001.0009.0023); Statement of Germaine Larcombe, 31 August (DLG.0001.0011.0013) [52]-[53] and generally the oral evidence of Lanie Chopping and Germaine Larcombe (HR3, 2 September 2021).

Working Together, One public sector delivering for WA: Service Priority Review – Final Report to the Government of Western Australia (Service Priority Review) chaired by Mr Ian Rennie.

13. In addition, in relation to regulatory design, delivery and evaluation, the Department of Treasury's Better Regulation Program and guidance² and the 'Streamline WA' initiative informs the Department's response to the Royal Commission's Discussion Paper - Regulatory Framework (**Discussion Paper**).

Part One

Regulatory theory

14. Part One of the Discussion Paper outlines 'concepts of regulatory theory'. In this submission, the Department provides clarification and further information on the components of a contemporary regulatory framework, from a regulator's perspective.
15. Regulatory frameworks consist of legislation, regulatory models, supporting regulatory delivery models and regulatory practice.
16. A solid legislative framework (i.e., Acts and regulations) underpins any effective regulatory framework. The Department of Treasury's Better Regulation Program outlines that regulation should be designed to:
 - support policy objectives and deliver maximum net benefits to the community;
 - allow for risk-based regulatory assessments and decision making focused on outcomes;
 - provide clarity and certainty for affected parties, recognising that different groups may be affected differently;
 - avoid duplication or conflict with other existing or proposed regulations; and
 - allow for well-considered, efficient and effective administration and enforcement arrangements.³
17. The regulatory model typically refers to the manner or lens through which the regulator applies the legislation it administers. The regulatory model associated with a regulatory framework can vary. All regulatory models consider risk. The appropriate regulatory model for a sector is informed by several factors, including: the legislative framework (the primary factor); the size and complexity of the sector regulated; the inherent risks associated with activities being regulated; and the relative maturity of the regulated entities.
18. Fit-for-purpose regulatory models can develop and evolve over time. As the maturity of a sector grows, so too must the associated model. For example, a sector's regulatory model might begin life as a prescriptive rules-based approach, but as the sector and regulator grows and matures, and the understanding of the associated risks evolve, the regulatory model can

² Government of Western Australia, Department of Treasury, *Better Regulation Program: Information paper for agencies*, (Web page, March 2020), <<https://www.wa.gov.au/system/files/2020-03/agency-information-paper-better-regulation-program.pdf>>.

³ *Ibid*, p 4.

transition from prescriptive to risk-based and eventually transition to an outcomes-based or even a self-regulation model.

19. The *Environmental Protection Act 1986 (WA)* provides an example of this. The enabling legislation is administered by a principles-based regulatory model in respect of the clearing of native vegetation, an outcomes-based regulatory model in respect of environmental impact assessment and a risk-based regulatory model in respect of the regulation of emissions and discharges. All these regulatory models are guided by the same objects and principles enshrined within the legislation.
20. The regulatory model is typically articulated through regulatory policy, guidelines, and standards. Modern regulators typically outline their regulatory models through the publication of regulatory approach documents or regulatory position statements. These position statements essentially articulate how the regulator intends to regulate, what type of regulatory model is being applied, how it will be applied, what the regulated sector can expect and how the effectiveness of the regulatory delivery will be measured. An example of this is the regulatory approach published by the Victorian Commission for Gambling and Liquor Regulation.⁴ The regulatory approach typically outlines the regulatory cycle of activities undertaken by the regulator to administer the legislation. The Department of Water and Environmental Regulation's regulatory approach⁵ is an example of a regulatory cycle, encompassing the activities undertaken to ensure the objects of the legislation are met.
21. In Western Australia, there are regulatory frameworks governed by statutory bodies or statutory positions who are charged with administering the legislation which operates across industries or sectors. The current Gaming and Wagering Regulatory Framework is an example of this, whereby a statutory body is established under the legislation and charged with administering the legislation to regulate sectors. Other examples of this in the Western Australian public sector include the Consumer Protection Commissioner (statutory position), the Western Australian WorkSafe Commissioner (statutory position), the Economic Regulation Authority (statutory board and Chief Executive Officer) and WorkCover WA (statutory board and Chief Executive Officer). This type of regulatory delivery model appears to be prevalent, where the legislative remit crosses multiple sectors or whereby the regulator has multiple complex functions to deliver.
22. Regulatory practice, also known as 'regulatory craft', encompasses the culture, people, processes, and systems supporting the regulatory model. This includes governance, oversight, standards policies, procedures, workforce capability, supporting digital information systems and, most importantly, culture that underpins the delivery.

⁴ Regulatory Approach, (Web page, November 2021), <<https://www.vcglr.vic.gov.au/about-us/regulatory-structure/regulatory-approach>>.

⁵ Water and Environmental Regulation our regulatory approach, (Web page, November 2021), <<https://www.wa.gov.au/government/publications/water-and-environmental-regulation-our-regulatory-approach>>.

State Government regulatory reform

23. There are over 10 major departments across the Western Australian public service with regulatory responsibilities across a range of sectors. A range of regulatory frameworks and delivery models are applied across government.
24. The Department is also responsible for regulating the liquor and local government sectors, as well as supporting the GWC, in the execution of its functions in respect of the gaming and wagering sectors.
25. Regulatory reform by the State Government and government agencies is guided by the Department of Treasury's Better Regulation Program. The Better Regulation Program's principles, which are outlined at paragraph [16], provide broad and high-level guidance on the fundamental outcomes to be achieved through regulation (being legislation).
26. As part of public sector reforms, in October 2017, the State Government's Service Priority Review,⁶ chaired by Mr Iain Rennie, was released. The panel examined the functions, operations, and culture of the public sector, with the aim of driving lasting reform.
27. The Service Priority Review acknowledged that new approaches in designing and implementing regulation and better ways of working can drive economic and social benefits.⁷ The panel said, "*A well-designed and well-implemented regulatory framework is a powerful tool of analysis and action for governments and the public sector seeking to build a robust economy and encourage business creation, investment and employment*".⁸
28. The Service Priority Review indicated that it is widely accepted that "*outcome-based and risk-based regulation is more efficient and effective than 'command and control' systems for both regulators and regulated entities*".
29. The Service Priority Review proceeds from the understanding that a risk-based regulator can identify and assess risk to inform its decisions on regulatory matters. Risk-based approaches can reduce regulatory burden for people and businesses that comply with the rules and should lead to lower costs through efficient resource allocation by the regulator. Outcome-based regulatory frameworks specify required outcomes, rather than prescribing the means by which they must be achieved. Outcome-based regulation allows people and businesses subject to regulations, to decide themselves how best to allocate resources to achieve compliance, driving efficiency and encouraging innovation.
30. The Service Priority Review recommended that the State Government should:
 - a. "*drive regulatory approaches that are risk-based and outcomes-focussed*"; and

⁶ Rennie, I, Seares, M and Dillon, M, *Working Together, one public sector delivering for WA: Services Priority Review – Final Report to the Government of Western Australia* (Web page, October 2017), <<https://www.wa.gov.au/sites/default/files/2019-07/Service%20Priority%20Review%20%20Final%20Report.pdf#:~:text=The%20Service%20Priority%20Review%20recognises%20the%20contribution%20of,of%20their%20time%2C%20insights%20and%20vision%20for%20reform>>.

