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**PERTH CASINO ROYAL COMMISSION**

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**PUBLIC HEARING - DAY 58**

**09.31AM TUESDAY 01 FEBRUARY 2022**

**COMMISSIONER NJ OWEN**

**COMMISSIONER CF JENKINS**

**COMMISSIONER C MURPHY**

**HEARING ROOM 3**

**MS PATRICIA CAHILL SC as Counsel Assisting the Perth Casino Royal Commission**

**MS FIONA SEAWARD and MR JOSHUA BERSON and MR KEAHN SARDINHA as Counsel for the Department of Local Government, Sport and Cultural Industries**

**MR NOEL HUTLEY SC as Counsel for Mr James Packer and Consolidated Press Holdings Pty Ltd and CPH Crown Holdings Pty Ltd**

**MR KANAGA DHARMANANDA SC and MR TIM RUSSELL and MS CLARA WREN and MR JESSE WINTON and MR RICHARD LILLY as Counsel for Crown Resorts Ltd; Burswood Limited; Burswood Nominees Limited; Burswood Resort (Management) Limited; Crown Sydney Gaming Pty Ltd; Southbank Investments Pty Ltd; Riverbank Investments Pty Ltd and Crown Melbourne Limited**

**MR PAUL D EVANS and MR PETER SADLER as Counsel for the Gaming and Wagering Commission of Western Australia**

**DR DAVID TOWNSEND as Counsel for Mr Barry Felstead**

**DR ELIZABETH BOROS as Counsel for Mr Ken Barton**

**MR DAVID SHAW as Counsel for Mr Lonnie Bossi**

COMMISSIONER OWEN: Just before we commence the process of entertaining oral submissions, the Commissioners would like to make a statement. The process which we will follow is that you are at liberty to remove your face masks when you  
5 are speaking but at other times it would be advisable for us all to continue to wear our masks.

The Perth Casino Royal Commission now enters the final phase of its inquiries. Today and tomorrow we will hear oral closing submissions from interested parties  
10 who have requested leave to do so. We will then prepare our final report that is to be delivered to the Governor and to the Premier no later than 4 March 2022.

Before we call on the first of the interested parties to make an oral closing address, the Commissioners wish to make some comments about the procedures that have  
15 been adopted during the later stages of the inquiry. The time frame for the later stage of the inquiry, indeed for most of our deliberations, has been tight.

The evidentiary phase of the inquiry effectively ended on 19 November 2021, although the process of finalising lists of exhibits continued through November and  
20 into early December. On the 17 December 2021, interested parties were provided with the Commission's written closing observations which had been prepared by Counsel Assisting and Solicitors Assisting with some input from the Commissioners.

On 20 January 2022, responsive closing submissions were received by the PCRC  
25 from interested parties and the PCRC then distributed those responsive submissions to other interested parties. On 27 January, some interested parties took the opportunity to deliver reply submissions to the responsive submissions of others of them. The PCRC was cognisant of the demands of their schedule, especially since it fell across the holiday season, but the final reporting date is such that there were no  
30 feasible alternatives.

The Commissioners are grateful to the parties for their written submissions, which have been of assistance. They have been considered and will be looked at again in the light of what is said over the next couple of days and generally in the course of  
35 finalising the report.

The final report will include a chapter explaining the methodology and processes that have been utilised during the inquiry. However, we wish to take this opportunity to make a few short remarks by way of summary of what that chapter contains to  
40 explain to those who are observing the process how it developed.

The processes adopted during the final stages of the inquiry may be different from other inquiries from which observers may be familiar. This is due to what the Commissioners believe was the most practical way to deal with the significant  
45 amount of material that had to be considered in a tightly compressed timeframe and a way that is fair. In this context, we use the term "fair" both in the technical sense of procedural fairness and generally in accordance with broader notions of fairness.

The PCRC has been conscious of the expectations that, as much as possible of its inquiry should be conducted in public, so members of the community can be informed about the process. We have not taken lightly decisions that have been  
5 made that limit public access to inquiry material. But, as will be explained shortly, the intention is to put as much as is possible into the public domain by the end of the process.

10 The requirement of fairness has been paramount consideration in all of the PCRC's work to inquire into and report on its Terms of Reference. The way that this has been done will be explained in detail in the final report and will cover fairness at all stages of the inquiry. This inquiry is, of course, many (inaudible) and has been going since March 2021.

15 What I am about to say is only a brief summary of some particular aspects that have arisen in the later stages, namely the period since November 2021.

There are at least five aspects of the procedures adopted in the later stages of the inquiry which the Commissioners believe are integral to the provision of fairness.  
20 The first is the production of "Four discussion" papers on various topics. In relation to two of them, namely the regulatory framework and the issue of poker machines and EGMs, the Commissioners formed the view that they may be of particular interest to members of the public who might wish to make submissions about them. They were, therefore, included on the Commission's website.

25 The other two discussion papers, namely on the technical concept of suitability and on structural issues arising from the corporate and trust structures of the Burswood entities, were thought to involve matters peculiarly within the province of the interested parties and they were not made public. The interested parties have had the  
30 opportunity to make submissions on all or any of these and some of the interested parties have done so.

The second relates to the tender of documents. During November and into  
35 December, the PCRC afforded to the parties an opportunity to tender documents they considered relevant to the inquiry and to seek non-publication orders in relation to any documents. Following this process, the PCRC provided parties with a composite list of documents that have been tendered and that were, therefore, evidence in the inquiry.

40 The third matter relates to the PCRC's written closing observations and the parties' responsive submissions. The PCRC's document covered many things. A primary purpose of the document was to identify issues that Solicitors and Counsel Assisting, with some input from the Commissioners, believed might be considered in the final report, and to notify the interested parties of potential adverse findings arising from  
45 those issues. The parties were then at liberty to provide submissions responding to matters raised in the written closing observations document and to put forward counter-arguments and material considered to be relevant. Importantly, they were also given the opportunity to address matters raised by the other interested

parties and that they felt affected their interests.

5 The fourth relevant aspect is the process of oral closing addresses on which we are about to embark. All interested parties were given the opportunity to speak. Most have elected not to do so and none who applied for leave were refused. Because of the short period for us to finalise the report, we could only allocate two days to the process and have found it necessary to impose time limits on the presentations, which are happily in line with the estimates given by the respective parties.

10 The oral closings will be an opportunity for those parties to explain to the public and to the Commissioners what they considered to be the most significant factors and how they see those matters affecting their interests. At the end of the parties' submissions, Counsel Assisting may make some observations on procedural issues or that she considers to be appropriate by way of a response to the parties' oral submissions. Those matters aside, and in accord with the Commissioners approach to procedural fairness, it is not intended that Counsel Assisting will raise matters in her address that have not been notified to interested parties.

20 The fifth and final aspect which to mention relates to the process of written closing observations and submissions. At the time of the provision of closing observations, the PCRC had not reached any final views and, indeed, in some critical matters, that remains the position.

25 The nature of this inquiry means it was not possible to ask every witness about all matters that might be the subject of adverse findings and to hear submissions from the interested parties at that time.

30 Some matters came to light in the course of the evidence given by other witnesses or the PCRC's other investigations, some of which were and must remain confidential. For that reason, the closing observations document was a comprehensive record of the matters that had been inquired into and the possible basis for potential findings.

35 Similarly, the responsive submissions of interested parties covered matters germane to the issues raised in the PCRC document and which in some cases traversed matters affecting other parties that might not previously have been raised in a public forum.

40 The written closing submissions and the parties' responsive submissions were not made public because the PCRC had not had the opportunity to hear submissions from the interested parties at that time.

45 To make public potential findings, that is findings that would seem to be open but that the Commissioners might not make in the final analysis, without the opportunity for those parties to be heard, carried the risk of unfair and avoidable consequences for individuals and organisations named in closing observations. Because it was not feasible to separate out parts of the interested parties' closing submissions that went to similar matters, the decision was taken not to make those documents public either.

09:37AM

- 50 However, it is important to explain that the decision not to make the documents public at this stage was not reached with the view to shielding individuals or organisations from the consequences of conduct that is found to be the requisite

standard to call for approbation or adverse comment. It is a question of timing.

5 Once the Commissioners have reached a level of satisfaction about those matters, they will be made public. The time and place for that is the final report, rather than the preliminary process of closing submissions. The analysis and conclusions in the final report will represent the informed and considered views of the three Commissioners, based on their assessment of all relevant materials.

10 It is, of course, for the Government not the PCRC to decide when and how the report will be made public. But if it follows the normal course, there should not be a long delay after the report has been delivered.

15 Another aspect of the closing observations requires explanation. In many inquiries the inclusion of the evidence gathering process is followed by oral submissions from Counsel Assisting the inquiry after or at the time of delivery of written submissions. This is not the process the PCRC has adopted.

20 There are many reasons for the departure from this process and I will mention two. It was considered to be a better use of time, which is an extraordinarily scarce commodity. It was also considered more appropriate, given the working relationship between the Commissioners and Solicitors Assisting and Counsel Assisting, that there be a comprehensive written closing observation summarising the evidence and recording potential findings.

25 The document was prepared by Counsel Assisting and Solicitors Assisting the PCRC, with input from the Commissioners. The objective was to give the parties an opportunity to respond to the written material so the four matters were addressed in oral submissions by Counsel Assisting. This process minimised the risk of  
30 potentially damaging claims against an individual or entity that may not be accepted by the Commissioners being made in public oral submissions.

35 But we repeat, the selection of this process was not designed to and does not deny the public the opportunity to know what the PCRC's inquiry has found. The Commissioners' analysis of the evidentiary materials and their reasoning process leading to conclusions and the findings that the three of us have to make and have made will be set out in full in the final report.

40 Repeating, in these remarks we are concentrating on fairness issues in the later stages of the inquiry. The five mechanisms that I have mentioned, together, represent a composite suite of measures by which procedural fairness and fairness generally are afforded to interested parties. It is not at odds with the legitimate expectations of the public to reach an understanding of the process and its results, which will be made clear in the final report.

45 Now we will move to our oral closing, Ms Seaward. The process which we would prefer to follow is what we have done throughout the inquiry, which is to allow you the freedom to develop your submissions and then we will dialogue with you and ask

questions at the end, if that is suitable?

MS SEAWARD: Yes, that is convenient.

5

### **SUBMISSIONS BY MS SEAWARD**

10 MS SEAWARD: May it please the Commission. The Department is grateful to the  
Royal Commission for granting it leave to appear today and make these closing  
submissions. The Department considers it is important, given the public nature of  
the Royal Commission and the hearings to date and the subject matter of this Royal  
Commission, that the Department provide closing submissions in a public forum,  
15 addressing matters that are specific to the Department.

The Department proposes to provide submissions which provide a short overview of  
some key topics concerning the role and function of the Department, the steps taken  
by the Department in response to matters raised in the Royal Commission and,  
20 finally, to respond to matters raised in the other reply submissions.

At the outset, we note that the Department makes these submissions on its own  
behalf and not on behalf of the Government or the broader public sector. The  
Department's submissions, therefore, do not represent the current or intended policy  
25 directions of the State Government.

The first topic I will address is an overview of the relationship between the Gaming  
and Wagering Commission and the Department and the role of each. An  
understanding of this relationship is relevant to Terms of Reference 10.  
30

The roles of the GWC and the Department in relation to the regulation of casino  
gaming and the Perth Casino are defined by the statutory framework within which  
they operate. Accordingly, in order to understand the respective roles of both the  
GWC and the Department, it is necessary to have regard to the key features of this  
35 statutory framework.

The Department has addressed the key themes evident from a review of the statutory  
framework in its written closing submissions. I will not repeat that analysis in detail  
in here today.  
40

However, we respectfully submit that it is clear from the statutory framework that the  
Department and the GWC have distinct and separate roles, whilst also working  
together to achieve the objects of the overall framework.

45 The GWC is established under the Gaming and Wagering Commission Act 1987 as a  
corporate body and is capable of doing and suffering all things that bodies corporate  
may lawfully do or suffer. Subject to the minister, it is the function of the GWC to  
carry out the administration of the GWC Act.

Section 7 of the GWC Act identifies a number of duties of the GWC. Some of these include, firstly, administering the law in relation to gaming; secondly, formulating and implementing various policies; thirdly, to administer all matters relating to any  
5 casino complex, licensed casino, casino key employees, casino employee or gaming in a casino pursuant to the Casino Control Act 1984, and any casino complex agreement; fourth, to cause licenses, permits, approvals, authorisation and certificates as appropriate to be issued as appropriate; and, fifthly, to perform such other  
10 functions as are prescribed by or arises and the GWC also has responsibilities under the State Agreement and the Casino Burswood Island Agreement Act 1985, including matters generally been described as probity approvals.

What we submit is clear from a review of the statutory framework is that the GWC is the statutory body that has been charged with the administration of the law in relation  
15 to casinos and casino gaming and it is the GWC who is the decision-maker for those matters.

Turning to the Department, sections 18 and 19 of the GWC Act provide a number of different ways in which the GWC may engage or make use of staff. One of these is  
20 that the GWC may come to an arrangement with an employing authority to make use of staff in the Public Service or in a State agency, and also to make use of the facilities of a department, agency or instrumentality.

The Royal Commission has heard during evidence sessions that the GWC has never  
25 directly employed officers to assist it and has instead always come to an arrangement with the employing authority of the Department under section 18 of the GWC Act. The Department has undertaken this role since 14 December 1984, when it was first established as the Office of Racing and Gaming, supporting the then Casino Control Committee and later the Gaming Commission, as the GWC was then called. Over  
30 time, the Department has had a number of name changes, but the Department has existed in its current form since the machinery of government changes in 2017.

What a review of the statutory framework establishes that it is the role of the  
35 Department to support and assist the GWC in the exercise of the GWC's statutory functions. The Department itself is not charged with any statutory decision-making role in the same way as the GWC is.

Insofar as the Department supports the GWC, that support can broadly consist of the



Department, through its officers and employees, first, undertaking GWC's administrative tasks; secondly, performing audits and inspections and associated compliance reporting; third, undertaking any required procurement and contract management; fourth, providing technical and IT services; fifthly, undertaking policy development work; six, providing services and controls; seven, preparing and carrying out communications on behalf of the GWC, that is including with Perth Casino, with the minister and other external agencies; and, finally, preparing of meeting agenda papers and executing or giving effect to the resolutions or decisions of the GWC.

The Department's tasks are of course not limited to supporting the GWC, nor are they limited to assisting the GWC in relation to only casino regulation. As the Royal Commission heard, the GWC has broader powers.

The Royal Commission has heard that the main interaction between the GWC and the Department occurs at monthly GWC meetings. For these meetings, departmental officers prepare an agenda and put forward agenda papers on a wide variety of topics for the consideration of the GWC. The GWC then considers the matters put forward in the agenda papers and makes a decision as to whether or not to approve the proposal put forward.

At all times it is for the GWC members to review the agenda papers with a critical eye and bring their own independent mind to the matters raised for their consideration. All GWC members who gave evidence in this Royal Commission understood this aspect of their role and agreed they were not obliged to agree with a proposal merely because it was put forward by the Department. All GWC members understood they could ask questions or ask for more information, and all GWC members in their evidence understood they could (inaudible) to be added (inaudible).

Therefore, respectfully, the Department agrees only in part with paragraph 6 of the GWC reply submissions. The Department agrees that it has particular responsibilities to instigate policy development and monitor emerging regulatory issues. The Department also agrees that it has a responsibility to provide clear, cogent agenda papers for the consideration of the GWC. Those agenda papers should provide policy options and information and provide the relevant statutory and policy context.

However, at all times these activities are done on behalf of and in consultation with the GWC. This is because the Department is not the statutory decision-maker. Rather, it supports the GWC and works together with the GWC. Therefore, the Department submits it is also incumbent on the GWC members to undertake their statutory roles and critically review and consider the agenda papers put forward by the Department and request additional information, including policy options that the members feel are relevant to their decision-making process.