⁷ Ibid, p 17.

⁸ Ibid, p 41.

- b. take a “*regulatory stewardship approach that proactively shifts the focus, in managing and assessing the State’s stock of regulation, from burden reduction to asset management*”.

In doing so, the panel stated that it will lead to appropriately context-relevant solutions, increasing the focus of regulation in high-risk contexts and reducing it or abolishing it altogether where risks are low.

31. More recently, ‘Streamline WA’ was established by the State Government to make it easier to do business in the State, by improving regulation and regulatory practice and deliver better services and outcomes for Western Australians.⁹ The approach is designed to improve the way regulation is developed and applied, to ensure that:
- Western Australians are confident that risks are well managed;
 - regulatory requirements are clear and easy to understand;
 - decision-making addresses risks and focuses on outcomes;
 - decision making is timely and transparent;
 - regulation consistently applied and reduces overlap and duplication;
 - a customer focused approach to service delivery is adopted; and
 - Government information, applications and processes are available online for maximum efficiency.

Western Australian Public Sector - Machinery of Government

32. In 2017, Machinery of Government reforms occurred in the Western Australian public sector.
33. Under the Machinery of Government reforms, the former Department of Racing, Gaming and Liquor (a small standalone agency of approximately 100 people) was amalgamated with the Department of Culture and the Arts, the local government functions of the Department of Local Government and Communities, and the Department of Sport and Recreation. As part of this process, two statutory bodies, being the Gaming and Wagering Commission and the Combat Sports Commission,¹⁰ were aligned to and are supported by the Department in executing their regulatory functions.
34. The Service Priority Review noted that the Western Australian public sector is made up of a range of statutory and non-statutory entities. Statutory and non-statutory boards and committees are used as a mechanism to provide independent and expert advice to government and, where appropriate, to provide management oversight of critical government functions. However, it was considered that growth in the number of entities had driven levels of complexity and administrative process that worked against effective governance and efficient public administration. Since 2009, the number of boards and bodies across the Western Australian Public Sector has reduced from 1,270 to 294 in 2017.¹¹

⁹ WA Department of Treasury, *Streamline WA* (Web page, 2021), <<https://www.wa.gov.au/government/streamline-wa>>.

¹⁰ Sports Combat Commission, Annual Report 2020-21, (Web page, 2021), https://www.dlgsc.wa.gov.au/docs/default-source/sport-and-recreation/combatsportscommission/combatsportscommission-2020-21-annual-report.pdf?sfvrsn=7e01221f_1>.

¹¹ *Ibid*, p 91.

Western Australian regulatory context – Casino

35. While there may be lessons to be learned from how casinos are regulated in other jurisdictions, there are several ways in which gambling, and how it is delivered and regulated, are unique in Western Australia. Any changes to the legislative framework or associated regulatory framework, and regulatory delivery model, needs to consider those unique features.
36. The current regulatory framework for Western Australia’s casino was developed with an awareness of the risks associated with casinos.¹² Prior to the establishment of a casino in Perth, two government inquiries^{13,14} identified the risks of criminal activity and gambling harm being associated with casino operations.^{15,16}
37. The Interim Report observes the key features of the Western Australian framework are:
- a casino agreement between a public company and the Minister, ratified by an Act of Parliament;¹⁷
 - grant of a casino gaming licence;¹⁸
 - controls on authorised gaming;¹⁹
 - the casino’s contribution to the cost of its regulation²⁰ via payment of casino tax and licence fee to the State, and other economic benefits;²¹
 - the need for probity of the casino licensee, associated persons and employees;²²
 - the need for public confidence and trust in gaming operations;²³
 - potential tension for government between its responsibility for regulating casino activities and the impact of growth on State revenues arising from casino tax;²⁴ and
 - an independent authority to regulate specified aspects of the casino and gaming.²⁵
38. The features that are unique to gambling and its regulation in Western Australia are:
- there is currently only one licensed casino;

¹² Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee, reports (1983) [PUB.0004.0002.0010] 41 [80].

¹³ Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee; Western Australia, Royal Commission into Gambling.

¹⁴ Perth Casino Royal Commission, Interim Report on the Regulatory Framework: 30 June 2021, p 31, paragraphs 114(b) and 118.

¹⁵ Ibid.

¹⁶ Ibid, p 32, paragraph 124.

¹⁷ Ibid, p 32, paragraph 124.

¹⁸ Ibid, p 32, paragraph 125.

¹⁹ Ibid, p 31, paragraph 121.

²⁰ Ibid, p 31, paragraph 127.

²¹ Ibid, p 32, paragraph 126.

²² Ibid, p 32, paragraph 126.

²³ Ibid, p 32, paragraph 126.

²⁴ Ibid, p 33, paragraph 128.

²⁵ Ibid, p 36, paragraph 141.

- the regulatory scheme prevents the playing of poker machines in Western Australia²⁶ and has criteria for distinguishing a "poker machine" from an Electronic Gaming Machine (**EGM**);²⁷
 - EGMs cannot be played in hotels and clubs and can only be lawfully played at the casino;²⁸
 - while Western Australia has a higher per capita of gamblers in Australia it has the lowest incidence of gambling harm;²⁹ and
 - the lower incidence of gambling harm is attributed to the lower per capita number of EGM gamblers.³⁰
39. The Department acknowledges that the current legislative framework in respect of regulating the casino is legislated in multiple instruments, complicated and could benefit from review and modernisation into a single Act, with supporting regulations, codes, standards or legal instruments. The inclusion of clear objects and principles in a consolidated contemporary legislative framework will set a solid foundation, from which to rebuild an effective and efficient regulatory framework for the casino.
40. It is acknowledged that the regulatory model and regulatory practice in respect of the casino has not evolved since it was established and administered by the former Department of Racing, Gaming and Liquor.
41. The Department accepts that the current regulatory framework has failed to keep pace with both the evolution of gaming and casino operations and contemporary better regulatory practice, which is commonplace across most regulatory agencies within the Western Australian public sector.
42. The Department observes that most issues identified by the Royal Commission in respect of the regulatory framework relate to governance, culture, regulatory remit and the failure to appropriately consider and engage with risks.

Cost of reform

43. The Department observes that the models proposed in the Discussion Paper have not been costed. Changes to legislation and the regulatory delivery model will require detailed financial analysis both in terms of the regulator, including the cost of the accountable authority and operational costs, as well as costs to the licensee. A detailed analysis would also be required to determine the costs of reform initiatives to transition from the current to future state.

²⁶ Casino Control Act 1984, Section 21(1)(a) provides for the authorising of any game except a game played with poker machines

²⁷ Gaming Machine National Standards, Western Australian Appendix at WA4.2

²⁸ Ibid.

²⁹ Gambling Harm and Harm Minimisation in Western Australia, Expert Opinion, CQ University Experimental Gambling Research Laboratory, October 2021, p 10

³⁰ Ibid.

Funding model of the Regulator

44. The State Government provides a range of regulatory services to the Western Australian community to achieve its policy outcomes. These activities are funded through a variety of revenue sources including taxation, cost recovery (fees and charges), government investments and other measures.
45. The Department and the GWC's funding for gaming and wagering activities is provided through the State Government budget process and the casino licence fee.
46. In Western Australia, the licensee of the casino is required by the *Casino Control Act 1984 (WA)* and the State Agreement, to pay casino tax to the Treasurer. The State Agreement sets the rate of tax that is to be paid under specified categories. The casino licensee also pays a regulatory casino gaming licence fee.³¹
47. Cost recovery is a transparent and accountable mechanism for charging of government services and supports the proper use of public resources. It reduces the need for the Western Australian community to fund all or part of the regulatory activities of a sole market provider. Within the State Government, the Economic Regulatory Authority operates a user pays or cost recoverable model for the regulation of entities. The ability to recover costs is specifically stated in their legislation.³²

Part Two

Regulatory models

48. Consistent with the discussion in Part One, the Department considers that the models outlined in the Discussion Paper are examples of regulatory delivery models rather than regulatory models as they predominantly focus on potential operational structures supporting the regulatory framework.
49. The Department is of the view that the appropriate regulatory delivery model should be determined by the size and complexity of the sector being regulated. In this case, the casino is a single entity. The prevalence of independent governing bodies or statutory positions overseeing regulatory delivery appears to be connected to its reach across the community, the entities or persons regulated, and the consequences or harm caused by non-compliance (e.g., WorkCover WA regulates employers and insurers to ensure payments and medical treatment to injured workers and the Economic Regulation Authority's role in regulating energy, gas and water markets).
50. There is no common regulatory delivery model across Western Australia or Australia. Some regulators are independent statutory bodies with their own operational staff, others have a commissioner that is supported by a government department and some regulators are embedded into a government department.

³¹ *Casino Control Act 1984*, s. 20.

³² *Economic Regulation Authority Act 2003* provides for regulations to be made for the imposition and payment of fees in connection with the ERA's functions.

51. The Discussion Paper proposes four possible regulatory delivery models, on which it seeks submissions:
- Model 1: Retain current model, with or without alterations
 - Model 2: GWC with a new legislative framework
 - Model 3: Stand-alone regulator that is dedicated to casino oversight and other gambling activities, excluding wagering.
 - Model 4: Absorb casino regulation into the Department.
52. The Discussion Paper also indicates the Royal Commission seeks information on other regulatory delivery models that interested parties may consider appropriate.
53. Given the Royal Commission is yet to deliver its closing observations or the Final Report, the Department's position on the regulatory delivery model may change in considering those documents. The Department also notes the Interim Report states that "*as inquiries proceed through the suitability Terms of Reference, the focus of risks already mentioned will be refined and additional extant and (or) emerging risks will be identified*".³³
54. The Department notes that the following risks in respect of casino operations were identified in the Royal Commission's Interim Report:
- Money laundering.
 - Criminal infiltration.
 - Junket operations.
 - Problem gambling.
 - Interactive/online gambling.
 - Competitive markets.
 - Regulatory capture.
55. The GWC and the Department have progressed a range of forward work programs across governance and regulatory reform to address the issues identified by the Royal Commission in its Interim Report. As these reforms progress, it becomes more apparent, that the risks can be effectively managed by recalibrating and consolidating the legislative framework for the casino, clearly articulating the supporting regulatory model, and implementing more contemporary governance and regulatory practices. The Department considers that, provided this is achieved, any of the four possible regulatory delivery models could support a sound regulatory framework.
56. The Department observes that the following characteristics are common across all four models proposed in the Discussion Paper:
- Clarification of the purpose of the regulatory framework by the inclusion of an objects and/or principles clause in the legislation.

³³ Paragraph 327 PCRC Interim Report

- A clear regime for delegating regulatory powers and maintenance of a register of delegations.

57. The Department considers that cost benefit analysis is a fundamental consideration in determining appropriate regulatory delivery models.

Model 1 - Retain current model, with or without limitations

58. The Department strongly agrees with the inclusion of an objects clause within the Gaming and Wagering Commission and Casino Control Acts as it would improve the current regulatory framework.

59. The Department agrees that the removal of Director General of the Department as Chair of the GWC would improve the current model.

60. A service level agreement is in the process of being developed between the Department and the GWC.

61. Full-time engagement of the Chief Casino Officer on GWC matters, whilst not holding another role within the Department, appears problematic. The Chief Casino Officer role is established specifically under the *Casino Control Act 1984* (WA). The role proposed under this model extends beyond the casino to regulating the racing and community gaming sectors. Full-time engagement on GWC matters does not appear consistent with the intended establishment under the Act. An alternative consideration may be to abolish the role of the Chief Casino Officer and create a new Gaming and Wagering Chief Officer role to provide operational oversight of GWC regulatory functions.

62. The Department does not consider the introduction of an additional oversight function for the GWC, similar to the Parliamentary Inspector, to be necessary or of value. As a statutory board within the Western Australian public sector, the GWC is bound by overarching public sector legislation³⁴ and some of the core public sector rules including as to equal employment, misconduct and disclosures of wrongdoing.

Model 2 – GWC with a new legislative framework

63. The Department agrees with the Royal Commission's suggestion that the regulatory framework for the casino would benefit from the consolidation of powers into a single instrument.

64. The Department strongly agrees that the regulatory framework for the casino could be greatly improved with the introduction of a clear purpose, objects, and principles in the legislation.

65. The Department sees benefit in the Chairperson having relevant regulatory and legal experience.

³⁴ Gaming and Wagering Commission, *Annual Report 2020-21*, (Web page, 2021), p 8 (Other Legislation Impacting on the Commission's Activities), [https://www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/4110831aec23ef790135861048258797001684dc/\\$file/tp+831+\(2021\)+gwc+2020-2021+annual+report+final.pdf](https://www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/4110831aec23ef790135861048258797001684dc/$file/tp+831+(2021)+gwc+2020-2021+annual+report+final.pdf).

66. The Department questions the merit in the formation of an independent statutory body in Western Australia, given the comparatively small gaming and wagering sector. The Department also notes that consideration of the regulation of the liquor sector is not within the Royal Commission's Terms of Reference.
67. The Department supports cost recovery from regulated entities when providing regulatory services.
68. The Discussion Paper states that a characteristic of Model 2 is to “*prescriptively legislate the functions of the regulator and build into the legislation an ability for the regulator to identify and regulate emerging risks which may arise in future, as it sees fit. This feature of the model embraces a risk-based method and anticipates the regulator's need to be adaptable to new risks which may arise because of, for example, advancements in technology*”. For the reasons outlined in paragraph [18], the Department does not support prescriptive legislation of regulatory model or functions. The Department does, however, support a model where the regulator is able to identify and regulate emerging risks which may arise in future, as it sees fit. This would enable contemporary, agile and adaptable regulation.