We wish to make short submissions on the standards relevant to the findings to be made by the Royal Commission. The Royal Commission is required by Terms of Reference 10 to consider and report, on amongst other things, on the capability and

effectiveness of the Department in supporting the GWC, including in relation to identifying (inaudible) and addressing any actual or perceived conflicts of interest by officers involved in casino regulation.

5

In so doing, the Royal Commission has had cause to consider the actions taken by the Department and Departmental officers over a wide period of time; in some cases, over 10 years ago. When assessing the effectiveness of the support provided by the Department to the GWC, the Department respectfully submits that it is appropriate for the Royal Commission to consider the various matters referred to in paragraph 303 of its written submissions.

10

Including, firstly, the statutory framework within which the Department and the GWC operates; secondly, the fact that some of these events occurred some time ago and it is reasonable for individuals not to recall such events with perfect clarity; and, finally, that the Royal Commission is in the position of being able to gather a suite of historical documents and consider the cumulative effect of each in a manner that may not have been practical or possible for the individual Departmental officers involved at the time.

15

The Department also joins with the other interested parties in respectfully submitting that in the event the Royal Commission proposes to make findings about the conduct of individuals, whoever they are, that first findings of culpability should be made with great care applying the Briginshaw standard and, second, the Royal Commission should be wary of making findings using hindsight reasoning and, finally, such findings should be made only if required for the purposes of the Terms of Reference.

20

The next topic I wish to address is the improvements that have been made to the corporate governance and regulatory framework. The staff of the Department have a number of roles, some of which include supporting the GWC in performing its statutory duties, one of those being the regulation of the Perth Casino.

25

The Department respectfully submits that staff have done their best to adapt to the changing and challenging circumstances facing the Department in recent years and have undertaken their duties to the best of their ability. Notwithstanding our submission that individual staff have done their best in the performance of their duties, the Department has acknowledged in its written submissions, and acknowledges here today, that aspects of the quality of the support provided to the GWC prior to the establishment of the Royal Commission could have been better. The Department, therefore, does not accept the submission of Crown at paragraph 127 of its reply submissions that the Department has not made concessions about its own conduct.

30

35

The Department has taken a number of steps, commencing in 2021, to improve the quality of the support provided by the Department to the GWC and to assist the GWC in better performing its statutory roles. These improvements can be divided into two categories; first, improvements to assist the GWC to develop and implement its strategic work program and, secondly, improvements to the Department's own

40

45

corporate governance.

5 Turning first to matters relating to the GWC. A GWC strategy planning day was held in June 2021, from which a GWC strategic work program was developed. The strategic work program identified four critical areas of focus for future work.

10 They are: firstly, the governance framework, broadly concerns the identification and development of a suite of government instruments relating to the GWC's practices; secondly, the regulatory function, which involves undertaking, scoping and formalising the operational relationship between the GWC and the Department; thirdly, stakeholder and community engagement, including the development of a GWC communications plan and identification of current programmes of work to discharge responsibilities in relation to harm minimisation; and fourthly, continuous  
15 improvement and business intelligence, including undertaking skills gap analysis of GWC members.

20 The focus of the GWC and the Department to date has primarily been on matters concerning the first two of those critical areas, the governance framework and the regulatory function. Some of the key developments to date have been as follows: first, the development and approval of the GWC strategic work program; second, the establishment of a dedicated GWC secretariat to provide governance and meeting support to the GWC; third, the development and endorsement of an updated GWC Code of Conduct and updated GWC Conflict of Interest Policy, and a new GWC  
25 Gifts, Benefits and Hospitality Policy. The Register of Conflict is now tabled at each GWC meeting and a Register of Gifts, Benefits and Hospitality has now been established.

30 Fourth, an increased focus on the quality of the agenda, the agenda papers and the minutes for GWC meetings. The improvements to the agenda papers have been commented upon positively by GWC members. Fifth, the development and endorsement of an Interim Casino Compliance Strategy, the confidential details of which have been provided to the Royal Commission. Sixth, the development of an updated and more comprehensive induction package for new GWC members.  
35

The Department accepts the point made in paragraph 13 of the GWC responsive submissions that it is the quality of the induction package and its utility to the GWC members that is relevant. For this reason the Department has worked with the GWC to identify the elements of the proposed induction package and a draft will be  
40 presented to the GWC at the February 2022 meeting for GWC for consideration and endorsement.

45 Seventh, a draft GWC Governing Body Charter has been prepared and will also be presented at the February 2022 meeting. Eighth, more detailed financial reports are now provided to the GWC, and the Chief Financial Officer now attends the monthly GWC meetings to be available to answer any questions.

In relation to problem gambling and harm minimisation, the Department and the

GWC have jointly engaged an experienced regulatory consultant to develop a policy model providing options as to how Western Australia may better respond to gambling-related harm. That report is pending.

5

In the meantime, the Problem Gambling Support Services Committee now provides monthly updates on its work program to the GWC. The Department has also developed a Terms of Reference for the Problem Gambling Support Services Committee. That has been endorsed by the committee and also the GWC as a working document which will be used pending the development of the policy model.

10

And finally, GWC members have also been offered a number of training programmes or professional development opportunities, including accountable and ethical decision-making training, attending workshop sessions on navigating current challenges and regulatory practice, conducted by Harvard Professor Malcolm K Sparrow, and the option to attend virtually the International Association of Gaming Regulators conference held in Boston in September last year.

15

To support these enhanced training opportunities, the Department will also be working towards developing a paper in the first half of this year, addressing the development of a skills matrix for the GWC. The Department notes that it remains open to individual GWC members to also identify other areas of training or professional development which they may wish to attend.

20

The Department reports monthly to the GWC in relation to its progress regarding the strategic work program and a second strategic planning day is scheduled for April 2022.

25

Turning to the improvements to the Department's own corporate governance, the Department has taken a number of steps to improve various aspects of the Department's processes. Firstly, the implementation by the Director-General of an interim executive structure that was approved by the Public Sector Commissioner for the Department.

30

That interim structure includes the creation of two deputy director SES level positions; second, the creation of a new Executive Director of Strategy, Accountability and Performance position; third, the creation of a new Executive Director of Racing, Gaming and Liquor position. This position is responsible for regulatory design and building the capacity, outcomes and integrity of the racing, gaming and liquor portfolio. The incumbent is also the Chief Casino Officer.

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And Finally, the secondment of an executive manager to the secretariat position for the GWC. Acting appointments to all these positions have been made and the interim structure remains in place and is currently approved until June 2022.

45

Second, finalisation of the internal review by Fiona Roche into the racing, gaming and liquor division of the Department occurred. This internal review commenced in

December 2020.

5 Third, the Casino Compliance Branch has increased the presence of inspectors at the Perth casino. Fourth, within the Casino Compliance Branch, a new casino regulatory reform program team has been established to address issues identified during this Royal Commission. Departmental officers have also completed a number of training programmes, including the accountable and ethical decision-making programmes, conflict of interest training workshops and the same navigating current challenges in  
10 regulatory practice workshop sessions referred to previously.

Sixth, the Department has ensured an experienced regulatory and management consultant has been engaged to provide expert and strategic advice to the Chief Casino Officer and other senior officers of the Department, as and when required.  
15

Seventh, an interagency working group, an operational group on casino tax, has been convened to consider a number of issues surrounding the payment of casino tax by the Perth Casino. This working group not only includes officers from the Department, but also officers from the Departments of Treasury and Finance.  
20

Eighth, an external consultant has been engaged to improve the audit capability of the Department generally. Ninth, an external consultant has been engaged to undertake a review of the funding of the services provided by the Department to the GWC; that is, to review the Department's service fee.  
25

This review will include the development of an activity based costings model, which will in turn inform a more accurate calculation of the Department's service fee to the GWC and assist in the development of a written service level agreement between the Department and the GWC for the start of the 2022/23 financial year.  
30

Tenth, the Department has commenced a series of communications from the Director-General regarding the Department's Code of Conduct and the various principles contained in it, and arrangements have been made for integrity presentations to be given to the Department's corporate executive by the Corruption and Crime Commission and the Public Sector Commission.  
35

The Department has accepted and accepts today that its historical management of conflicts of interest was not of the standard expected of a modern public sector organisation involved in regulation. The Department has taken a number of steps to address this issue.  
40

In February 2021, the then Acting Deputy Director-General of the Department requested departmental officers advise her of any personal relationships or close friendships with staff at Crown Perth. Such personal relationships or close  
45 friendships were then declared, assessed and managed in accordance with the Department's Code of Conduct, including the development of a mitigation strategy.

Those conflicts and the mitigation strategies for staff involved in casino regulation

were reported to the GWC in May of 2021. In August of 2021, the Director-General approved a new Managing Conflict of Interests Guidelines for the Department.

5 Thirdly, a centralised online Register of Declared Conflicts of Interest and the associated approved management plans now exists. The register is tabled at the Department's corporate executive meetings each month.

10 Finally, a new centralised online register now also exists for gifts, benefits and hospitality, with a review of the Department's gifts, benefits and hospitality policy and guide scheduled to be completed by June 2022.

The Department's work in relation to these matters will continue to evolve and develop as time progresses.

15 I now wish to make some short observations and submissions in relation to some specific matters raised in the other interested parties' reply submissions to the extent I have not already addressed those so far.

20 Turning firstly to some matters raised in the GWC's reply submissions at paragraph 15. Paragraph 15 of the GWC's submissions deals with the extent to which the Department is presently able to assist the GWC in a review of the key performance indicators.

25 In our respectful submission, the GWC's submission oversimplifies the issue (inaudible) of KPIs. The GWC assert that the Department does not have a developed view and is not able presently to provide advice and policy support in relation to the issue.

30 The evidence heard in this Royal Commission has made it clear that the GWC has been lacking a number of strategic and governance documents. These have been identified in the GWC's Strategic Work Plan and are currently being developed by the Department on behalf of the GWC. These strategic and governance documents need to be developed before the Department can undertake or cause to be undertaken  
35 a meaningful review of the GWC KPIs and provide meaningful policy advice on this issue. Paragraph 108 of the Department's written submissions outlines this process.

Therefore, the Department respectfully submits that when regard is had to the entirety of the work the Department is currently undertaking in support of the GWC,  
40 it is providing advice and policy support in relation to the strategic objectives of the GWC and this work will inform the future review, consideration and advice regarding the key performance indicators.

I wish to now turn to the topic of the changes to the Electronic Gaming Machine Policy that were made in 2019. This matter is addressed at paragraphs 45 to 46 of  
45 the GWC reply submissions. The Department accepts and has accepted that the Electronic Gaming Machine Policy should not have been amended in 2019 to remove the prohibition on multiline outcomes, also known as winning combinations.

At paragraphs 383 to 387 of the Department's written submissions it posited an explanation, not an excuse, as to how that outcome came about. The GWC, in its reply submissions, takes issue with that explanation on the basis that the changes requested included a change to the return to player, which was not approved, and a change in the speed of play generally, which was also not approved in the form put forward in the recommendation.

However, respectfully, we submit that when regard is had to these particular minutes and agenda papers, these two matters don't alter the submissions made in our written submissions.

What is clear from a review of the various documents is that the original proposal that was put forward by Crown and, therefore, the Department to the GWC did include a change to the return to player, plus a change in the speed of play and some associated other amendments, including the independence of outcomes.

When the matter was first considered by the GWC in March 2019, a decision was made to split in half the matters for consideration, the return to player being the subject of consideration by the minister or possible consideration by the minister, and the other matters to be the subject of a paper put forward by the Department to the GWC.

I don't know if the Commission has this particular document in the bundle but the minutes of the GWC from 26 March 2019 are found at GWC.0002.0016.0271. If we turn to page 4 what first happened at the bottom of the page, item 6.4, is there is a reference made to a presentation being given by Crown in relation to the agenda paper and then the resolution is to note the presentation. In addition, the chairman to provide a briefing to the Minister for Racing and Gaming regarding Crown Perth's request.

The matter then came before the GWC in the April 2019 meeting. The minutes are located at GWC.0002.0016.0273 on page 2 under item 5 "Business Arising". In the second paragraph it can be seen that the DC, being the Deputy Chair, referred to agenda item 6.4, which is the one I have previously taken the Commission to.

The Deputy Chair is then asking members for further guidance in relation to the proposed amendments sought by Crown Perth. It lists there the three bullet points of what those are; a reduction in the minimum game speed, changes to game design features, reduction in return to player.

In the following paragraph after the bullet points:

*The members agreed that in relation to the reduction in game speed and the changes to the game design features, that these proposed amendments be progressed through a submission of an agenda paper for the consideration of members at the Commission meeting in May.*

Whereas the reduction in return to player, dealt with in the next paragraph, is to be discussed with the minister.

5 The matter did not come back before the GWC in May 2019, it did come back in  
July 2019. The relevant agenda paper is GWC.0002.0016.0281. On the first page it  
outlines the background to the proposal put forward by Crown and recounts the  
history of what has happened to date at the various meetings. If we go Over to page  
2, and if we could we blow up the paragraph immediately above after the word  
10 "Recommendation":

*Amended version of the WA Appendix (relating specifically to Factors 1(4) and  
(2) only) (Attachment 4) and corresponding sections of the EGM policy  
(Attachment 5) have been attached for the consideration and approval of the  
15 Commission.*

So, attachment 5 contains the EGM policy and that can be located on page 32. Page  
33 contains the beginning of the marked-up amendment that had been submitted for  
consideration and approval by the GWC. We can see amendments proposed to  
20 appearance, speed of play, winning combinations, which is number 4, and over on  
page 34, independence of outcomes. So that was what was put up to the GWC for its  
consideration.

We turn to the minutes from July, which can be located at GWC.0002.0016.0285 and  
25 the relevant page being page 2.

COMMISSIONER JENKINS: Sorry to break with the procedure we all agreed  
upon. Going back to the previous document, where do you say the multiline changes  
appear in that document, if at all?  
30

MS SEAWARD: On page 33, item 4, "Winning Combinations" and it lists the  
different combinations that are or aren't acceptable.

COMMISSIONER JENKINS: You are proceeding on the basis that the application  
35 requested changes to game features and the removal of the prohibition on multiline  
was a change in game features; is that right?

MS SEAWARD: We accept it is not clear and we have accepted that in our written  
submissions. What we are simply putting forward an explanation for how it came  
40 about. And how it came about was this was the paper that was put up for the GWC's  
consideration and approval.

COMMISSIONER JENKINS: Thank you. Please continue.

45 MS SEAWARD: I turn back to the minutes from July, GWC.0002.0016.0285, on  
page 2. Agenda item 5.3 is reduction in minimum game speed. The confusion that  
has clearly come about is when a review of the formal resolution in the box and the  
paragraph above are considered.



The Department accepts that the formal resolution is to approve changes to the WA Appendix and relevant policies to reduce the minimum game speed to 3 seconds, and then it provides some details about game speed, and also removes references from documents relating to the independence of outcomes, and the Department accepts it does not refer to the winning combinations.

However, when regard is had to the paragraph above, members agreed to approve the changes requested, including those related to game design and independence of outcome and requested the minister be briefed in relation to this proposal.

In our respectful submission, what is unclear is what else was being approved. If it says "Agree to approve the changes, including those", it begs the question of what else was being approved. The submission from the Department is simply that this is the explanation, to the best of the Department's ability, as to how the policy came to be amended in circumstances where it is not specifically referenced in the resolution of the GWC.

Turning to paragraph 50.4 of the GWC reply submissions, which is simply a submission in relation to the Department's position on harm minimisation. The Department simply wishes to confirm that the Department does not suggest it was entitled to be wholly or even substantially reactive to requests for support and assistance from the GWC. Rather, when our paragraph 253 is read, the Department is saying the existence or nonexistence of a request from the GWC to develop a particular policy is simply one factor relevant to considering the effectiveness of the Department's support in relation to the topic discussed in that paragraph.