Model 3 – Stand-alone casino regulator

69. The Department does not consider a stand-alone casino regulator as an appropriate model for the Western Australian context, given there is only a single casino operating in this jurisdiction. The proposal to re-structure the regulator is unlikely to address issues raised in evidence before the Royal Commission, particularly in areas related to governance, culture and the regulatory risk management. These matters could readily be addressed by recalibrating the current regulatory framework that applies to the casino, clearly articulating the supporting regulatory model, and implementing more contemporary governance and regulatory practices.
70. It is noted that a regulator of this nature, if established, would be a small public sector agency (less than 100 employees). The cost of establishing such an entity would need to be carefully considered. There are risks with this model including the potential for greater ‘regulatory capture’ given the regulator is likely to have a small, dedicated workforce, specialising in casino regulation. A stand-alone regulator under this model also may not be able to benefit from leveraging broader contemporary public sector regulatory practice.
71. The Department considers that the other proposed models are preferable to Model 3.

Model 4 – Absorb casino regulation into the Department

72. The Discussion Paper states that Model 4 “*is similar to what currently occurs in Queensland, where a dedicated Office of Liquor and Gaming Regulation sits within the Department of Justice and Attorney-General and administers the liquor and gaming legislation.*” The Department notes that in addition to the Office of Liquor and Gaming Regulation, Queensland has a Commissioner for Liquor and Gaming.
73. This model, whereby a public sector department under the direction of a Director General is responsible for the administration of State legislation and supporting regulatory frameworks, is
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currently the most common regulatory delivery model across the Western Australian public sector. Specifically, the Department of Water and Environmental Regulation has a model where the Chief Executive Officer has regulatory powers while an advisory body being the Environmental Protection Authority provides advice to the Minister for Environment.

74. The Western Australian public sector effectively regulates a range of sectors under this kind of model. The Department of Mines Industry Regulation and Safety is responsible for regulating the mining, petroleum and dangerous goods, work safety, and the building industry under this type of model; the Department of Health is responsible for regulating environmental health; and the Department of Transport regulates a range of aspects of the transport sector, taxis, heavy haulage under this model. It should also be noted that the administration of the Commonwealth's *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth) is undertaken by a government agency under the direction of a Chief Executive Officer.
75. This model is also:
- a. consistent with the general principles that currently inform State Government regulatory reform (see paragraphs [23] to [31]) and the Service Priority Review's recommendation that the number of statutory boards and committees be rationalised (see paragraph [34]); and
 - b. likely to be the most cost-effective reform (albeit noting that no costings analysis has been done on the models).
76. Further, the State Government's 'Streamline WA' is focused on whole of sector regulatory reform and leveraging better regulatory practice across the sector. Progressing this model would enable casino regulation in Western Australia to be informed by broader more contemporary regulatory practice from different sectors.
77. An alternative or modification to Model 4, that may have merit, is a single regulatory statutory position, supported by a workforce of public officers employed through a department. Similar regulatory roles within the State Government include the Western Australian WorkSafe Commissioner, Commissioner for Consumer Protection, Building Commissioner and the Director of Energy Safety. In this model, instead of the Director General being ultimately responsible for the administration of the regulatory framework, the statutory position holder is responsible. This model is typically applied in larger agencies, overseeing multiple regulatory functions.

Part Three

Consideration of specific topics and areas of regulation

Objects and principles clauses

Questions

- A. Should the regulatory legislation contain an objects clause?
- B. Should the regulatory legislation contain a principles clause?
- C. If so, what key objects should guide the regulation of casinos and, depending on the model adopted, other forms of gaming and wagering in Western Australia?

78. The Department agrees that the inclusion of an objects and/or principles clause would assist the regulator in performing its duties and provide clarity of the community and Government's expectations of the regulator.
79. The Department does not have a concluded view on the key objects that should guide the regulation of gaming and wagering, but at a minimum the objects should:
- a. ensure fairness in gaming and a fair return to the player;
 - b. ensure integrity of gaming (including by reference to the suitability or fitness and propriety of persons working in the gaming industry and minimising criminal infiltration of the casino);
 - c. ensure responsible service of gaming and minimisation of gambling-related harm.

Risks

Questions

- A. Should the regulatory framework prescriptively legislate for the regulator (or an external expert) to undertake risk assessments and devise risk management plans for the Perth Casino? If so:
 - a. At what intervals should that assessment take place?
 - b. How should those tasks be funded?
- B. Should the regulatory framework prescriptively legislate for the licensee of Perth Casino to undertake risk assessments and devise risk management plans for its own operation subject to approval by the Regulator?
- C. If so, at what intervals should that assessment take place?
- D. In relation to B, to what extent should a regulator be involved in the process by which the licensee develops the risk management plan prior to approval and be involved in periodic reviews?

80. The Department does not consider that it is necessary for the legislation to prescribe that the regulator undertake risk assessments and devise risk management plans for its regulation of the casino. The development of risk assessments is an ordinary part of the practice of good regulation. The Department is currently in the process of developing and improving the governance model for the operations of the GWC and the Department, including clarifying the

regulatory framework and philosophy and, in the turn, the identification of risks and the development of a risk register.³⁵

81. The Department does not consider that there is a need for the legislation to prescribe that a risk assessment must be undertaken by the casino licensee. However, the Department considers that power to require the licensee to undertake a risk assessment and develop a risk management plan are tools which should be available to the regulator. To the extent that the current *Casino Control Act 1984 (WA)* does not already authorise such a requirement being imposed on the casino licensee (for example in section 24 of the *Casino Control Act 1984 (WA)*), there may be merit in prescriptively legislating to ensure the regulator has these powers with the cost to be borne by the licensee.
82. To ensure such risk assessments and management plans remain apposite and fit-for-purpose, such powers should:
 - a. empower the regulator to require the casino licensee to undertake the task or require an external expert to undertake the task; and
 - b. be expressed generally and not overly prescribe the content or requirements of the risk assessments and management plans.
83. The Department considers that an appropriate governance framework is for the casino licensee to be required to provide a risk assessment, and then to develop a risk management plan. Such a plan would then be approved by the regulator and subject to regular audit and compliance reviews.
84. In the Department's view, the role of the regulator prior to the submission of the risk assessment and risk management plans for approval should be in the form of publishing guidelines as to the object, purpose, and general expectations regarding the content of such plans. The regulator could then assess the submitted plan against the guidelines.
85. The regulator should be given full access to, and ability to oversee, the licensee's risk assessment and risk management plans and any periodic reviews. Whether or not such tasks are imposed by the regulatory framework, or directions issued pursuant to the regulatory framework, they ought to be done to the satisfaction of the regulator.
86. The appropriate interval for undertaking risk assessments and reviewing risk management plans may depend on other measures adopted. For example, the undertaking of a new risk assessment could be tied to any periodic review of the casino licensee, with the review of risk management plans tied to the mid-point of any periodic review. Further, consideration should be given to whether a new risk assessment (in whole or in part) is required upon the happening of certain conditions (for example the presentation of a new, unforeseen risk or failures of risk management plans). These are matters which the regulator can best assess once the process commences and upon consideration of the circumstances facing the regulated industry at the time.

³⁵ DLG.0001.0009.0242 (Witness Statement of Ms Lanie Chopping) [23]; GWC Strategic Work Programme 2021-2022, (DLG.0001.0009.0023); ts 3366-7 (HR3, 2 September 2021, Ms Germaine Larcombe).