I turn briefly to the reply submissions made by the Crown entities. At paragraph 113 to 115 of the reply submissions is a discussion in relation to the speed of play for EGMs. The Department accepts the point made by Crown in those submissions that it has not conceded it is unable to verify the average speed of play but, rather, has identified the need for an agreed methodology as to how speed of play is tested, both pre-approval and post-approval.

The Department maintains its primary submission that it is open to this Royal Commission to recommend that the GWC consider restoring the WA Appendix and the EGM policy to their pre-July 2019 text. The Department agrees that if the GWC moves beyond restoring the WA Appendix and the EGM policy to their pre-July 2019 text and considers revoking any relevant declarations that have been made in the interim period, then it will be required to follow the show cause procedure set out in section 22 of the Casino Control Act.

The next topic the Department wishes to address is the role of the Department after the conclusion of this Royal Commission. The final report of this Royal Commission will make a number of findings and recommendations in relation to Parts A and B of the Terms of Reference.

The Department has made limited submissions in relation to Part A of the Terms of

Reference. The Department looks forward to the Royal Commission's findings and recommendations in relation to this part and it will support and assist the GWC in reviewing and considering those findings and recommendations and taking such  
5 action as the GWC considers appropriate moving forward.

In relation to Part B of the Terms of Reference, insofar as the Royal Commission's findings and recommendations concern the effectiveness of the support provided by the Department to the GWC, the Department has not stood idle waiting for the Royal  
10 Commission's final report. As outlined in our written submissions and summarised here today, the Department has taken steps to address many of the issues highlighted in the evidence before the Royal Commission and identified in the interim report.

This program of work includes matters specific to the Department and matters  
15 assisting the GWC. These programmes will develop and evolve following the receipt of the final report and a consideration of the matters raised in it.

The second part of Part B of the Terms of Reference concerns enhancements to the regulatory framework. The evidence before the Royal Commission has identified a  
20 number of areas of potential recommendations in this respect. The interested parties have addressed many of those in their responses to the regulatory framework discussion paper.

Some of these matters, such as the inclusion of an objects clause in the legislation  
25 and the appointment of an independent Chair of the GWC have received universal support. Others, such as the appropriate regulatory model and the regulation of electronic gaming machines, involve more complicated and nuanced considerations.

There has not been a review of the legislative framework governing the regulation of  
30 gaming since the Government Gaming Inquiry Committee Review and Report in 1984, which led to the creation of the Gaming Commission. This Royal Commission has provided an opportunity for reflection and engagement in relation to the current framework and, if appropriate, an opportunity for law reform.

Ultimately, the Royal Commission's recommendations in this respect will be matters  
35 for the Government to consider and respond to. The Department looks forward to carefully reviewing and considering the Royal Commission's recommendations as part of its role assisting and advising the minister.

Those were the submissions of the Department, unless there are any questions from  
40 the Commission?

#### 45 **QUESTIONS BY THE COMMISSION**

COMMISSIONER JENKINS: Ms Seaward, can I ask you some questions about the current situation with the Casino Control Officer. Is there currently a permanently

appointed Casino Control Officer?

5 MS SEAWARD: No, there is not. The previous acting person in that role, Ms Larcombe's six month contract came to an end and, unfortunately, she was unable to continue in that role. A new person has been appointed to the role of Executive Director of Racing, Gaming and Liquor and that person is currently in the process of being appointed as the Chief Casino Officer.

10 COMMISSIONER JENKINS: Is that Ms Perry or someone else?

MS SEAWARD: Ms Jennifer Shelton.

15 COMMISSIONER JENKINS: Sorry, she is in the process of being appointed?

MS SEAWARD: She has taken up the role of Executive Director of Racing, Gaming and Liquor, which is the underlying Department position. There needs to be an authorisation then under the Casino Control Act, section 9, to appoint Ms Shelton as the Chief Casino Officer. That authorisation still has to be completed.

20 COMMISSIONER OWEN: Can I follow through on that. Where in the Department hierarchy does the level of Executive Director sit? We are used to the phraseology Deputy Director-General, who has generally held the role of CCA.

25 MS SEAWARD: Yes. So the hierarchy, the current structure, is that we have the Director-General at the top, then two Deputy Director-Generals and sitting below one of those Deputy Director-Generals is the Executive Director level. So it is the third level down, if I could describe it that way. The first two levels are the senior executive service. The Executive Director is the permanent Public Service.

30 COMMISSIONER JENKINS: So I gather from that that Ms Shelton, as far as the Department and Ms Shelton are concerned, is going to be appointed the permanent CCO?

35 MS SEAWARD: Yes, those are my instructions, yes.

COMMISSIONER JENKINS: Is it still, as I understand it, the Department's position that it is the role/obligation/ duty, however you want to phrase it, of the Department to appoint the CCO?

40 MS SEAWARD: That is certainly an issue that has been raised in this Royal Commission. The Department's present view is that under the Act it simply does not say who appoints the Chief Casino Officer. So, unless and until that matter is resolved, the Department's current position is that it is appropriate for the Department, at this point in time, to continue to appoint the Chief Casino Officer. When I say "Department", I should say the Director-General, as the employing authority of the Department, is the appropriate person to appoint unless and until consideration of that issue can be further dealt with.

COMMISSIONER JENKINS: Since this appointment seems to be in train, what then is the GWC's role in that appointment? Does it get an opportunity either to be consulted or to veto the appointment?

5

MS SEAWARD: I don't have instructions on what the particular role will be in relation to the appointment in relation to Ms Shelton. But certainly those matters are matters which will need to be worked out moving forward. When Ms Chopping gave her evidence to the Royal Commission, she explained she had put in place this interim structure to get the Department through the period until the Royal Commission's findings had been handed down and consider further changes and decisions, if necessary, which can be made. So at this point in time, this is part of the interim structure that is in place.

10

COMMISSIONER JENKINS: In respect to Ms Chopping herself, has she been permanently appointed?

15

MS SEAWARD: I do not believe so. I don't have instructions on exactly where that process is in the course of the various steps.

20

COMMISSIONER JENKINS: You referred to the improvements to the corporate governance and regulatory framework and you will be aware that the PCRC was provided with a document as part of the Departmental submissions in relation to that. And At paragraph 12 of that document it says the Department provides licensing services for casinos. Can you explain to me how, under the regulatory framework, it is the Department that provides licensing services?

25

MS SEAWARD: Yes. What presently happens is, under a delegation from the GWC, it is Departmental officers who deal with the key casino employee or casino employee licenses. So what doesn't come up before the GWC at every meeting is every casino employee licence application. That is delegated down and the Department manages those, due to the volume and numbers.

30

Also, that is a broader --- it has got casino, but also it deals with permitted gaming. So the licensing services that are referred to in that paragraph are broader and include community gaming matters.

35

COMMISSIONER JENKINS: I appreciate that, but in relation to the provision of casino licenses, even in that situation which you have just articulated, isn't the work of the Department still being carried out on behalf of the GWC?

40

MS SEAWARD: Yes, we certainly accept that. I don't believe paragraph 12 was intending to say it is only done by the Department in its own right. The focus of paragraph 12 is more this is the interface between the Department and various West Australians, in the sense that this is where people may send their applications and who they may hear from. But we certainly accept it is done on behalf of and for the GWC.

45

COMMISSIONER JENKINS: Finally, in relation to the Problem Gambling Support Services Committee, can you just articulate what is the Department's position there? Is that committee a subcommittee of the GWC or independent of it or part of the  
5 Department?

MS SEAWARD: In our respectful submission, it is not a subcommittee of the GWC. It hasn't been established in accordance with the requirements under the GWC Act. So it has, based on its historical development, been something that the Department  
10 has managed, bringing together various groups of people in order to identify policies and programmes and fund those in order to support gambling-related harm in Western Australia.

What its role will be going forward is partly a matter that the external consultant doing the review and the policy options will consider. There has been no change to the Problem Gambling Support Services Committee pending that review as it may be a complete change is recommended in relation to how Western Australia as a whole deals with problem gambling.  
15

COMMISSIONER JENKINS: So, just to make sure I understood what you were there, you are saying that the Department says it is a committee that historically it has organised, so to speak?  
20

MS SEAWARD: I think "organised" is, respectfully yes, the correct word. It has organised and had input from various group but, yes, the Department has organised it.  
25

COMMISSIONER JENKINS: So you are saying the Department, currently and historically, has the power to direct it but that the GWC has not had that power, does  
30 not have that power?

MS SEAWARD: I'm not sure we would agree the Department has the power to direct it in any way. It doesn't have any statutory power that would allow the Department to do that. And if it is not a subcommittee of the GWC, then the GWC  
35 has no statutory power in order to do that either.

The GWC has increased its involvement in the Problem Gambling Support Services Committee since the Royal Commission started in the sense that the Problem Gambling Support Services Committee now reports up to the GWC and so the GWC  
40 has a sense of what work is being done. Traditionally, there has been a representative from the Department on the Problem Gambling Support Services Committee. But given it is not a formally established subcommittee, it doesn't sit within any legal framework that would give anybody a power of direction.

COMMISSIONER JENKINS: You say that its future, so to speak, is being considered. So does that mean the Department at this point doesn't have a proposed future --- a determined future for the Problem Gambling Support Services  
45

Committee?

5 MS SEAWARD: Yes, that is correct. That will be considered as part of an overall policy consideration of how best to address harm minimisation.

10 COMMISSIONER JENKINS: I said that was the last matter, but just one other matter I wanted to cover off on and that is the induction program for GWC members. You spoke about an induction program being prepared and then being submitted to the GWC for its endorsement. Is that what I understood?

MS SEAWARD: Yes, that's correct.

15 COMMISSIONER JENKINS: So I want to understand what you meant by "endorsement" and how the Department sees its role in that as opposed to the GWC. Whose induction program will it be?

MS SEAWARD: It will be the induction program for incoming GWC members.

20 COMMISSIONER JENKINS: Yes, but is it the Department's program which it has for the GWC members or is it the GWC's program which it has for itself.

25 MS SEAWARD: We would say it is the GWC's program but it is being developed and prepared by the Department and it will be put forward to the GWC for them to review the elements of the package and what the suggestions are for the information that should be included and to obtain feedback then from the GWC as to what other things they think they would like to see in the package.

30 Some work was done in December on that, as to what elements might be necessary and that did go to the GWC in December. What is coming back in February is the culmination of considering all those matters and the Department's proposal for the GWC.

35 COMMISSIONER JENKINS: So, to get to the nub of it, will the GWC have the ability to approve or reject that program independent of the Department?

40 MS SEAWARD: Yes, with respect. It may be that it is a case of approving certain elements or asking for more things to be included. So it may not be an approval or reject type scenario, it may be, yes, that looks appropriate or, no, we would like some other matters to be included.

45 COMMISSIONER JENKINS: In respect of the content of that program, you have identified that the GWC members were given the benefit of attending a seminar or talk by Mr Sparrow. Sorry, I have forgotten his title, I'm sure he has one.

MS SEAWARD: Professor Sparrow.

COMMISSIONER JENKINS: Professor Sparrow. He is obviously an expert in

regulatory theory. That is an important part of the GWC's armoury of knowledge, would you agree ---

5 MS SEAWARD: Yes.

COMMISSIONER JENKINS: --- to have some knowledge about regulatory theory and what sort of form of regulation they may be implementing?

10 MS SEAWARD: Yes, yes, we do.

COMMISSIONER JENKINS: So is there anything, to your knowledge, in the proposed program to further that education for GWC members as part of their induction?

15

MS SEAWARD: Do you mean in the induction package itself? I don't have instructions to that level of detail. But certainly part of the strategic work program, one of the four categories, is an improvement in the training information that the GWC will have in order to --- so the individual members can better perform their tasks. So certainly training and general knowledge building is part of the strategic work program as a whole.

20

COMMISSIONER JENKINS: Thank you, Ms Seaward. Those were my questions.

25 COMMISSIONER MURPHY: Just a couple, if I may, on the enhancements, Ms Seaward. You referred to an increasing presence of inspectors at the casino. Is there an associated increase in the number of inspectors or the amount of hours being devoted to casino inspections now?

30 MS SEAWARD: I don't have the precise instructions or figures, but I don't believe there has been any new appointments to inspectors. But there is certainly an increased presence. I can obtain additional information as to hours.

COMMISSIONER MURPHY: Just in general terms.

35

And you mentioned an external consultant has been engaged to enhance the audit capability, is that the casino auditing?

40 MS SEAWARD: It is the Department's auditing as a whole, which will then impact upon the work it does for the GWC.

COMMISSIONER MURPHY: Thank you.

45 COMMISSIONER OWEN: Ms Seaward, can I bring you back to the Regulatory Framework Discussion Paper that was circulated in November and the Department made a submission for which the Commissioners are grateful. The impression on reading that is that the Department's --- the four delivery models that were included, the impression reading it is that the Department favoured centring the regulation of

the casino back into the Departmental structure rather than a statutory body. Is that a fair reading?

5 MS SEAWARD: The Department's position in that regulatory --- in response to that paper was that either of the four models could work in Western Australia, depending on exactly what amendments were made to the statutory regime.

10 The Department does not formally express a preference for any one of the four models, but what the Department did do in our response was to identify benefits and disadvantages of the various models. In relation to model four, we do identify in there a number of benefits to that model and a number of ways in which that model may be, of all four, more in line with some of the recent whole-of-government policy documents that have been released.

15

COMMISSIONER OWEN: And it is a model in at least one other State?

MS SEAWARD: Yes, in Queensland.

20 COMMISSIONER OWEN: But If we decide to the contrary that it should be a statutory body of some description, the question that immediately arises is whether it should have full-time dedicated employees, at least at the central level, and the person occupying the role of Chief Casino Officer, who you might term a CEO of the body, a CFO of the body, and also an administrative manager, would be three, I  
25 would have thought, key, dedicated full-time employees.

Does the Department have a position on that notion of key employees being dedicated to the statutory body if that is the way that the regulatory framework, the recommendation for enhancement of the regulatory framework model?

30

MS SEAWARD: The Department doesn't have a formal view on who exactly should be the key employed positions if that model is put forward. We certainly accept that those three would seem appropriate in all the circumstances but we don't have a view on whether there are any others or how many should or should not be directly  
35 engaged.

COMMISSIONER OWEN: The next question, of course, is where the casino inspectors would sit. In terms of the enhancement processes in which you have been engaged, was any thought given to a full and comprehensive service delivery  
40 protocol or memorandum of understanding?

MS SEAWARD: Yes, a service level agreement, Commissioner, if that's how I understand it, setting out the formal relationship between the Department and the GWC. Do I understand that to be your question?

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COMMISSIONER OWEN: Yes.

MS SEAWARD: Yes, that is definitely something that the Director-General wants to



10:41AM

be developed and the proposal is for something to be developed to start the 2022/2023 financial year. In order to do that, part of that work is dependent upon one of the external consultants who is currently at the moment reviewing the entire service fee and an activity based system of costing.

The Department's view is that will be fundamental to underpinning the service level agreement. There will, of course, be other matters that will need to be worked out, but certainly a formal service level agreement is part of the work program the Department is working on.

COMMISSIONER OWEN: Thank you, I have nothing else. Ms Seaward, those submissions have been very helpful. Thank you.

MS SEAWARD: My pleasure.

COMMISSIONER OWEN: Mr Evans, I think we might take a break now and if we come back at 11.10 and start then, does that suit you?

MR EVANS: Thank you.

COMMISSIONER OWEN: I presume everyone is aware of the Western Australian Industrial Relations Commission rulings on access to level 18? You will follow them no doubt. We will come back at 11.10.

**ADJOURNED** **[10.43AM]**

**RESUMED** **[11.10 AM]**

COMMISSIONER OWEN: Please be seated. Thank you, Mr Evans.

**SUBMISSIONS BY MR EVANS**

MR EVANS: If it pleases the Commissioners. The Gaming and Wagering Commission, which I will refer to for brevity as the GWC from now on, thanks the Commission for the courtesy of an opportunity to make oral closing submissions.

Those submissions are informed by the approach taken by the PCRC to the publication of written submissions, which may affect the understanding by the public of the positions of parties who might otherwise only read the report. There are, therefore, some matters I wish to cover in elaboration of written submissions, essentially for the purpose of public consumption. Other aspects deal more directly with the submissions which we made.

I don't propose to descend in any great detail into the pros and cons of what are, on my left side, more than 8 inches of double-sided, close-typed submissions, submissions in response and submissions in reply which raise an enormous number of issues. But we will make submissions about the approach to the resolution of those issues for the purposes of the final report and some matters for which the GWC advocates.

Before turning to the first topic, which is the GWC itself, I do want to extend on behalf of the GWC its thanks for the assistance provided by the Department and the Department's solicitors at the State Solicitor's Office in dealing with the issues in this Royal Commission.

As Commissioner Owen indicated in his opening, this has been an exercise undertaken under enormous time pressures, with vast volumes of materials. I think counsel for Crown have indicated somewhere in their submissions a set of statistics giving some indication of the scope of the task. For the GWC, it would have been simply impossible to deal with those issues without the assistance of Departmental officers and the SSO in providing logistical and material support. The GWC is greatly indebted to the Department and Ms Seaward for that support.

The GWC also wishes to acknowledge that since the commencement of the Royal Commission in particular, there have been considerable improvements in a number of aspects of the interaction between the Department and the GWC. Ms Seaward has taken you to a number of those in relation to improvements in procedures in the quality of materials prepared for the GWC and in the progression of a number of initiatives, in particular in relation to strategic planning, for which the GWC members have been advocating for some time.

That, of course, is a question of the mobilisation of resources. (Inaudible) It is amazing what the searchlight glare of a Royal Commission will do to liberate resources within government.

One of the issues for you in making recommendations in the final report will, of course, be resourcing on an ongoing basis to sustain the efforts of whatever regulatory body in whatever regulatory framework is recommended. I will turn to that a little later.

In identifying, as Ms Seaward did, the range of support and assistance which is provided by the Department to the GWC, and it is acknowledged and we accept the accuracy of that general description, the question necessarily arises, well, what is the GWC, which is supported. There are some important characteristics of the GWC which need to be made plain in understanding how the GWC has performed its role over many years and in addressing Part B of the Terms of Reference when this Royal Commission comes to make its report.

The GWC is a small board of no more than seven members, plus its chair. Except for

the chair, ex officio the Director-General of the Department, and for much of the time the Deputy Chair, who was also concurrently for most of that time the Chief Casino Officer, it is essentially a volunteer body.

5

In recent times its members have been selected, effectively, from those who put forward their names as volunteers to serve on any government board. The Commissioners heard evidence from the most recently appointed Commissioners, bar two, who were selected through that process of volunteering, effectively, for board membership within the panoply of boards that exist within government.

10

Members have always been selected by government through the responsible minister, almost exclusively through the ministerial office and rarely, if at all, after consultation with even the Director-General. Historically without the involvement of the GWC itself, through a process which is opaque, with no defined selection criteria or skills, other than the general requirement in the Act that they be persons of good character and relevant experience, and how that relevant experience has been defined and employed is not apparent.

15

For all that, the members have, over time, displayed a variety of skills, which has evolved from time to time during different periods of the GWC. At one stage it had an emphasis, perhaps in the 2000 to 2010 period, on some gaming and hospitality experience and, at that time, a particular interest in relation to issues of responsible gaming.

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More recently, the appointments have tended towards significant professional skills, with chartered accountants, financial planners, former police officers being appointed.

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Only in the most recent appointments during the term of this Royal Commission have professional casino regulators been appointed as ordinary members of the GWC. One was to replace Mr Sargeant, who was historically a professional casino regulator, and more recently another regulator to fill a vacancy which emerged on the GWC recently.

30

The Chair and Deputy Chair and CCO, the Deputy Chair also being a ministerial appointment, have a significant influence, obviously, on the agenda, the materials and the business of the GWC, simply because the Department, as Ms Seaward addressed earlier, is responsible for the preparation of those materials and has the resources and is the only body which does have the resources to undertake those administrative and the policy roles on behalf of the GWC.

35

But the GWC is the decision-maker and it is the decision-maker on the materials which are before it, in addressing a wide range of gambling issues. I say a "wide range" because when one looks at the range of duties which are expressed under section 7 of the Gaming and Wagering Commission Act, the GWC has responsibility not only for casinos but also for community gaming. We will say there that the GWC regards casino gaming and community gaming as a continuum of regulatory activity

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which are partially reinforcing; that is, the regulation of community gaming reinforces the monopoly enjoyed by the casino and supports and protects the revenue base associated with that. But also racing, gaming and wagering and lotteries.

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The duties are mixed and multiple. They include policy issues, oversight issues, compliance issues, including decision-making in relation to noncompliance with licenses. They are, therefore, both regulatory, policy, administrative and, to a degree, adjudicative.

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It is a body which has had to conduct itself and, in its submission, does conduct itself professionally, but within the constraints that it faces both in its relationship with the Department and its inherent dependence on the Department, and one very real constraint; that is, its part-time and essentially voluntary nature, and the very limited remuneration which is received by members of the GWC, a mere fraction of that paid to members of peer regulators, which in itself is hardly incentivises members to commit vast amounts of time, other than out of a sense of public service, since public service was evident in some of the evidence given before you.

15

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The GWC overall is constrained by a finite resource base and a finite revenue base. You may have considered in the course of your deliberations subsection 2 of section 7 of the GWC Act, which identifies effectively that the Commission is to live within its means. Those means, so far as concerns casino gaming, are principally revenues derived from the casino tax.

25

That casino tax is payable by virtue of the State Agreement. The State Agreement sets out an agreed basis between the State and the casino licensee for monies which are to be paid for the purpose of the regulatory function, although, in GWC's contention, they are not hypothecated to be a GWC function but form part of general funds. And those are limited and they are limited because of the nature of the formula contained in the State Agreement, which has not been revisited for very many years.

30

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You will recall there has been some evidence, although it hasn't been greatly explored, about the possibility of the revenues of the GWC being enhanced. That could only be by appropriation and that could only be by appropriation in a government environment which has for many years been constrained in relation to the increment of departmental funding.

40

The very purpose of the 2017 machinery of government changes which resulted in the formation of the present Department was cost saving, not the objective of increasing available funds for bodies such as the GWC. So the GWC has operated for much of its life, and certainly for the last many years, in a resource constrained environment.

45

Having said that, in recent times resources have been made available and there has been considerable improvements in process, are indicated. The GWC would say those have, to date, been principally improvements in the processes by which the

Department supports the GWC.

5 What now will matter in the future is the policy development which is supported by those processes and the implementation of that policy development into the future. That policy development will undoubtedly, of course, be shaped by the report of this Royal Commission.

10 Can I turn then to the inquiry and, first, the suitability question. The Terms of Reference Part A fundamentally directed to questions as to the suitability of individuals and entities associated with Crown Perth and what their conduct over a very extended period of time may demonstrate about the present and prospective suitability of Crown Perth, the Perth casino licensee, and of its close associates to be involved in the conduct of the casino licence.

15 I note that we make no further comments on the CPH parties comments about its status as a close associate at the present time. I regard those as matters for you.

20 The question of suitability, so far as the GWC is concerned, is not primarily directed to the finding of fault for the purpose of punishment, although contraventions of the casino legislation and State Agreement which are exposed in the course of the inquiry and which have that consequence, which may have been exposed, may lead to action at some stage.

25 Rather, the purpose is protective for the future, to determine whether Crown Perth should continue to hold the licence or should be regulated differently in the future to achieve the purposes of the regulatory regime and whether permitted close associates or casino key employees should continue to hold that status.

30 For the most part, GWC does not make submissions in relation to the findings the Commission should make as to the suitability of particular entities or persons with relationship to Part A of the Terms of Reference because those are questions (a) posed by the Terms of Reference specifically but (b) ultimately, are questions which GWC itself may have to confront or a successive body to GWC, depending on your  
35 report, in providing advice to the minister, including potential advice under section 21A(4) or (5) of the Casino Control Act, if acting under the existing statutory regime, or for government or another successor regulator, depending on the regime in the future, to address. It is inappropriate for GWC to address specific suitability questions in that regard.

40 One suggestion which the GWC has made in its submissions which has drawn particular ire, however, is the suggestion that should this Royal Commission ultimately recommend that the casino licence be cancelled or suspended, and that is a recommendation for ministerial action under section 21B, effectively, of the Casino  
45 *Control Act*, as a result of properly made findings, well-founded in relation to the conduct of persons or entities, then there is at least the option which should be entertained for legislative change.

It is, in our submission, a given that legislative change will be a result of this Royal Commission, to create the potential for the recommendation and findings that you might make to be effected without the GWC needing to take further inquiry action.

5

Now, to put that in context, you will recall we have submitted in opening and elaborated in our written submissions that in February of last year the GWC resolved to recommend to its minister that an inquiry be undertaken under section 21A(5) in relation to matters the subject of what was then the Bergin Inquiry and later expanded into the Melbourne Royal Commission, in terms which are in a less elaborate form but otherwise substantively the same as the Terms of Reference of your Commission. And insofar as that inquiry --- in both Part A and Part B.

10

Insofar as those matters go to Part A, the evident purpose of that is to frame the possibility of a report to the minister under section 21A(5), which would then lead --- well, I can't say it would lead, would then commence a process by which the minister could take action under section 21B.

15

It is a consequence of the fact that this inquiry has been constituted as a Royal Commission that there is no longer a direct nexus between the chain of inquiry which might be initiated under the Casino Control Act and the consequence of ministerial decision. It is, in our submission, open for this Royal Commission under Terms of Reference 7 and 11 --- that is, as a matter incidental to a suitability inquiry and as an enhancement to the regulatory regime --- to effectively replicate the consequence of this inquiry having been constituted under the Casino Control Act, as the GWC originally advocated.

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That is the approach taken in Victoria in the amending legislation which followed the report of the Victorian Royal Commission, although interestingly it was not actually a recommendation of Commissioner Finkelstein in that Royal Commission. But section 20(12) of the Victorian legislation, as it now appears as a result of the amending legislation passed late last year, effectively allows direct reliance upon findings for the purpose of taking regulatory action.

30

Of course that does raise then the question as to the approach to the findings if they were to happen. Ms Seaward identified that all parties had effectively urged a singular and appropriate caution in making findings reflecting upon individuals, both in the application of an appropriate standard, the Briginshaw standard, and I think the CPH parties have reflected Commissioner Owen's approach in the HIH Royal Commission in that regard in their submissions. But also in relation to the number of findings, the number of individuals and entities that might be subject to findings.

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The GWC endorses that approach. It endorses the Briginshaw approach because of the importance that there be rigour and a high degree, with due respect, of integrity in the findings; that is, you have reached a finding in relation to an individual or entity after a high degree of confidence that that finding is appropriate and right.

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5 But also because the GWC, as a regulator, is concerned, perhaps selfishly, to have to deal with the minimum number of findings; that is, to operate on what might colloquially be called the 80/20 rule. Take the findings that matter and will affect the regulatory environment in the future, and perhaps if there are findings which could be made but are not central to the regulatory exercise, they may not be necessary to be made.

10 Crown has opposed that and I think CPH has opposed that. The ground of opposition might be not one of principle but one that recognises, as Crown's submissions do, that there will be limited or no grounds for review with that approach adopted.

15 I will say nothing more in relation to the suitability questions. Our written submissions say some things about the suitability test in response to the suitability discussion paper, but we rest upon those.

20 The second part of the Terms of Reference, Part B, deal with the effectiveness question. That is, the effectiveness of the relationship between GWC and the Department.

25 There are, in our submission, three stages of the inquiry. The first is an understanding of the statutory regime, its purpose and the respective roles allocated to or undertaken by the GWC and the Department under that regime. Ms Seaward has taken you through those.

30 And, because the GWC and the Department do not operate in a vacuum, the application of certain other statutory frameworks to the GWC and the Department, and that includes the Public Sector Management Act and the Financial Management Act, as they may impact upon the activities of the GWC and the Department.

35 That is mainly an exercise in statutory construction. That construction may identify deficiencies in the statutory regime and it may identify deficiencies in the understanding of the statutory regime by those engaged in the undertaking of it.

40 The second stage involves an assessment of the Department and the GWC in their performance of duties and obligations under that regime. You may identify instances where that performance falls short of expectations. Those expectations may be framed directly by the statute as a result of the exercise of statutory construction or they might be circumstances which arise because of other extrinsic considerations. They could be deficits of resources, they could be deficits of personnel. They may not necessarily be due to a lack of diligence on behalf of the GWC or the Department.

45 An assessment of the GWC's or the Department's performance must fairly be made in the light of the policy imperatives within the statutory regime and the policy settings of government from time to time in relation to gambling regulation, as they were understood by the Department and the GWC from time to time.

As a key example in relation to that, this Commission has spent a considerable amount of time upon questions of harm minimisation. Harm minimisation is but one objective of --- I withdraw that. It is not even an objective. A consideration of issues  
5 of harm minimisation is one duty of multiple duties which fall upon the GWC under section 7.

The Commission saw evidence that harm minimisation was an important consideration for the GWC in its deliberations. It personally mattered to a number of  
10 GWC members and they brought personal perspectives out of their life experiences in relation to harm minimisation to the table, as it were, in considering those issues.

But any body charged with performing multiple duties will sometimes find those duties pull you in different directions and there are other obligations which arise  
15 under section 7 and out of the macro policy settings of government.

Some of those are evident in the State Agreement. The State Agreement has, as one of its objectives, the promotion of tourism. It has as another of its objectives the raising of money for the State. It is quite possible to eliminate any prospect of harm  
20 through the casino. But in doing so, it is quite possible to also eliminate any revenue for the State out of the operations of the casino. Those are policy imperatives which may be intentional.

It is perfectly open for members of the GWC to regulate the casino out of business.  
25 That has been a consideration which they have had in the forefront of their mind throughout their regulatory endeavours.

There is a question of the known or perceived functions of other agencies of government, both State and Federal, concerned in matters relating to the operation of  
30 casinos. For example, the perceived --- and I emphasise in this regard, so far as the GWC is concerned, the word "perceived" --- involvement of AUSTRAC and Australian Border Force up until at least 2017, in the case of the Department and later, in the case of the GWC, in relation to the regulation of the propriety of junket participants as one example. The involvement of VCGLR in the periodic review of  
35 Crown as part of the group holding the casino licence in comparable circumstance is another consideration which bore upon the GWC's work, and you have heard evidence on that from GWC members.

Practical constraints for funding, technical and human resources within which the  
40 GWC and the department operated are realities. We have cited in the submission some metrics in relation to the disparity in those from peer regulators.

Now that goes to the question which many submissions have picked up, and Ms Seaward again alluded to, that there is a risk in approaching any inquiry of this  
45 nature with hindsight bias. We do not elevate that in any way to the level which appears in the Crown (inaudible) submissions.



5 A function of a PCRC, under its Terms of Reference, is to engage in an evaluation of historic conduct. Necessarily, that involves judging the past by reference to what is now known. But in determining what should have been known and should have been done in the past by what is now known, questions in relation to policy, functions and resources remain relevant to understand properly the decision-making process which was engaged in and to understand the propriety and robustness of that decision-making process.

10 That is not to say that a finding could not or should not be made that things could be done better. But the path from what was done to what could be done better does not mean necessarily that there was fault or error in what was done. It simply means, with what we now know, other things could be done if other parameters are properly adjusted.