Review of the licensee

Questions

- A. Should the WA regulator have a legislated power to review the casino licence holder? If so:
- a. What matters ought to be reviewed?
 - b. Who should bear the cost of the review?
 - c. What powers should the regulator have?
- B. Should the regulator have the ability to suspend a casino licence? If so, in what circumstances?
- C. Should WA include a regime like the one found in sections 28, 28AA and 28A of the Victorian legislation for approval by the regulator where there is major change in circumstance to a licensee or a close associate?

87. The current legislative framework is circumscribed by the *Casino (Burswood Island) Agreement Act 1985 (WA)* and the State Agreement itself, which would need to be renegotiated to provide for periodic reviews of the casino licensee.³⁶ However, the reviews undertaken pursuant to the Victorian *Casino Control Act 1991 (Vic)* are a de facto means by which the GWC has in the past:
- a. sought to ensure the probity of the licensee's holding company; and
 - b. was able to put recommendations arising from that review to the casino operator.³⁷
88. Notwithstanding the current legislative constraints, the Department considers that such a legislated power in Western Australia would be beneficial to ensure to the ongoing suitability of the licensee. The matters that could be reviewed are similar, if not the same, as those contained in section 25 of the *Casino Control Act 1991 (Vic)*, namely:
- a. the casino operator's suitability;
 - b. the casino operator's compliance with the regulatory framework; and
 - c. whether the continuation of the licence is in the public interest.
89. Such a review could consider, among other things:
- a. the casino licensee's corporate structure;
 - b. the degree of oversight exercised by relevant directors and key employees over the operations of the casino;
 - c. the adequacy of centralised audit and risk processes;³⁸ and
 - d. the past communications and degree of co-operator and candour with the regulator.
90. The matters subject to review should also properly refer back to those matters considered and investigated when the casino agreement was entered into (see section 19 of the *Casino Control Act 1984 (WA)*).

³⁶ ts-146 (HR3, 11 May 2021, Mr Barry Sargeant)

³⁷ ts-144-145 (HR3, 11 May 2021, Mr Barry Sargeant).

³⁸ WIT.0002.0001.0036 [124] (Witness Statement of Duncan Ord).

91. The casino license holder should bear the cost of the review.
92. For the purposes of the review, the regulator should have the powers currently granted to inquiries directed by the Minister pursuant to section 21A(5) of the *Casino Control Act 1984* (WA), that is the powers of a Royal Commission (see section 21A(9)).
93. The ability to suspend or cancel a statutory instrument is a standard regulatory tool available to regulators. It is considered the most significant intervention a regulator can undertake in response to significant breaches or issues being identified. Typically, these types of regulatory interventions are applied in situations whereby all other interventions have failed to achieve the desired outcomes and the instrument holder is demonstrating a blatant disregard for their statutory responsibilities under the legislative framework. Provisions like these typically have very specific procedural fairness consideration embedded in legislation to ensure due process.
94. Regardless of who has the ability to suspend a casino licence, the Department also considers it is important that the regulator have a range of compliance options available to it, including (for example) education programmes, disciplinary action and fines for non-compliance, so that it is able to ensure compliance by the licensee, without needing to move directly to suspension of the casino licence.³⁹ The Department of Water and Environmental Regulation's Compliance and Enforcement Policy is a good example of the range of enforcement options.⁴⁰
95. The Department does not have a concluded view as to whether Western Australia should replicate the regime in sections 28, 28AA and 28A of the Victorian legislation. The scheme is already, in part, replicated in sections 18, 19A and 19B of the *Casino Control Act 1984* (WA). However, there is merit in expanding the current legislative framework to more proactively monitor major and minor changes in the licensee (beyond approving shareholders with a relevant interest of more than 10 per cent pursuant to sections 12 and 13 of the *Casino (Burswood Island) Agreement Act 1985* (WA)). Similarly, the current legislative framework may benefit from specifically expressed requirements in the monitoring of associates, although section 19B impliedly provides for the monitoring of close associates.

³⁹ See the related discussion at ts-3315 (HR3, 2 September, Lanie Chopping).

⁴⁰ Government of Western Australia, Department of Water and Environmental Regulation, *Compliance and Enforcement Policy* (May 2021) < https://www.wa.gov.au/system/files/2021-05/Compliance_and_Enforcement_Policy_0.pdf>.

Delegation of powers of the GWC

Questions

- A. Are there any specific current powers which the casino regulator ought not be able to delegate?
- B. Are there any potential future powers of the casino regulator which it ought not be able to delegate?
- C. What oversight should the casino regulator retain over the exercise of delegated power?
- D. How should delegations (their grant and exercise) be recorded? For example, should the delegation of powers be articulated with precision in a written instrument which addresses, as a minimum:
 - a. the scope of the delegation, namely whether it be a full or partial delegation of power;
 - b. any conditions of the delegation (for example, can the delegate decide whether to exercise the power independently or must the delegate act in accordance with an in-principle decision of the delegator); and
 - c. the content and purpose of reports to the regulator concerning the exercise of delegated powers (for example, whether the report is simply for noting and recording or whether the exercise requires ratification before taking effect).

96. The Department considers that the only power which the casino regulator ought not to be able to delegate (either current or future), is the power to delegate itself. It is important that modern regulators are able to adapt to changing circumstances as and when they arise. A broad delegation power allows a regulator to allocate its resources appropriately and focus on achieving its strategic objectives.
97. The Department considers that grants of delegation should be recorded in a written instrument and maintained in a delegation register. As a matter of practice, the instrument of delegation should be articulated with sufficient clarity to avoid uncertainty and establish the scope of the delegation, including any conditions on the exercise of delegated powers.
98. The content and purpose of reports to the regulator concerning the exercise of delegated powers should not be dealt with in the instrument of delegation, rather such matters should be addressed in the policies and protocols that support an instrument of delegation (see below).
99. As a matter of good practice (and as the Department and the GWC are currently progressing), instruments of delegation should be supported by policies, protocols and supporting processes and training on how delegations are to be executed legally.⁴¹ Oversight of the exercise of delegated powers by a regulatory authority is, in part, achieved through ensuring there are clear policies and protocols that govern the exercise of the delegated power. Such policy documents should clearly articulate:
 - a. the circumstances in which delegations will be executed;
 - b. how those delegations will be executed (considerations, steps, etc);

⁴¹DLG.0001.0011.0018 (Witness Statement of Ms Germaine Larcombe) [24].

- c. the reporting mechanism to the authorising environment (in this case the casino regulator); and
 - d. (as noted above) quality control and audit elements.⁴²
100. The level of oversight the casino regulator should have over the exercise of delegated powers is, in part, dependent on the nature of the power exercised. If a delegate is exercising a power pursuant to narrow or administrative delegation with appropriate protocols in place, it is appropriate for the casino regulator to be informed after the decision has been made. In contrast, if the delegated power is broad it may be preferable to communicate and engage with the casino regulator before the delegated power is exercised.⁴³ In any event, delegation protocols should clearly articulate quality control and audit requirements that apply to the exercise of delegated powers and the regulator's expectations as to the content and purpose of the reporting.