15 The third and final stage of the effectiveness inquiry involves the recommended enhancements to the statutory regime for the future, in accordance with TOR 11. This involves policy formulation and is constrained by the Terms of Reference that the recommendation must be for an increase or improvement in the statutory regime.

20 The PCRC is not given a tabula rasa in relation to the reform of the regulatory regime, but it has significant scope to recommend improvements.

25 Common to both issues is the importance of caution and precision. I have addressed that in relation to the finding in relation to individuals and entities that might be made. What I want to be clear about and to ensure that all understand is that there should be no misunderstanding of GWC's closing submissions in relation to the urging of caution and precision. The GWC urges no sympathy for Crown or any past or present Crown officer, nor, indeed, regrettably to the extent it may be necessary, and only if it is necessary, Departmental officers or former members of the  
30 Commission.

35 But GWC has a broad regulatory remit and still at the moment limited resources. Consequently, the GWC needs any findings by this Commission upon which it might be able to act to be precise, well-supported and not susceptible to challenge upon the basis of undecided information (inaudible). If the GWC needs to rely on that finding for its own purposes, it also needs to deal with a manageable number of findings that require action. A level of discrimination is useful, if not essential.

40 In a number of instances, particularly in relation to issues of communication with the GWC, findings are urged by the GWC. That's not to say findings (inaudible) but rather a finding that there is or is not fault, if that finding can properly be made.

45 As a recall, I think there are six or so particularised instances in our closing submissions of interactions between the GWC and Crown in relation to areas of communication where GWC urges this Commission to reach a landing, as it were, in relation to those findings. Those are important matters to set the relationship between GWC and Crown for the future and they may inform recommendations that may be made for regulatory reform.

There are a number of other matters where, from the closing observations, there are matters for the Commission to find which we wish to make some brief observations about. The first of those is harm minimisation in EGMs.

5

The GWC agrees it has a duty, amongst other duties, to formulate and implement policies for the scrutiny, control and regulation of gaming and wagering, taking into account the need to minimise harm caused by gambling. That is its obligation under 1, I think it may be EA, or E1 of the provisions of subsection 7(1) of its Act. It is one of a number of duties expressed in the regime. It requires the GWC to take into account the diverse requirements and interests of the community as a whole.

10

Accordingly, in our respectful submission, this Royal Commission should not consider the duty to minimise gambling-related harm paramount among the other regulatory objectives of the framework. It may be, that after having heard the evidence before the Royal Commission and assimilated those findings, you wish to make that recommendation that it should be a paramount consideration in future. And If so, and our regulatory discussion paper addresses this, there are means by which objectives can be framed in future legislation and a hierarchy of importance for those objectives shaped, which would accommodate that policy objective. But that is explicitly then a recommendation for policy change.

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In GWC's submission, it can't be disputed that it did, in fact, place considerable emphasis upon a duty to minimise gambling-related harm when formulating and implementing policies. That is undisputed written and testimonial evidence of the GWC before this Royal Commission.

25

The closing observations make a number of contentions with respect to the GWC and its role in minimising gambling-related harm, including that its effectiveness in regulating and overseeing harm minimisation in respect of the operations of the Perth Casino may have been compromised by the lack of current information, particularly research and statistics, and that it did not sufficiently take into account gambling-related harm when formulating and implementing policies.

30

Neither of those contentions is supported by the GWC. With respect to the lack of current information, the GWC accepts it would have been assisted from time to time by independent, current information as to the prevalence and nature of gambling-related harm. Initiatives are underway, as we understand it, to enhance the available information.

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However, the GWC was provided with research and current national statistics compiled by other State governments and respected gambling institutions through the Department. In more recent times it has been provided, at its request, with monthly RSG statistics from Crown Perth, from which trends could be discerned and probed.

45

But Importantly, in terms of actual outcomes, the premise upon which the GWC was operating, based on prior Productivity Commission research and periodic national

information is wholly consistent with what appears in the latest research from Professor Rockloff. That is, despite a high proportion of West Australians actually gambling compared to the rest of Australia, the level of gambling problems in  
5 Western Australia is considerably lower across the board and, in particular, in relation to what Professor Rockloff's research categorised as being problem gamblers.

10 That is so, despite Western Australian gamblers being twice as likely to participate in casino gaming as those in the rest of Australia. There is an obvious reason for that: Western Australian gamblers participate in casino gaming because it is the only place that they can gamble on table games and EGMs. On the east coast of Australia, EGMs are disseminated far and wide in the community and present a far greater regulatory challenge than they do in relation to a single site and manifest  
15 considerably more harm through EGMs and Keno participation in the east coast in diverse and distributed venues than in Western Australia.

WA's single site regulatory regime works, on the data. No one to date, so far as we can ascertain, has clearly articulated how access to the postulated information, which  
20 is now available through Professor Rockloff's work, in any prior period would have affected GWC decision-making as the information now available is in fact consistent with the information that was then available, even if it was dated. So, the premise is that if the research had been undertaken, GWC would have found out what it now knows from Professor Rockloff's research, which is what it believes was the case in  
25 any event.

In relation to EGMs, they carry a risk of harm as much as elsewhere to those who play them in Western Australia. The finding from Professor Rockloff's research tends to support the need to revisit the functional definition of an EGM. We have  
30 addressed this in our submissions on the discussion paper on EGMs, with an emphasis on harm minimisation features.

The GWC's contention is that any features or practices recommended in relation to EGMs should rest on a robust theoretical or empirical foundation and cannot proceed  
35 from the foundational proposition that a loss in and of itself (inaudible). Indeed, I think Professor Rockloff gave a slightly colourful piece of evidence which said the risk of losing is the fun, and the risk of losing has to be translated into actuality at some stage. Most of the measures commented upon at part 4.2 of Professor Rockloff's report do not obviously meet the requirement for theoretical or empirical  
40 robustness.

Now With respect to the sufficient consideration of harm minimisation when making decisions in the absence of requirements in the statutory regime to put harm  
45 minimisation considerations above all else, the GWC has entrusted the balance of potentially competing considerations, in this case by its duties, in making decisions.

The GWC says that it undertook that evaluative exercise from time to time in good faith and based on information (inaudible). Another decision-maker --- Commissioners, that means you --- might make a different decision. But it does not

appear to be capable of being disputed that the GWC members did, in fact, take into account gambling-related harm when formulating and implementing decisions in relation to gambling in Western Australia and gambling at the casino, in particular.

5

Now, that's what was. Going forward, the GWC's view is there should be clarity in the purpose of the regulatory framework by the inclusion of an objects clause or a principles clause, or both. In that new clause, a requirement to minimise harm caused to people or any group of people due to gambling should be a primary objective.

10

Further, the GWC is in favour of and advocates for a statutory obligation imposed upon the casino licensee to develop a gaming harm minimisation program at the Perth Casino and Responsible Service of Gaming initiatives. These are already underway within the GWC, the Department and in conjunction with the Problem Gambling Support Services Committee.

15

I will interpose there to reinforce what Ms Seaward said in answer to questions from Commissioner Jenkins. It is also the position of the GWC that the PGSSC is not and has never been a subcommittee of the GWC. It is not constituted as such. It is a body which has been facilitated by the GWC and the GWC, through the Department, provides both (a) funding and, (b) I think provides a special purpose account for the administration of funding in relation to PGSSC.

20

It was an initiative of Mr Sargeant, that was his evidence, to fill a need which the legislation at the time did not accommodate.

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COMMISSIONER JENKINS: Sorry for interrupting. Then why is it included in the GWC's annual reports?

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MR EVANS: My understanding is, and I'm sure Commissioner Murphy can explain this better than I can, that once funds are under administration, they have to appear somewhere and that somewhere is the GWC.

COMMISSIONER JENKINS: The annual reports certainly do not make it clear that that is why the information is in the GWC's annual reports. It is presented, is it not, as if it is a committee by which the GWC assists in problem gambling or the management of problem gambling in Western Australia?

35

MR EVANS: It does appear in the annual reports in that way.

40

COMMISSIONER JENKINS: You are saying that is wrong?

MR EVANS: I fear it may be. That may be one of the errors you may discern and report upon.

45

COMMISSIONER JENKINS: Thank you.

COMMISSIONER MURPHY: I certainly observe a disconnect between the view

that it is not a subcommittee of the GWC and of course in financial terms, I mean, the accounts of the PGSSC are part of the accounts of the GWC. So if that is the case, then any payments authorised by the PGSSC would need to be authorised by the GWC.

MR EVANS: It is one of the areas for improvement in the regime. You may well recommend that the PGSSC should become a subcommittee or should be absorbed in some way into the regulatory regime. The GWC has no objections to the regularisation of that, it simply observes that the history does not seem to support the notion that it is, in fact, a subcommittee. As a result of that, there are some disconnects in the reporting and management of the finances of that body.

Generally, the GWC favours and advocates for a more principles-based approach to harm minimisation, and as low as reasonably practicable, rather than a prescriptive rules-based approach. This view is predicated on the fact that not all gambling expenditure is harmful and not all gambling activities cause harm.

In our respectful submission, no evidence has been led to suggest that such a conclusion should be drawn. But some gaming activities do cause harm to some people and such harm should be reduced as far as reasonably practical. The calibration of that notion of reasonable practicability is a question of considerable (inaudible). The GWC does not consider the evidence received by this Commission to date allows a finding in relation to what the level of a threshold of harm should be. I will turn in a moment to the question about thresholds.

Some prescriptive rules, properly founded, may be appropriate for ease of administration and auditing in the performance of regulatory functions. They may also be appropriate as interim measures, pending the development of more theoretically or empirically robust measures.

Crown endorses GWC's approach, as we understand and read their submissions to risk, which has Crown principally responsible for managing and mitigating its own risk. But, as we again read their submissions, it seeks to avoid GWC scrutinising and auditing that risk management.

GWC considers it is necessary that it satisfies itself that Crown has apparently suitable risk management mechanisms in place as an integer of suitability. The directions in Casino Manuals at the moment are aspects of risk management scrutinised by GWC. It is apparent they need wholesale revision in the light of Crown's improvement program. And Because of the complexity of those systems, the GWC considers it likely that it will need external assistance in the assessment and auditing of compliance in the future, again as an incident of assessing ongoing suitability.

COMMISSIONER OWEN: Sorry, Mr Evans, you are now talking about risk management generally, not harm minimisation?

MR EVANS: My apologies, risk management more generally, although harm

is obviously a significant component of that. It is apparent, in GWC's submission, that audit was not previously adequately successful in attaining that objective.

5 Crown raises, in opposition, that there will be a duplication of audit functions if a separate GWC audit of risk management is required. There are a couple of answers to that one. They will be remarkably brief. But there is potential for a harmonisation of external audit to function both for the purposes of Crown and for the purposes of the GWC. That will be a matter which could be developed. But given that the  
10 objective is to audit compliance by Crown with its obligations, the GWC considers that reliance upon internal audit is an insufficient safeguard going into the future.

Can I then turn to remediation because it features very large in Crown's submissions, for obvious reasons, and it has featured significantly in the stage 4 evidence before  
15 the Royal Commission. Crown has addressed and adopted GWC's contentions that certain criminal infiltration risks have been mitigated at the present, partly through measures adopted by Crown and partly by circumstance. Again, the GWC wishes to caution that that should not be misinterpreted on its behalf.

20 You have heard considerable evidence about the risk mitigation measures which have been adopted in relation to money laundering issues using certain typologies and, in particular, certain bank accounts in the latter part of this inquiry, but also in the last few years. Those last few years, 2017 onwards in particular, coincide, of course, with the collapse of Chinese gambling tourism, for reasons which are wholly  
25 extrinsic to the regulatory exercise and more lately still, the closure of borders within Australia.

The GWC is concerned that the mitigation may not persist. That is, the lessons of the past may be forgotten in the future and systems put in place. Great confidence  
30 may over time weaken and wane. That may be because of, at worst, conscious internal decision-making, but simply because, as in the case of the Department or the GWC, all enterprises and entities are strained for resources and sometimes resources diminish over time.

35 One of the important considerations for the GWC in the findings that you may make is the conclusions that PCRC reaches on an affirmative level of satisfaction that the risks have been in fact by the mitigation measures, or will be mitigated in a relatively short time frame and that mechanisms are available which would ensure the validation of that mitigation in the future, to the extent it hasn't been undertaken or is  
40 not yet complete or that to the extent it is dependent upon a current absence of overseas gambling participants due to market changes and extraordinary circumstances.

The GWC is also concerned that historic risks are not the only risks addressed in the  
45 regulatory reform. At the very least, recommendations should focus upon frameworks that can be employed by a regulator in conjunction with government, to the extent that legislative instruments are necessary which are adaptable to changing

circumstances, including perceived or actual levels of risk over time, in preference for the recommendation of a former regulation focused on one specific risk, even if that is a serious risk.

5

There is no guarantee that yesterday's problems will be repeated in precisely the same form. There is almost a guarantee that new problems will emerge in the future and the regulatory regime must respond to both what has happened and what may happen. For the full range of risks exposed by gambling generally in casino gambling (inaudible).

10

Crown suggests that GWC is off the mark in inviting you to consider whether Crown's culture is so flawed to be redeemable. That responds to a submission by the GWC in relation to the assessment of individuals, which concluded with a suggestion that the Royal Commission should not fall into the acceptance of what amounted to the Nuremberg defence of individuals if they were engaged in conduct which is plainly wrong and then move to the (inaudible) of assessing the remediation of entities.

15

Crown's submissions on future suitability are predicated on changes to leadership, management and processes producing sustainable change in areas where Crown's behaviour in the past may be found to have demonstrated failings.

20

In responding to the suitability discussion paper, the GWC provided an extended explanation of the traditional and broader approach to attributing responsibility for acts and omissions to corporations, and whether that was applicable to the consideration of past conduct of Crown in answering the suitability question. Our approach was to say that while it agreed with the traditional approach in assessing past conduct, focusing on directors, officers and employees and the broader approach --- a broader approach is available which concentrates on system, strategy, structure and culture that is not a point-in-time assessment.

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If circumstances of misconduct are found to have occurred over an extended period of time, during which leadership has changed, with the result that systems, strategies, structures and cultures were either allowed to stay in place or amended in line with a view to changing leadership, it may be open to you in evaluating the evidence to consider whether Crown's demonstrated pattern of noncompliance, if that is found, with expected norms manifests deeper structural and cultural flaws, the remediation of which is not responsive to changes in one or even a number of individuals or internal structures.

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It is a difficult exercise in evaluation but one which, in our contention, is at least necessary for you to engage with in the final report. Against that, the understanding of our reply submissions should be assessed.

45

GWC is not saying that Crown's culture is so flawed as to be irredeemable. Even if it was inviting such a determination upon Crown, the more correct formulation would be that Crown's systems, strategies, structures and cultures were irredeemable.

What we say it is important for this Commission to engage with the reform program as to whether it offers the real prospect, with a high level of confidence, that both changes in leadership and changes in systems will produce consistent, compliant  
5 behaviour across the organisation, both imminently and in the longer term, because we have to regulate the casino in the longer term.

There are other differences in approach between GWC and other interested parties. There is some attention on junkets and International Commission Business. The  
10 history of the engagement with junkets and ICB has understandably occupied much of your time and a considerable part of the time of the Bergin and Finkelstein inquiries, in particular given the susceptibility of junkets and ICB business to money laundering and criminal infiltration.

15 Now we would contend it is fairly obvious from the evidence that we have been let down in relation to junkets on a number of levels. I don't propose to repeat our submissions in that regard. But it is the case that 20 years ago the scrutiny of junket operators at a meaningful level had fallen into a level of disrepair and formally was dispensed with some 10 years ago, although in a way which raises issues as to the  
20 approach adopted. From that time, effectively, junkets were not scrutinised in any way.

The residual requirement to provide information as a result of a provision of the Casino Manual (Operations) was, of course, removed in April 2017. There are issues  
25 in relation to that process upon which you might make findings.

The Department's views which informed actions and communications of the GWC in relation to those actions at those regulatory reforms up to April 2017 are understandable as mistaken but honestly held beliefs, at least until the time of  
30 AUSTRAC's publication of its 2017 engagement with the gambling regulators. That publication identified that AUSTRAC and the Australian Border Force were not, in fact, performing the probity functions that the Department had assumed they were and was a clear indication that the Department's assumptions regarding regulatory breaches was understandably required to be (inaudible) revisited. It must be said that  
35 the same could be said of many other regulators around Australia, as reported in that publication.

Looking forward, there is a certain equivocation on the evidence from a number of Crown officers as to what junket and ICB business might be in the future. At the  
40 moment there is no junket or ICB business at the casino for two practical reasons. One of them is wholly practical; there are no foreigners entering the country. The second is there is a direction in place from the GWC which precludes such business being undertaken at the casino.

45 The issue which arises from a policy setting is that the State Agreement, of course, contemplates (inaudible). Effectively, the State Agreement dealt with the taxation of such business.

It is apparent from the more recent evidence from Crown that some form of



International Commission Business, that is business involving international gambling participants, would, with appropriate regulatory oversight, be endorsed in the future by Crown. That is as we understand their evidence. And it would be consistent with the State Agreement. It would be consistent with significant parts of the infrastructure of the Crown complex which were developed for that purpose.

In our respectful submission, it is not inherently risky that foreign gambling at the casino --- I will rephrase that. There are risks in relation to foreign gambling at the casino. Those risks inhere to the way in which money is handled by foreign gamblers in particular and historically by junkets. That must not be permitted to be repeated. The opaqueness of the financial transactions within junkets are a significant criminal infiltration risk. That has been identified clearly in this and the prior two inquiries.

But that does not mean that foreign gambling participants must be forever barred from the Perth Casino, either on an individual basis or on an organised basis. What must be regulated is any aspect of that involvement by foreign gamblers in casino activities which creates a material risk of the misuse of the gambling facilities of a casino for a criminal purpose.

As a regulator considering the State Agreement and considering a broad set of interests, the GWC does not consider that a form of foreign gambling tourism or foreign gambling should be forever proscribed. What is necessary, however, is an appropriate regulatory construct to facilitate that at minimum risk.

What that does not mean, in our respectful submission, is that the risk of approval and supervision should be wholly transferred to an external party. Crown has accepted in its risk management submissions that if Crown owns the risk, it should manage the risk. Our regulatory and governance submissions make plain that, in our contention, Crown must always have the principal responsibility for determining who it deals with and bear the consequences of errors in that decision-making process.

An attempt to move the risk in relation to the approval of foreign gamblers to a regulatory body creates a form of mild hazard. Crown gets to transfer the risk away from the regulator and then argues it is the regulator's fault if for some reason criminal infiltration occurs. That should not be the regulatory construct.

GWC should regulate those issues in the same way it regulates casino licenses and casino (inaudible), but it needs assistance. Foreign gamblers pose particular difficulties in relation to approval, and those that have been recognised.

What we now know from evidence in this Commission is that the sources of intelligence which are now available to Western Australian POLICE are considerably better than they were 10 and 20 years ago, at the time when the approval process for foreign junket operators fell into practical disrepair. But there is no use Western Australian police having those resources and those sources of intelligence unless they are deployed in aid of the regulatory regime.

5 The GWC maintains the position that it is not a law enforcement agency and it is not desirable that it becomes one. Part of any regulatory reform needs to be a recognition of the respective roles and responsibilities of the various agencies that are engaged in law enforcement and the creation of proper and appropriate interfaces between those agencies and the GWC.

10 There is some indication of nascent development in that area, in the evidence, but there is much yet to be done.

Commissioners, unless I can assist you further, and I'm sure questions were being noted as I spoke, I have no further submissions on behalf of the GWC.

15 COMMISSIONER OWEN: Thank you.

### QUESTIONS BY THE COMMISSION

20 COMMISSIONER MURPHY: Only one Mr Evans, you said the GWC operated in a resource constrained environment. I accept that. Does that create an opportunity or an obligation to go to government to seek additional resources?

25 MR EVANS: It does at an abstract level, Commissioner, recognising that to do so, practically, GWC goes through the Department. There is some evidence about that from the Department's CFO, from former Directors-General and also from GWC members about that idea being floated. It is not detailed evidence but suffice to say it might be that the possibility would have been entertained, but looking at subsection 7(2) of the GWC Act, one would not say warmly entertained. But in crisis there is opportunity, as the Chinese proverb goes, and we have come to a crisis, so there is an opportunity.

30 COMMISSIONER MURPHY: Thank you.

35 COMMISSIONER JENKINS: Mr Evans, the first issue I would like to deal with is the composition of the GWC. One of the new members you spoke about is Mr Sarquis --- is that how I ---

40 MR EVANS: It's as good a guess. I must admit I refer to him by first name, Commissioners.

COMMISSIONER JENKINS: Can I understand, is he resident in Western Australia?

45 MR EVANS: No, he is a permanent resident of Queensland and is the equivalent to the chief executive of the gambling regulator in Queensland. I can't recall his precise title but he's a ---

COMMISSIONER JENKINS: Is he retired from that position?

MR EVANS: My understanding is he's a full-time public servant in Queensland.

COMMISSIONER JENKINS: And he's been appointed as a member of the GWC?

5

MR EVANS: I might --- Ms Seaward might --- yes, I understand that is correct, he is. So it is an additional duty for him. I understand there has been another appointment, another regulatory officer.

10 COMMISSIONER JENKINS: I was going to come to that person. Let me deal with Mr Sarquis. Has it been considered whether there is any conflict for Mr Sarquis between those two roles?

15 MR EVANS: I have no idea, because, with respect, the GWC was not consulted in relation to his appointment. (Inaudible) It was an appointment by the minister.

COMMISSIONER JENKINS: Moving on to the second person, who is that?

20 MR EVANS: I don't know whether there has been a formal announcement. Again, Ms Seaward may know. Ms Seaward doesn't know whether there has been a formal announcement or not. I can say it is an experienced regulatory officer who currently has a position with an interstate casino regulator.

COMMISSIONER JENKINS: Thank you.

25

MR EVANS: I actually cannot recall their name.

30 COMMISSIONER JENKINS: You spoke about --- moving on to another topic, you spoke about policy development that was going on. And I just like you to elaborate on what the GWC sees as the differing roles and responsibilities in terms of the policy development for casino regulation between itself and the Department.

35 MR EVANS: Can I put it in these terms, Commissioner; the resources for the undertaking of policy development rests with the Department. It has been the case that for quite a long time, policy initiatives were principally driven by the Department which had a sense of broad purview of government and policy within government. More recently, the GWC has taken --- the current Commissioners have taken a material interest in specific policy development as issues have been identified to them in a way that perhaps they did not engage with the previous years. Now there are obvious --- through the Bergin Inquiry and through the Finkelstein Commission and through this Commission, there are areas of policy development which have been identified --- harm minimisation is an obvious one and is an area in which work is currently being undertaken --- where GWC is now actively engaged with recruiting the Department to support it in policy formulation. That's as a result of the strategic planning exercise which Ms Seaward referred to and which, of course, you had evidence of from GWC members that they've been pushing for for a little bit of time.

40

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COMMISSIONER JENKINS: I'm just wondering how, going forward, if the current regulatory framework remained as it was, who decides and directs policy development for casino regulation in Western Australia; is the Department or is it  
5 GWC or is it an ad hoc mixture of both?

MR EVANS: In the current regulatory regime, it is one of its potential weaknesses. The duty, of course, rests upon the GWC to engage in policy development. That is a duty under section 7. The practicality of the performance of that duty is that the  
10 policy resources reside within the Department. And it is fair to say that except for the most recent appointments and Mr Sargeant's tenure, and of course the role of Mr Connolly as CCO and Deputy Director-General, the policy capability in the specific gambling area has rested with essentially departmental officers. The members of the  
15 GWC, historically, have not been --- or the ordinary members have not been policy people, so there is a practical dependence for policy generation upon the Department. It may be that, from time to time, something is exposed to the GWC which causes it to think about "We need more definition in policy", around which may drive them to ask the Department to do some work on policy. You will have seen, or your Counsel  
20 Assisting will have seen in the papers over time, reasonably material policy papers coming forward in the agenda materials for the GWC, at least some of which are driven from questions arisen from the GWC itself. But the policy assets and competence and the professional casino and gambling management skills have rested within the Department. That, of course, drives, if I might step that out, issues in  
25 relation to the potential regulatory reform models and whether, if you were disposed to recommend a reformed regulatory regime, you would do so on a basis which included a standalone policy competence for the regulatory body. And the model which the GWC has put forward as its recommendation of its response to the regulatory discussion paper, is one which would have a policy function organic to the GWC and responsive to the GWC. A policy and research function, in fact, to enable  
30 the GWC to initiate and control policy formation autonomously.

COMMISSIONER JENKINS: Thank you, Mr Evans.

You spoke of competing regulatory objectives, acknowledging that there are no  
35 actual objectives in the Act. You said that GWC had in the forefront of its mind, either individuals, I suppose, or collectively, a desire not to regulate the casino out of business. Is that --- am I right in summarising your comment in that respect?

MR EVANS: That would be to slightly flip the comment, if I might say,  
40 Commissioner. The intent was to say that the GWC has been conscious that it has the capacity to regulate the casino business. That is, the power to direct under section 24, I think it is, of the *Casino Control Act* the casino in relation to matters pertaining to the playing of games and associated matters could be used in a way which would effectively render the casino unviable. Now, obviously it would not  
45 achieve the other objectives of the GWC and the regulatory regime to do that. But when considering any particular regulatory initiative, one of the things that the GWC has to consider is what is the impact of this upon the casino. It is a point we make, in fact, in relation to the recommendations that you may make, that we'll have to assess them

holistically and consider what the impact is going to be upon the objectives of the regulatory regime because you could recommend ---

5 COMMISSIONER JENKINS: That's what I'm trying to get at, really. So are you effectively saying that --- what you've just said, that it is something GWC --- the financial impact of a regulatory step on the finances of the casino is something that the GWC bears in mind, at the very least, when it is regulating the casino?

10 MR EVANS: Can I put that one step back from that point because Ms Hodson-Thomas, I think, for example, gave evidence that she didn't care what the regulatory impacts on a particular decision were, but the GWC has to bear in mind that the State has decided there will be a commercial casino and, therefore, its overall approach to regulation, in the broad, has to be that, overall, it can't regulate the casino out of  
15 existence.

COMMISSIONER JENKINS: Does that mean --- that's a kind of different concept to whether it bears in mind, and is appropriate for it to bear in mind, the financial impact of a regulatory step.  
20

MR EVANS: The evidence would not support the conclusion, I don't think, that that has been a specific consideration in relation to any decision. It has been a factor which has been urged upon the GWC, because you will recall, for example, in relation to the EGM changes which were sought in 2019, there were overtly financial  
25 considerations in support of that.

COMMISSIONER JENKINS: So that's really where I was going to. I'm trying to tease out from you what the GWC's position is under the current regulatory regime, as to whether that kind of submission, I agree with you, that the submission in  
30 respect of the change of speed and other changes to the EGMs had as one of its justifications, this is from Crown, the financial benefit to Crown of those changes, and I'm trying to find out from you are you saying that that is something that the GWC then did and should bear in mind when it makes its decisions under the current regulatory regime, or are you saying something different?  
35

MR EVANS: My understanding of the evidence in relation to that decision, to the extent it explored that question, was that it does not support a conclusion that the financial outcomes were, in fact, a component of the GWC's ultimate decision. Again, the GWC's position, as I would apprehend it, is that while the financial --- in  
40 fact, a particular decision might not influence the outcome of that particular decision, it is the case that they are regulating a commercial casino and it is the casino which must be allowed to operate commercially and that, of course, has an effect upon what I call the general approach to the regulatory task because one has to balance competing considerations. I'm not sure the evidence in these proceedings go to the  
45 level of granularity to say that (inaudible) decision.

COMMISSIONER JENKINS: You seem to be having a bit of a bet each way, Mr Evans. In respect of say the two--- the application with respect to EGMs is but one example,

it is true, is it not, that the GWC never challenged Crown's assertions about the financial effect of a regulatory step on it?

5 MR EVANS: That is correct, as I understand the evidence.

COMMISSIONER JENKINS: It never initiated its own independent assessment of the financial effect?

10 MR EVANS: It relied upon the agenda papers in that regard.

COMMISSIONER JENKINS: Yes.

15 MR EVANS: I have a recollection that it was Mr Leigh point, that they were criticised for not recalling an inconsistent point from an agenda pack some months previously, 600 pages into a 1200 page agenda pack in the process of that decision-making but criticisms ---

20 COMMISSIONER JENKINS: I will try not to get diverted from my task by that comment, Mr Evans, but going then to the objective regulatory framework, putting aside what evidence the GWC members gave as to whether they did take it into account or or didn't, are you saying, on behalf of the GWC, that the impact of a regulatory step on the finances of the casino is a relevant matter under the current regulatory framework for the GWC to take into account when it makes its decisions  
25 in respect of casino regulation?

MR EVANS: Ultimately, yes, and I need to expand on that slightly, if I might. That is because the aggregate regulatory settings have to permit the operation of a commercial casino. That doesn't mean that they have to feature prominently or at all  
30 in any particular situation, but the aggregate regulatory settings have to permit. Take it to a more possibly straightforward example, the number of EGMs permitted on the floor of the casino any given time has an economic dimension. They are always supported by economic submissions and the revenue implications of an additional group of EGMs being approved is a proper consideration in the course of an approval  
35 process.

COMMISSIONER JENKINS: So what then does the GWC say in response to this proposition, that if that is a legitimate matter for consideration, that it was incumbent upon the GWC to obtain some independent assessment of at least the major  
40 regulatory steps it took in respect of casino regulation on the finances of the casino, either by initiating their own independent assessment or requiring Crown to obtain such an assessment?

MR EVANS: This, to a degree, comes down to the regulatory relationship. Without  
45 doubt --- and, again, this is where we come to the benefit of hindsight --- there would be a case for a significant regulatory step. What the threshold for that is again difficult to say in vacuum. For a significant regulatory step which was said to have revenue implications to be supported by a business case and for that business case to be auditable, if not audited, during the approval process, that might well be

a regulatory improvement of process or of regulatory framework which might be recommended or adopted by the GWC autonomously with the benefit of the learnings from this Commission.

5

COMMISSIONER JENKINS: So Again, could you respond to this proposition: could it be said that the failure of GWC to do that in the past over 30-odd-plus years is a sign ultimately of their regulatory capture by Crown?

10 MR EVANS: In our submission, no. Regulatory capture, in our submission, is a relatively specific notion that the regulator has subordinated its decision-making process to the interests of the regulated either consciously or through some other process. In the US, it has a particular meaning, because of the nature of the  
15 interchange between regulators and regulated, that is, most of the commissions that regulate key regulated industries in the US are in a revolving door between officers of the regulated and officers of the regulator. That is not the case in Western  
Australia, or, indeed, in Australia more generally. What it is, in our submission, is a recognition that the GWC has relied upon the candour and the integrity of the  
20 submissions put to it from Crown through its department in the past and it may be that its reliance was not justified in all cases, with the benefit of hindsight.

COMMISSIONER JENKINS: Thank you, Mr Evans.

MR EVANS: Perhaps I will identify this only for transcript purposes.  
25 Commissioner, if you were to look at a good example from 10 years ago, but it's a good example of a balanced regulatory paper considering these multiple issues is an impact assessment of the proposed increase in gaming capacity at Crown Perth, GWC.0002.0016.0077, which includes a consideration of economic factors, harm  
30 minimisation considerations and other elements as part of I call a balanced scorecard evaluation.