Harm minimisation and the responsible service of gaming within the casino environment

Questions

- A. Should a prescriptive approach be taken in respect of harm minimisation?
- B. Should a prescriptive approach be taken in respect of responsible service of gaming?
- C. What degree of oversight ought the regulator have in respect of harm minimisation? How might that oversight occur?
- D. Should the casino gaming regulator prepare and implement a gaming harm minimisation plan or program or should the casino operator? If the former, who ought to bear the cost (or a portion of the costs) of its preparation and why?
- E. Should there be an independent body which addresses gambling harm, similar to the Victorian Responsible Gambling Foundation?

101. The Department considers that a prescriptive approach should not be taken in respect of either harm minimisation or responsible service of gaming. Harm resulting from gaming is considered an inherent risk associated with gaming activities. As such, it should be a clearly articulated risk for both the regulator and regulated entity and will fall within the risk-based approach outlined in this submission. It is noted there is not a "*one-size fits all solution*" to problem gambling related harm.⁴⁴
102. The casino licensee should prepare and implement a gaming harm minimisation plan or programme that is approved by the casino gaming regulator at the casino licensee's cost. Any such plan or programme should:
- a. include reporting obligations to the casino gaming regulator;
 - b. be subject to compliance and auditing activities by the casino gaming regulator; and
 - c. be reviewed by the casino gaming regulator at regular intervals.

⁴² GWC.0012.0001.2588-2589 (Agenda Paper dated 27 August 2021 entitled Proposed Chief Casino Officer Delegation).

⁴³ ts-3379-80 (HR3, 2 September 2021, Ms Germaine Larcombe)

⁴⁴ ts-5831 (HR3, 16 November 2021, Professor Matthew Rockloff & Dr Kahlil Philander).

103. Compliance with such a plan or programme, or parts thereof, should be enforced as a condition on the licence or via directions to the casino licensee or similar.
104. Oversight of harm minimisation at the casino should be achieved through the regulator establishing publicly available guidelines as to the information that must be included in the harm minimisation plan or programme. The licensee should then be required to prepare their harm minimisation plan which would then be approved by the regulator and made publicly available. Further oversight would then occur by way of the reporting obligations contained within the plan or programme and audit or compliance activities undertaken by the regulator (or on the regulator's behalf).
105. The Department is not in a position at present to comment on whether there should be an independent body which addresses gambling harm similar to the Victorian Responsible Gambling Foundation. The GWC and the Department are in the preliminary stages of considering how they can better respond to gambling related harm in Western Australia (including a review of the current Problem Gambling Support Services Committee).⁴⁵ Two models are currently under consideration:
- The first provides for an enhanced and integrated public service capability.
 - The second, is an independent statutory body, similar to the Victorian Responsible Gambling Foundation.
106. The Department currently considers that whichever model is adopted going forward, it should:
- have a sustainable funding source commensurate with and responsive to changes in need;
 - resolve perceptions of or actual conflicts of interests or undue influence;
 - enable the government to build knowledge and objective understanding of the deleterious impacts of gambling in Western Australia; and
 - be effective in mitigating the impacts of identified gambling harm.
107. The Department is also of the view that whilst the licensee should contribute to the funding for whichever model is adopted going forward, it should not be participating in the policy development or decision-making processes.⁴⁶
108. Whether either model is to be recommended also requires further consideration and consultation with other agencies including the Department of Health, Western Australian Police Force (**WA Police**) and the Department of Communities. Such consideration will also likely have regard to the fact that Western Australia has the lowest rates of problem gambling and gambling related harm in Australia.

⁴⁵ ts-3319-20 (HR3, 2 September 2021, Lanie Chopping).

⁴⁶ ts-3358-59 (HR3, 2 September 2021, Lanie Chopping).

Inspectors

Questions

- A. What are the advantages and disadvantages of a physical inspectorial presence on the casino gaming floor?
- B. What are the advantages and disadvantages of the current inspection and audit model and reliance on electronic surveillance?
- C. What should be the role and function of inspectors as to inspection, audit and compliance at Perth Casino?
- D. What legislative powers should inspectors have (if any) in respect of inspection, audit and compliance at Perth Casino?
- E. Should interference with inspector functions carry with it a strict liability offence?
- F. To what extent should the GWC be responsible for oversight of inspectors at the Perth Casino?
- G. Should the role of inspectors be dedicated to casino inspection or include other compliance functions such as liquor?

109. Before addressing the specific questions regarding inspections, the Department makes the following comments and observations in relation to inspections generally.
110. Inspection and compliance activities are a key element of any regulatory framework. They provide the methods and tools by which a regulator monitors and addresses issues of non-compliance with key elements of the regulatory framework.
111. There is limited research and analysis on inspection and enforcement activities by regulators in an Australian context. In an international context, the majority of academic and research literature on the topic of inspection relates to occupational safety and health or food safety. It is also focusses on how to design and develop regulation more than the delivery mechanisms or inspection instruments and tools.⁴⁷ However, lessons can be learned from public safety inspection functions for regulatory reform in other areas of regulation, such as gaming.
112. The 2011, the Investment Climate Advisory Services of the World Bank Group (World Bank), made observations regarding regulatory activities and misconceptions. One of the misconceptions they address was that *“More frequent inspections mean heightened safety”*. From experience, the report states that *“No correlation has been found between more frequent inspections and better outcomes. When inspections staff are spread too thin, they tend to become ineffective”*.
113. Furthermore, a physical presence may not equate to effective regulation in terms of outcomes or cost efficiency. It is one tool in a regulator’s tool kit but not the only one. It should be used where and when it is appropriate to do so. There is no evidence available to the Department which indicates that a physical presence increases compliance.

⁴⁷ Blanc, F. (no date), *Inspection Reforms: Why, How and with what results*. OECD, <https://www.oecd.org/regreform/Inspection%20reforms%20-%20web%20-F.%20Blanc.pdf>

114. Changes in the methods of inspection can bring about opportunities for alternate ways of monitoring. These alternate ways, if assessed and considered appropriately, can provide more efficient and effective inspection. Events like the recent pandemic have shown the need to alter and change the ways of working for regulatory agencies in order to maintain regulatory oversight.
115. The World Bank report recommends that inspections should be planned and focussed on the risk analysis and appropriate choice of regulatory instruments. Frequency may increase where risks are higher and other regulatory instruments may be used.⁴⁸
116. The World Bank report also indicates that countries that have made inspections more risk-focussed and transparent have seen public outcomes remain at least stable, and often improve.⁴⁹
117. Factors driving regulatory reform related to inspections include the impact of ineffective or excessive inspections and the inefficiency of the inspection/compliance system including operating within set budgets without compromising regulatory effectiveness. According to the World Bank, the challenge for reformers “*is not to abolish inspections but to develop mechanisms that will make them work better. This is not easy ...*”⁵⁰
118. In terms of the inspectorial presence at the Perth Casino, the Department notes that the evidence before the Royal Commission suggests that a physical presence on the casino gaming floor by inspectors may have a deterrent effect.⁵¹ This is certainly a factor in favour of having an inspectorial presence on the casino floor.
119. However, the evidence has also suggested that there are disadvantages of a having physical inspectorial presence on the casino gaming floor. Such disadvantages include:
- a. It is resource intensive.
 - b. It is likely to be inefficient as not every casino activity or event needs to be physically overseen and can appropriately be audited after the event⁵² or observed via security footage.
 - c. It may draw resources from other compliance activities that are more strategic, longer term in nature or that address areas of higher risk.
 - d. A high level of inspectorial presence on the Perth Casino gaming floor creates a risk of familiarisation between inspectors and Casino staff, with the attendant risks such familiarisation creates.⁵³

⁴⁸ Investment Climate Advisory Services of the World Bank Group, *How to Reform Business Inspections Design, Implementation, Challenges*, (2011), p 4, <<https://documents1.worldbank.org/curated/en/781711471587220442/pdf/107898-WP-PUBLIC-TAG-TOPIC-Investment-climate.pdf>>

⁴⁹ Ibid.