COMMISSIONER JENKINS: Thank you, Mr Evans.

I was going to go on to harm minimisation. You submitted that the GWC's policies  
35 and decisions always had harm minimisation in mind. That might be a very poor summary of what you said, but I just want to set the area that I want to go to now. In that respect, I wanted to ask you about the GWC 's approach to a Responsible  
Service of Gambling Code of Conduct. Is there any evidence as to why the GWC  
40 did not require the Crown to have a Code of Conduct and direct what its content should be?

MR EVANS: As I recall, there is no evidence on that, or none that I can bring to  
45 mind, bearing in mind that it is 60 days of evidence and I've got no idea how many documents.

COMMISSIONER JENKINS: Perhaps if I stop you there and ask my next question. How would you say that a mission is consistent with a regulator who had harm  
minimisation at the forefront of its collective mind?

MR EVANS: Perhaps this goes to one of the weaknesses in the regulatory regime to date, which is that it is fair to characterise the principal functions of the GWC as having been operational rather than strategic for a lengthy period of time and there are reasons for that and they are addressed in part in the submissions. And that if one had sat back to consider strategically harm minimisation within the policy formulation and the harm duty under section 7(1), it might be that policy might have come forward favouring some kind of Code of Conduct. That was not done. Now That doesn't mean that harm minimisation wasn't a consideration in the operation of decision-making and evidence is, I think, clear in relation to this from Commission members, some of whom, as I have said in addressing, had life experience in relation to harm caused by gambling and for whom it was a personal issue, if not a crusade. And Both on the papers for the GWC --- and you will find many mentions of harm minimisation in the papers and the paper I just took to you is an example of that. It was very well articulated as an express consideration, but the evidence of the members was "It was something we were thinking about all the time but at an operational level". And as a strategic tool, codes of conduct did not come forward for consideration(inaudible). Now, of course, the legislative framework is different here to the east coast and the slightly more modern Eastern States legislation, particularly in NSW and Victoria, codes of conduct are more explicit regulatory tools which are contemplated.

COMMISSIONER JENKINS: Thank you for that.

25 The next matter I wanted to ask you about was your oral submission about WA's benefit of having a single site where EGMs are played and that this is a successful harm minimisation tool, effectively. I just want to understand what you are saying about that. Are you submitting that GWC can have a more relaxed attitude towards harm minimisation in respect of EGMs than in a jurisdiction with multisite EGMs?

30 MR EVANS: It would be difficult to say that, Commissioner, because we have the most robust approach to EGMs, you have the highest return to player, we have the longest play times in relation to EGMs, which are (inaudible) considerations. No, simply that the nature of destination gambling in Western Australia. If you are going to play an electronic gaming machine, you cannot play it by walking past on the corner of the street at a pub or a club; you have to go to Burswood to play and that exposes you to both innate harm minimisation characteristics of those approved machines but also the other regulatory mechanisms. Your picture is going to be taken on 2,000 cameras. You will be able to draw limited amounts of money out of a cash machine which must be a certain distance, or must be operated electronically within the sight of a casino employee if it is an EFTPOS machine. There are significant harm minimisation advantages, as we understand, and my understanding is that is how the GWC has always understood it from the single site regime. It is a combination of factors that reduce overall harm and that appears to be borne out on the evidence, most particularly Professor Rockloff's most recent research.

COMMISSIONER JENKINS: Thank you for that clarification.

Just a couple of small matters I just want to clear up. It seems from the evidence that



the Chinese staff of Crown, or a significant number of Chinese staff and ICB staff of Crown who were arrested in the China arrests, had casino employee licenses from the GWC. Is there any evidence as to why they did?

5

MR EVANS: No. In fact, that's news to me. It's not something I had looked at in the course of the materials to which I've been exposed.

10 COMMISSIONER JENKINS: That is the conclusion --- well, that is a conclusion, I won't say it is the conclusion, but it is a conclusion from correspondence that Crown sent to the Department and GWC and/or GWC, depending on how you want to characterise it, afterwards, which included the licence numbers of the staff and a proposition that this information was being provided under Western Australian regulations.

15

MR EVANS: Which would be appropriate because it would be a contravention which required exposure.

20 COMMISSIONER JENKINS: They had been convicted. This was after conviction.

MR EVANS: Yes, I will have to take that on notice if I might and I will confer with Ms Seaward and her instructors and see if we can come up with a position in relation to that.

25 COMMISSIONER JENKINS: Thank you.

30 And my final question is about the GWC not being a law enforcement agency. Acknowledging that GWC is not a criminal law enforcement agency, do you acknowledge that the GWC is a regulatory law enforcement agency; that is it does have power to commence proceedings for breaches of the regulatory framework?

35 MR EVANS: Indeed, it has the power to --- the Chief Casino Officer has the power to authorise proceedings on behalf of GWC officers within the scope of the *Casino Control Act and the GWC Act and you will see there is an annexure at the back of* our principle submissions which look to glaring discrepancies that there are in that legislation and in relation to the offences. We accept it is a regulatory enforcement agency. The distinction we draw between a law enforcement agency and a regulatory agency is really focus and skill sets. Regulatory enforcement agencies recruit skill sets (inaudible). Law enforcement agencies which can be either  
40 specialised or generic, generally have far greater investigative tools and powers. And, with that, far higher standards of obligations in the exercise of those powers. But they also have in relation to the criminal conduct with which we are concerned, it is criminal conduct that is not within the regulatory regime. No part of the GWC Act or the Casino Control Act says, "Don't money launder", that's in the criminal  
45 code. Though questions as to whether criminal infiltration has occurred, that is the relevantly not the infiltration of the casino and its management personnel but the infiltration of the gaming system, is a suitability question which goes to systems and processes. But it is one where the tool set currently employed by the regulator would be in our submission manifestly

inadequate to handle the investigation of those tasks. So it should be done in conjunction with or by a law enforcement agency. Otherwise a finite resource base gets spread over a much of a larger range of activities than it is designed to accommodate.

5  
10 COMMISSIONER JENKINS: Thank you, Mr Evans. Can I just go back to that China issue. What I was going to ask you, so you might also consider this, is that if they were licensed casino employees by the GWC, what affect does that have on GWC's obligations when those arrests took place?

MR EVANS: We will look into that and come back to the Commission in writing.

15 COMMISSIONER JENKINS: Thank you.

COMMISSIONER OWEN: Mr Evans, could I ask you some questions about the structure under which the casino operates. It is still, as I sit hereat the moment, not sitting easily with me, and I hope by the end of tomorrow there will be greater clarity in my thinking, but I only want to ask you about regulatory aspects of the structure. One of the propositions that emerges from the materials is that since corporatisation, that is since 1997, it is Burswood Limited that has owned and operated the Perth Casino using the trust structure. Now if you extend that, that word "operate", there is an implication there that Burswood Limited is the casino operator. Is that something to which the GWC has turned its mind on who owns the casino?

25 MR EVANS: I think we made submissions in our closing submissions about that, Commissioner. I can't immediately bring them to mind but my recollection is Burswood Nominees is the licensee, and it is the licensee that has the privilege of conducting business under the casino licence, but Burswood Resort Management actually provides all the staff procurement, many of the facilities, and there is some disconnect in that regard. It is not an intractable problem in the sense that it is certainly possible to have a regulatory --- a regulated entity which simply enjoys the privilege of carrying on the business although it contracts all (inaudible) the resources which are required for that purpose.

35 COMMISSIONER OWEN: So which would be the body that the GWC is regulating?

40 MR EVANS: In those circumstances principally I would have thought Burswood Nominees as the licensee because it is the subject of the regulatory regime. There are collateral issues in relation to Burswood Limited, of course, because probity approvals in relation to the public company, the approved company, are catered for within the State Agreement and certain functions are conferred upon the GWC in relation to those probity approvals.

45 COMMISSIONER OWEN: But not probity approvals in relation to the appointment of officers of the company?

MR EVANS: We do undertake probity approvals at a level of generality for the approved company and for Crown Resorts Ltd itself and, of course, key casino --- under an approach which should be in place --- might you excuse me one moment.

5 Under a system which has been in place, a GWC policy which has been in place since about 2004, the chair and chief executive of Crown Resorts, of the relevant parent entity from time to time, held key casino employee licenses with all the requirements under the regulations, other than the requirement for fingerprinting, which was waived. And, similarly, as I recall, the same is true for --- it is in  
10 paragraph 391 of our submissions, resolution 290 of 2004 (inaudible) takeover. There is a three-tier approval process.

*..... all Burswood Ltd directors and officers are licensed as key casino employees. Directors of the immediate parent, the chairman of the board and  
15 the chief executive officer of the ultimate parent are licensed as key casino employees and all of the directors in the corporate structure are required to provide a completed personal particulars form and undertake a national police clearance.*

20 COMMISSIONER OWEN: Yes, one of the reasons I ask is that the direction-making power, which is a significant integral part of the regulatory process, is directed at the casino licensee.

MR EVANS: It is.

25 COMMISSIONER OWEN: That's Burswood Nominees Ltd.

MR EVANS: Which is not --- for those directions which are directed to processes, and I'm trying to think of what direction is not directed to the process, I don't think  
30 there is a difficulty with that in the sense that the processes are the processes of the licensee and even if they are carried out by personnel employed by another entity, and the liability for a failure of those processes should still properly rest with the licensee because ultimately the risk is borne by the licensee that the licence may be impaired if it fails to operate in accordance with them.

35 COMMISSIONER OWEN: So the probity approval --- so you've got the situation where there is express requirement for probity approval of a person who is to be appointed as a director of Burswood Resort (Management) Limited but not at either Burswood Limited, which is said to be the owner and operator of the casino, and not  
40 Burswood Nominees Ltd, which is the licensee, but the way that probity applies to them is through a key casino employee licence; is that the position?

MR EVANS: That is the position at this stage, yes.

45 COMMISSIONER OWEN: Do you have ready access to the Casino Control Act?

MR EVANS: I do.

COMMISSIONER OWEN: One very small point about the definition of "Casino Key Employee" in section 3 of the Act ---

5 MR EVANS: Yes.

COMMISSIONER OWEN: Has the GWC turned its mind to this question: looking at paragraph (a) of that definition, would that apply to a person who is, say, the general manager or in a senior management function of a centralised service that provides centralised services to the Burswood Casino, sorry, the Perth Casino, but has no other relationship with the Perth Casino?

MR EVANS: The punctuation of paragraph (a) is unhappy but in my respectful submission it would, although it is obviously an area where clarification would assist the regulatory regime. I say that it would because if one takes the ought to be disjunctive, "a person in a centralised function who exercised a decision-making capacity through the exercise of a discretion, that regulated aspect of the operation of the casino". So To take, for example, Mr Blackburn, to the extent he has a discretion in the exercise of decision-making functions over the AML/CTF program to be employed in Burswood Casino, that would seem to fall within paragraph (a). The complexity comes in understanding what, if any, approval mechanisms within the Burswood Limited entities might exist in relation to the approval of a discretionary decision that he might make, that he may have axiomatically adopted (inaudible) from those companies to him in relation to the exercise of that discretion, which is suggested by a centralised management function. That is, a centralised function operates because there is a delegation by the entity to the centralised function in relation to those matters.

COMMISSIONER OWEN: Yes. So far as I'm concerned, there is nothing inherently problematic about a centralised process but it has to be seen in the regulatory context. So it is really the impact on the regulatory context that is exercising my mind at the moment.

MR EVANS: And I think we have addressed aspects of that in our submissions on the regulatory framework document. There is the scope for improvement in that area. Indeed, I think my recollection is we suggested there might be the possibility of a subcategory of what I call more than key employees, critical decision-makers, who might require special attention in relation to probity and competence approval potentially.

COMMISSIONER OWEN: Can I move now to the topic of the remediation work, the Remediation Plan. As you indicated, there are the more traditional and then the broader views first relating more to the people and second to the systems. As you indicated, this is not an easy area to work out but it is something we have to do. But can I just --- whether you are talking about the people or the systems, the reality is that we have to make decisions in a temporal context now. What is happening now. And If you are looking at an entrenched culture, and we have to look at Crown both at the CRL level and that at the Burswood entities level as it is now, and there has been radical

change both in terms of --- certainly in terms of the people in the second half of 2021 and, on one view of it, there has been radical change in many systems and a movement towards a program that although its going out some time in the future,  
5 does have some definition to it. In that sense, how do you characterise what might be termed then an entrenched, almost, almost, or bordering on irretrievable culture?

MR EVANS: That avoids the question to say that is a very profound problem. A bad analogy; the bomb's gone off, but we don't know what the damage is yet, we  
10 don't know where the debris has landed, there has been lots of activity and lots of change, we don't know whether it has substantially changed the outcome.

Now, Crown projects a very high level degree of confidence that not only that it has changed things now but that that change will be ongoing. And from the GWC's  
15 perspective, it is probably more an issue of a prospect that that change will be ongoing to produce a result within a foreseeable and finite time. And then that those changes will stick in the longer term. And what regulatory tools are appropriate to observe, audit and address any deficiencies which emerge over time.

I concede that I do not know how you can decide whether the level of cultural change, which has occurred or is imminent, is sufficient to remediate the past. But  
20 Can I say this: Crown's position as I understand it is that it is easier for a company to change its character than an individual because on the traditional Tesco view about corporate psyche, you change the people and, therefore, you change the mind of the  
25 company. The concern that we've identified, the concern you are grappling with Commissioner, is this is a large organisation and much of what is done is not done by management, it is done at a level below management and management may have changed but have they instilled change in the individuals who will actually  
30 implement those changes and make them effective at an operational level. I suspect, and it is no more than a suspicion, that one can get to a level of comfort about them closing by saying what are the changes that have been made, or are planned, do they manifest themselves operationally, that is in process changes which are very  
35 significant to address the strategic risks with which the Commission is concerned and are there the signs of a will amongst the new corporate mind, adopting a Tesco approach, to drive that change regardless of the individuals. Part of that goes to a  
40 willingness to change out those individuals if they are not compliant. And, of course, we've seen very significant change, not just at the board level but at a level one and two layers below the board in only --- frankly in the course of the submissions being drafted. So if one made affirmative findings about the will, about the programmes,  
45 and about the individuals charged with demonstrating that will and giving effect to those programme, then one might reach a conclusion that even if there are cultural difficulties in the short-to-medium term, those may well change as a result of the implementation of the change program. It's a complex calculus, which then raises the question, well, what if it doesn't happen within a reasonable time. Of course, that  
is fundamentally the question in which Commissioner Finkelstein grappled in Melbourne and he devised a solution to that, which is, as you are aware, an ongoing monitoring, more than a monitoring role, a special management, is quite  
extraordinary role to see that the expression of will and those programmes in fact

manifested themselves in change in a finite time period. And the legislation which has been adopted by the Victorian Parliament provides a firm mechanism for giving confidence about an outcome at a point in time in the foreseeable future.

5

COMMISSIONER OWEN: Just following on from that, the monitoring, if, if we were to come to the view that something like that was desirable, is there any reason in principle why it couldn't be done through the regulator engaging in a group such has been done in NSW with Kroll?

10

MR EVANS: No, I don't think there is any reason why it couldn't be done. Ultimately, the question is, is there a personal body with sufficient power to robustly interrogate the individuals, the systems and the processes. It could actually be done by a roving Commission effectively under the existing powers under the *Casino Control Act, arguably. That is the minister directs a roving inquiry to that purpose.* That would likely achieve the outcome of auditing the result, which is of paramount consideration. Where the Victorian approach has gone further, of course, is that there is an in terrorem component to the mechanism which they've adopted both during its operation and at the end of its operation because there is effectively a default cancellation of the casino licence unless a high bar assurance the remediation has been effective, has been achieved.