⁵⁰ Ibid, p 20.

⁵¹ ts-5642 (HR3, 2 November 2021, Mr Sandrino Del Prete); ts-1141 (HR3, 25 May 2021, Mr Nicholas Toyne); ts-1316 (HR3, 27 May 2021, Mr Leigh Radis).

⁵² ts-137 (HR3, 11 May 2021, Mr Barry Sergeant).

⁵³ ts-300-301 (Connolly), ts-5642 (HR3, 2 November 2021, Mr Sandrino Del Prete).

120. It is for these reasons that the Department considers that the precise deployment of inspectors (including on the casino floor) at any given time or period is an operational issue and best determined by the regulator or the Department on a case-by-case basis having regard to the particular regulatory issues, risks or programmes in place, as well as resourcing. The precise manner in which inspectors are deployed at any one time will vary, as each of these factors vary over time.
121. In terms of the current inspection and audit model, the Department considers that in order to undertake a proper assessment of its effectiveness, it is first necessary to complete the regulatory governance work so that there are clear regulatory objectives and an understanding of the relevant risks against which the audit and inspection programme can be assessed and then amended or expanded as needed. The Department accepts that at present, more work is needed in this area.⁵⁴ A disadvantage of the current inspection and audit model is that without an appropriate review of audit activities (and associated training), audit-based activities can invite a 'tick and flick' response, such that the activity being audited is not evaluated meaningfully.⁵⁵ This is not to say that individual inspectors are not diligently working on their audits and inspections.
122. The current inspection and audit model does include reliance on electronic surveillance. Broadly, the Department considers that the electronic surveillance utilised by the inspectors is of a very high quality and allows for the efficient allocation of inspectorate resources. For example, there are times where there is little activity at the Casino and certain Casino events and activities have a low-risk process, such that few or no regulatory resources need to be allocated and reliance can instead be placed on the surveillance footage.⁵⁶ This footage can generally be relied on to investigate most matters where it is necessary to see what has occurred on the gaming floor or at a table.⁵⁷
123. The Department supports potentially enhancing the statutory power of inspectors. The current powers can be found in sections 9, 21A, 27A, 28 and 32 of the *Casino Control Act 1984 (WA)* and sections 22, 25, 26, 31 and 85 of the *Gaming and Wagering Commission Act 1987 (WA)*. However, at present, the Department is not cognisant of any particular power or area or matter in respect of which legislative reform is required.
124. The Department notes that section 29(1) of the *Gaming and Wagering Commission Act 1987 (WA)* does provide a strict liability offence of hindering authorised officers of the GWC (which includes inspectors). The Department does not have a view at this time as to whether a further strict liability offence of interference with inspector functions is required. The Department is not aware of any particular instances of interference with inspector functions.

⁵⁴ Statement of Germaine Larcombe, 31 August (DLG.0001.0011.0013) [31].

⁵⁵ ts-1077 (HR3, 25 May 2021, Mr Nicholas Toyne).

⁵⁶ ts-3715, 3721 (HR3, 9 September 2021, Mr Barry Sergeant).

⁵⁷ ts-3714 (HR3, 9 September 2021, Mr Barry Sergeant).

125. In terms of the extent of regulator's oversight over inspectors, the degree of any such oversight will, in part, depend on the model of regulation going forward. If it is intended that the regulator will continue to utilise the services of the Department with respect to (at least) inspectors, then the Director General will remain the employing authority of the inspectors under the *Public Sector Management Act 1994 (WA)*. This will inform and shape the extent to which the regulator can have direct reporting responsibility for inspectors. Also central to the regulator's oversight of the work of the inspectors, is the development of a service level agreement, detailing the work that will be performed by the Department.
126. The Department considers that if the current relationship continues, the appropriate way in which the regulator ought to have oversight over the inspectors is for the regulator to clearly articulate, in its governance documents, its regulatory objectives and philosophy. Once this has occurred, work can be done by the Department to develop plans and programmes detailing how the Department will work to achieve those objectives (including appropriate audit and inspection regimes). Once finalised, those plans can then be presented to the regulator for their consideration, and once approved, the Department can then report monthly to the regulator detailing how the Department is performing as against those plans. The Department considers this general approach to be how all governance matters should be addressed, and there is no requirement for any different or specialised process for inspectors alone.
127. The Department has not formed a final view on whether casino inspectors dedicated to casino inspection should also engage in other compliance functions such as liquor compliance.
128. Part of the work currently being conducted by the Department includes consideration of the structure of the compliance team. The Department has, pending the release of the Royal Commission's final report (and its consideration by Government), moved to restructure the compliance functions within the racing and gaming division to delineate clearly between casino, community gaming, racing and liquor compliance programmes and requirements. The Department has separated officers (including inspectors) who work on liquor compliance from those who work on racing and gaming matters. Further, within the racing and gaming section, officers who work in casino regulation at present only work on casino regulation.⁵⁸
129. The Department's preliminary view is that there may be some merit in having specialist casino inspectors, due to the specialised nature of the regulatory environment. In addition, there may be merit in separating the liquor functions from the racing and gaming functions such that inspectors do not work on both liquor and gaming matters.

⁵⁸ Statement of Lanie Chopping, 31 August (DLG.0001.0009.0235 [24(b)]; Statement of Germaine Larcombe, 31 August (DLG.0001.0011.0013) [52]; ts-3316-7 (HR3, 2 September 2021, Ms Lanie Chopping); ts-3371 (HR3, 2 September 2021, Ms Germaine Larcombe).

Ministerial powers

Questions

- A. What are the advantages or disadvantages of expanding Ministerial powers to include delegation of the Minister's powers to the Director-General of the Department?
- B. Should the regulator's or Minister's powers include the ability to suspend or revoke a casino licence? If so, under what circumstances should that power be enlivened?
- C. What powers should the Minister have in respect of directing or overseeing the operations of a regulator?

130. The Department does not currently have a position on the appropriate powers of the Minister, nor on the delegation of the Minister's powers to the Director General of the Department.

GWC financial systems and resources

Questions

- A. To what extent should the casino operator fund its own regulation? Why?
- B. Should licence fees payable by a casino licensee be accounted for and used solely for the regulation of casinos or should they be generally available, with other funds, to be utilised in the regulation of all forms of gaming and wagering?
- C. Should there be a legislative power for the regulator to review the casino licence fee on a regular basis?
- D. How prescriptive should any power to increase or decrease the casino licence fee be?
- E. Should the casino operator be consulted before any increase or decrease in the casino licence fee?
- F. Who should recommend and/or approve any increase in the casino licence fee?
- G. In what circumstances should that increase, or decrease be permitted?
- H. In the case of proposed models 1 and 2, should the regulator be assigned to regulate other industries, for example liquor? Why?

131. The Department considers that the casino licensee, as a regulated entity, should contribute to the funding of its own regulation as it currently does. This is appropriate as the casino licensee has the privilege of being granted a licence to operate a casino, in circumstances where the risks associated with gambling require regulation. The appropriate contribution is to be determined having regard to the regulatory effort.
132. Determining the appropriate amount of any contribution will also take into account the fact that the casino licensee holds a statutory monopoly in Western Australia.

133. In a context where the regulator is responsible for other aspects of gambling regulation, the Department does not consider that the licence fee payable by a casino licensee should be accounted for and used solely for the regulation of casinos. Rather, such funds should generally be available to be utilised by the regulator in the regulation of all forms of gaming and wagering that it is responsible for. This is particularly so in relation to the regulation of other forms of gaming, as it is through the regulation of such gaming that the casino licensee's statutory monopoly is protected.
134. To the extent there are concerns that the casino licence fee is not being appropriately expended, financial accountability can be achieved through other means, such as the introduction of a service level agreement between the regulator and the Department and the development of an appropriate cost recovery system.⁵⁹
135. In relation to the mechanism for determining an increase (or decrease) in the casino licence fee, the Department notes that this is currently the subject of sections 23(1) and (9) of the *Casino (Burswood Island) State Agreement Act 1985 (WA)*. Leaving this aside, the Department's preliminary view is that a regulator should have the ability to review the casino licence fee on a regular basis and to then make a recommendation to a final decision maker. How prescriptive such a power should be requires further consideration, but if it is adopted it should, at the least, prescribe the general matters that should be taken into account when determining an increase or decrease in the licence fee. It should be noted that there are Treasurers Instructions that stipulate review of tariffs, fees and charges as well as Costing and Pricing, Government Services Guidelines in respect of this issue.
136. The Department has not formed an opinion on whether the casino licensee should be consulted on any increase or decrease in the licence fee. Whether consultation is appropriate may depend on the matters that are to be taken into account when reviewing the licence fee.
137. The regulator is likely best placed to recommend any increase in the casino licence fee as they will be in the best position to provide information as to the costs of regulating the industry and any one time, and the anticipated future costs.
138. The Department has not yet formed a view as to what circumstances increases or decreases should be permitted, save that a decrease in the licence fee is likely to be more exceptional than an increase in the licence fee. However, it would seem reasonable that the amount of the fee be calculated by reference in some manner to the costs of regulating the regulated industry and entity.
139. The Department does not currently have a view as to whether the GWC should be assigned to regulate other industries, such as liquor. Such a question inherently requires a detailed analysis of those other industries, their current model of regulation, the possible interaction with the statutory responsibilities of the GWC and a comparative costings exercise. These matters have not been the subject of any evidence before the Royal Commission and appear to be beyond the scope of the Royal Commission's Terms of Reference.

⁵⁹ Which are intended to be developed – see DLG.0001.0009.0242 (Witness Statement of Ms Lanie Chopping) [24(c)], [57] and [59]; ts-3317-8 and 3357-8 (HR3, 2 September 2021, Ms Lanie Chopping).

Junkets

Questions

- A. Should there be an unconditional statutory prohibition on junket operations at Perth Casino?
- B. If junkets are to be prohibited, should the present ban on Premium Player and Privileged Player activity be included in the prohibition? If not, what type of regulation is necessary or desirable in relation to the activities of individuals coming within those definitions?
- C. If junkets are allowed to form part of the operations at Perth Casino, what role should the regulator have in approving junket operators and assessing probity?
- D. What other oversight should the regulator have in respect of junket operators at Perth Casino?
- E. Should there be a legislative prohibition on remote betting or betting by agent?

140. The Department considers that an unconditional statutory prohibition should not be placed on junket operations at Perth Casino, nor on Premium Player and Privileged Player activity. At their core, junkets involve the organisation of a group of individuals to attend the casino. In addition, the group also attend the hotel complex and engage in other tourism activities. The Department does not consider that there should be a statutory prohibition on this activity as a whole. However, it is important that the risks inherent in such businesses are appropriately identified, managed and mitigated.
141. The role of the regulator in approving junket operators and assessing probity should be one of co-regulation with state and federal agencies, supported by data sharing. Historically, the ability of state agencies, including the WA Police, to check intelligence nationally and globally was limited.⁶⁰ This lack of information (and therefore the limited ability of the regulator to meaningfully assess and approve junket operators and representatives) was one of the reasons why the previously existing junket regulations were recommended for repeal in 2010 and the relevant sections of the Casino Operations Manual were amended in 2017.⁶¹
142. However, WA Police's ability to obtain intelligence, evidence or information about individuals nominated on a junket operation or the source of funds on a junket has since that time greatly improved and probity checks on junket operators and participants could be quite extensive.⁶²
143. The Department agrees with the view expressed by Deputy Commissioner Col Blanch, that moving forward, the regulator, WA Police, AUSTRAC, Australian Border Force, national law enforcement, and other State-based regulators should cooperate to ensure that the right of amount of information is available to undertake the best intelligence assessments of junket operators and participants.⁶³

⁶⁰ ts-4334 (HR3, 23 September 2021, Deputy Commissioner Col Blanch).

⁶¹ See GWC.0002.0016.0001 at _0338-0339, _0346; -1050 (HR3, 25 May 2021, Nicholas Toyne); ts-3729 (HR3, 9 September 2021, Barry Sargeant); ts-3557, (HR3, 7 September 2021, Michael Connolly).

⁶² ts-4334 (HR3, 23 September 2021, Deputy Commissioner Col Blanch).

⁶³ ts-4334 (HR3, 23 September 2021, Deputy Commissioner Col Blanch)

144. The Department has not formed a view on precisely what that model of co-regulation should look like, and what the precise role of the regulator should be in that model. Further consultation with these other law enforcement agencies is first required. In this regard, the Department notes that the regulator is not presently a law enforcement agency (with the same powers) in the same manner as WA Police.
145. The Department agrees that the regulator should be notified of incoming junkets and the participants. This will enable the regulator and the Department to ensure that the usual audits regarding gaming operations can be focussed on those junket operations if required. However, the question is whether the regulator should have a role in approving junket operators/assessing probity. In order for the regulator to be able to effectively carry out any approval role, it will first be necessary to determine what information sharing can be established. If the regulator does not have access to the information necessary to make an informed decision regarding approval of junket operators, then the entire approval process will be undermined and there is a risk that the same issues that arose in the past will arise again.
146. Beyond that, the Department considers that the regulator should have oversight of any junket operations in the same manner as it has oversight of other activities at the Perth Casino. That is, the regulator should be able to conduct compliance activities, observe CCTV and require the casino licensee to produce documents relating to its junket operations.
147. In relation to remote betting or betting by agent, the Department notes that the current position is that remote betting is not the subject of a legislative prohibition pursuant to the Western Australian regulatory framework. The Department has not considered or formed a view as to whether this position should change. However, the Department notes that it has not to date been provided with any information suggesting that a change to the current practices is warranted.