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20

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COMMISSIONER OWEN: Right. Thank you very much, Mr Evans. That's all I have. Once again, thank you for your submissions. They have been of great assistance. 2.15, Mr Dharmananda?

MR DHARMANANDA: Thank you, Commissioners.

30

COMMISSIONER OWEN: We will adjourn until 2.15.

**ADJOURNED**

**[1.01 PM]**

35

**RESUMED**

**[2:15 PM]**

COMMISSIONER OWEN: Please be seated. Thank you, Mr Dharmananda.

40

MR DHARMANANDA: Commissioners, Mr Evans would like 5 minutes to finish up, if that is convenient for you?

45

MR EVANS: It was actually 5 seconds, Commissioners. Commissioner Jenkins put a question to me about Mr Sarquis and his status. He was watching remotely and contacted us to inform me that he had in fact retired during the course of the last few months. He is an ordinary member with no executive capacity at the present time. Thank you.

COMMISSIONER OWEN: Thank you. Mr Dharmananda?

**5 SUBMISSIONS BY MR DHARMANANDA**

MR DHARMANANDA: Thank you, Commissioners. May I begin by thanking  
Commissioners for this opportunity to make submissions on behalf of the Crown  
10 entities. In these oral submissions, Crown proposes, as set out in the required  
summary of oral submissions, to address the following eight topics: one, the  
framework for the assessment of suitability; two, Crown's remediation program and  
developments in risk, audit and culture; three, the manner of governance and  
associated corporate structure issues; four, Crown's AML/CTF program; five, the  
15 steps taken to minimise critical infiltration; six, Crown's communications with the  
GWC in the past and its commitments as to the future; seven, the financial stability  
of Crown and the absence of tax issues; eight, Crown's approach and initiatives as to  
the Responsible Service of Gambling.

20 Before addressing these matters in turn, a couple of matters ought to be recorded.  
First, this oral presentation, being a distillation, does not address all the matters set  
out in writing or reflected in documentary materials before the Commission. And a  
failure to address something written by the PCRC or by other interested parties is not  
acceptance of those matters.

25 Second, consistently with the position taken in the Victorian Royal Commission,  
Crown has made a number of concessions about its past conduct. That sits  
conformably with the approach Crown has taken to the task of remediation;  
recognise and understand the issues and set about to remedy them and put systems,  
30 policies and practices in place to deal with and properly address the relevant issues.

Turning to the first topic, framework, Crown's written closing submissions seek to  
assist the Commission in relation to framework by assessing suitability under the  
Terms of Reference, including Crown's answers to the various conceptual questions  
35 possessed by the PCRC's discussion paper on suitability.

There are a number of key points to highlight. As to the question of suitability, as  
the Commissioners well know, the Terms of Reference directs the Commission to  
enquire into whether Burswood Nominees is a suitable person to be concerned in or  
40 associated with the organisation and conduct of the gaming operations of a licensed  
casino, and whether each of CRL, Burswood Management and Burswood Limited is  
a suitable person to be associated with the licensee.

It is not suggested in our written submissions that it is relevant to consider a  
45 shareholder who is not exercising control relevantly over the licensee or other  
constituent bodies. CPH's shareholding is not presently relevant, particularly in  
circumstances of the undertakings given.

The Commission is also directed to determine what, if any, change would be required to render an entity suitable if it is not presently suitable. The capacity to make recommendations is not preconditioned by a finding of unsuitability, though there may well be implied limits on the scope of recommendations, in the sense that any recommendations should fairly relate to matters that were properly the subject of the PCRC's inquiry.

The statutory roles and powers of the minister and the GWC must be respected and should not be usurped. That is a point made by the GWC and it follows from the language of the Casino Control Act.

As to the place of public interest under the Terms of Reference, there is a real question over whether public interest is within the scope or beyond scope. In Crown's respectful submission, the most obvious construction of the Terms of Reference does not see public interest covered. If a contrary view is taken, a problem remains in that there was no direct nor sustained inquiry into the public interest, enabling fully informed findings to be made on a proper evidentiary basis. So if public interest were captured, it is not apparent how that aspect of the Terms of Reference could properly have been discharged.

When it comes to the assessment of suitability, one has regard to the concept of suitability under the Casino Control Act. In that Act, the concept makes its appearance in various sections and when it does, the language used is narrower than that used in the Terms of Reference.

The Casino Control Act language is concerned with reputation, financial status and capacity. Those words seem clear in their meaning. The factors at item (h) of the Terms of Reference are not exclusive, nor are they mandatory. Those words are broad in their application. There is no correspondence between the definition as found in the Casino Control Act and that found under the Terms of Reference.

The concept of suitable person under the Terms of Reference is distinct and it is broader. In our submission, the effect that should be given is the plain meaning of the definition under the Terms of Reference.

The GWC's reply submissions suggest this is somehow reflective of a forensic choice made by Crown. That submission is not understood. Crown's written submissions give effect to the ordinary words of the Terms of Reference and the Casino Control Act. *The words used are different. That must reflect a conscious choice by the draft person in circumstances where the Terms of Reference were drawn in the face of language available under the Casino Control Act but not adopted. That had nothing to do with Crown. So the GWC's proposition of a forensic choice should be disregarded.*

When it comes to temporal considerations, as seems common ground, the inquiry is grounded firmly in the present. The past is relevant but the question of relevance requires careful analysis and cannot be glossed. There must be attention to whether,



judged by reference to people or systems or both, one can see change.

5 In Crown's submission, evidence of the past relevantly bears upon present suitability in a number of aspects. We have identified three in writing but two matters are critical. First, have the deficiencies of the past been adequately addressed, so the public can have confidence the failures will not be repeated? In other words, past failures may continue to inform the adequacy of Crown's present arrangements.

10 Second, does particular past conduct have an ongoing and continuing affect on Crown's present character and culture. In our submission, the past has no broader relevance to present suitability. For example, the public cannot reasonably or actually entertain doubts about Crown's present management of ML/TF risk by pointing to employees who are no longer associated with Crown or to practices that  
15 have been abandoned, unless it is found in present inadequacy of systems or a persisting defect in character.

That then leads to the third aspect of the temporal prism through which this Commission must conduct its inquiry; that is, considerations as to future evolution.  
20 What is reasonably foreseeable needs to be taken into account. As to the suggestion made this morning about the unidentified term "long-term", we would resist that that needs to be brought into account. The future must be assessed, but not by reference to anything contemplated by the expression "long-term". It is about what is reasonably foreseeable.

25 Crown's submissions on the benchmark for assessing suitability are dealt with in writing but three matters may be highlighted. First, it is not about perfection because there would be few institutions, religious or otherwise, that would pass muster under a standard of perfection. The assessment must be holistic and not atomistic.

30 It bears mentioning that in the observations there were countless areas where the observations recorded that certain matters were open to be found. Those open findings are addressing matters at an atomistic level. Of course, the Commission will review the matter in the round and as a whole.

35 Further, it ought to be observed that those matters said to be open findings are not understood to be matters that require dislodging, involving some casting of an onus on any of the interested parties.

40 The third point that may be made about the approach to the assessment of suitability is that if one were to accept that the assessment should not be atomistic, if one were to examine Crown's conduct and attribute grades, Crown may not achieve high distinctions across the board, but it would, with respect, receive distinctions in some areas, and Crown has demonstrated industry and effort on all fronts. The evidence  
45 speaks to that. In our respectful submission, Crown does not presently deserve an F in any field.

As to Crown's position on the appointment of an independent monitor, the following

three things may be said. The independent monitor seems unnecessary in light of the existing monitorships in Melbourne and Sydney, and the proposed recommendations to improve the operations of the GWC and empower it to become a more effective regulator.

The GWC's reply submissions seek to disavow any responsibility for monitoring Crown's ongoing reform program. That would seem at odds with the basal functions and powers of the GWC and would place the GWC apart from its colleagues at ILGA and the VCGLR, who have been keen to receive monthly updates on Crown's remediation program and to track progress.

The GWC contends that it would not be a proper or efficient use of regulatory resources to engage in the continual monitoring of the attainment of Crown's entity reform program. The GWC has an express duty to administer all matters relating to the casino complex and the licensed casino. That is section 7(1)(d) of the GWC Act. The GWC was conferred ample powers for that purpose. It has been given all such powers as are necessary to carry out its duties under the GWC Act section 8(1).

The powers expressly conferred upon the GWC necessarily contemplated that the duty of administration would encompass monitoring the suitability of the licensee and its close associates. So much is evident from the power to give directions to the casino licensee, including as to the provision of information in the records, the power to require close associates to divest themselves of their interests if the associates are not thought to be suitable, the power to recommend the holding of inquiries and the power to make recommendations to the minister as to whether or not it is in the public interest for the casino licence to remain in force.

The legislative regime makes clear that such monitoring does not cease during periods of transition and change. So not only would it be proper for the GWC to monitor Crown's reform, it is already firmly within the ambit of its duties. The GWC may consider that to be not an efficient use of regulatory resources but that is, with respect, beside the point.

One other matter ought to be observed with respect to the assessment of the evidence before this Commission. There was no real evidence of industry practice. This may colour the assessment of Crown's systems, processes and operations. The PCRC is left to form an assessment of Crown's suitability to organise and conduct the gaming operations of a licensed casino without the benefit of a clear industry yardstick against which Crown Perth's organisation and conduct of gaming operations might be compared and measured. This is a matter to be borne in mind when considering the adequacy of Crown's remediation program.

I want to observe one thing in relation to the reply submissions and the approach taken by Crown with respect to submissions generally. We had understood the invitation to provide submissions-in-chief and reply was extended to interested parties to enable their comment on matters pertinent to their particular interests and to afford some measure of procedural fairness to those whose interests stood to be

affected by potential findings.

5 Crown's supply submissions do not treat the submissions of other parties as pleadings. Some of the other parties' reply submissions may portray a different approach. Insofar as there are matters canvassed in those other submissions, Crown rests on its written submissions, particularly with respect to chapter 2, and does not now consider it appropriate to engage on all points raised in the various replies.

10 Turning then to the topic of remediation. In this part of the oral submissions I intend to address Crown's Remediation Plan and the substantial progress already made, significant improvements to the risk management and internal audit processes, and the advances in relation to cultural reform.

15 In summary, the people, systems and procedures being assessed by the PCRC are fundamentally different to those in place when the cultural and risk-failing acts identified by the Bergin Inquiry occurred. Crown has a very different and improved corporate culture and risk management today. The PCRC should be satisfied that there is the competence, commitment and resources required to drive Crown's  
20 reforms to their conclusion.

Crown's Remediation Plan is a serious, well-considered plan. Its objective is to implement and embed best practice governance and management throughout its operations. It applies to the whole Crown Group, including Crown Perth, and covers  
25 the following key areas: corporate governance and organisational structure, the CPH relationship, culture, risk management, AML/CTF compliance, junkets, persons of interest, significant player review, audit and assurance, and responsible gaming.

30 A core component of the Remediation Plan is the improvement of Crown's governance and oversight functions through better people, better systems and improved culture. Delivering best practice in critical functions such as AML is facilitated by having a corporate group with substantial resources and multiple assets and then working with dedicated teams based at each of the properties, including  
35 Crown Perth, to implement those practices having regard to the particular requirements of the Perth Casino.

The Remediation Plan is a living document. It is updated monthly and provided to various regulators, including the GWC. Crown agrees that it is open for the PCRC to find that the Remediation Plan is subject to changes following from ongoing  
40 inquiries.

Crown's desire to continue to reform and improve itself reflects positively on Crown. Crown has devoted, and will continue to devote, significant resources to the relevant reform tasks. Substantial progress has already been made in designing and  
45 delivering the reform program. The ultimate aim of Crown's reform program is not only to satisfy regulatory expectations, but to surpass the standards of strict legal compliance and restore the trust and confidence of Crown's regulators and the communities in which it operates.

5 The evidence of both about Mr McCann and Ms Ward was to the effect that the remediation process is well-progressed. The PCRC should find that substantial aspects of the Remediation Plan have already been completed or are in the course of being completed.

10 Although the plan covers many areas and requires a large amount of work to complete, there is a sound basis to conclude that the plan will be fully implemented and completed. The combination of commitment and competence of executive and management, together with the completion of many items to date, and the appointment of an independent expert to monitor the effectiveness of the Remediation Plan, grants confidence that Crown will deliver on the outstanding aspects of the Remediation Plan.

15 As Commissioner Finkelstein acknowledged, Crown has, at great financial cost, embarked on a significant program led by people of goodwill and skill. Commissioner Finkelstein accepted that important steps towards reform have been taken and that the program is likely to succeed. He concluded in relation to Crown Melbourne that it has the will and capacity to reform itself.

20 Those assessments, with respect, are also relevant to Crown Perth, particularly as a result of the significant reforms which have already been implemented. It has allocated significant resources to the remediation project and has already made significant progress under new leadership, including directors of Burswood Limited and CRL.

Further, to assist in implementing the Remediation Plan at Crown Perth at an operational level, there is a Crown Perth Plan, about which evidence was received.

30 Crown agrees it is open for the PCRC to find that: one, the directors of CRL and Burswood Limited have experience in leading remediation or transformation programmes in large corporations; two, its executives and management are committed to delivering on the Remediation Plan; and, three, based on the views of experienced directors, the executives and senior management who have been recruited as part of Crown's program are competent to deliver on the Remediation Plan.

40 Relevantly, Commissioner Finkelstein considered that the most important step towards reform was the appointment of a new board and new and highly motivated senior executives. That has been done. Many of the directors of CRL have been attracted to the pathway of transforming Crown. As Ms Ward observed, it is the challenge of restoring the trust and confidence of Crown's regulators and the communities in which it operates, and restoring the pride of the people who work for Crown to be part of Crown.

45 I move now to the topic of risk. As observed by the PCRC, given that the ultimate question about suitability is a point-in-time exercise, it may be satisfied steps or

measures CRL has taken to remediate risk management failings, the subject of conclusions in the Bergin Report and the Finkelstein report, or in Crown's concessions, are appropriate to address those failings in circumstances.

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Crown has undertaken significant reform and remediation in respect to its approach to risk management procedures. Those measures are sufficient to address the identified failings. Among the many changes implemented, about which there is much written in the closing submissions, I highlight a few.

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Crown's risk team has increased from one full-time employee to ten employees. Crown has significantly reduced the materiality threshold, so that more risk information is provided to the CRL board. It has introduced escalation requirements for each level of risk to specify when risks are required to be escalated and to whom.

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The new role of Chief Risk Officer has been created, reporting directly to the CEO of CRL, with a reporting line to the Risk Management Committee. The CRO is a member of the executive team for each property, including Crown Perth. This reflects the increased importance of risk management to Crown.

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Crown has developed a Risk Uplift Plan to ensure there is a fit-for-purpose operating model for risk management across Crown, resourced with the required capabilities, and that there is increased risk assessment in decision-making. Crown agrees that the adoption of the Deans and Deloitte risk-related recommendations and the proposed update to the risk appetite and board charters as part of the Risk Uplift Plan are favourable developments.

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The PCRC should find that Crown has implemented all of the Deloitte recommendations with the exception of changing the name of the RMS, and that Crown intends to implement all of the Deans recommendations. It has already done so for the majority of those recommendations subject to the approval and endorsement by the Risk Committee in respect of certain recommendations.

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Given that most of the Deans recommendations have been implemented or will be implemented in the near future, there is no real prospect that Crown's risk management framework and systems will not be effective and robust by reason of any decision not to implement any number of the Deans recommendations.

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Mr Deans found there was evidence of improved reporting of business risks and risk matters generally to the Risk Management Committee. This includes reporting and documenting a wide range of business and risk issues, reflecting the range of issues which may face Crown. Crown agrees it is open to the PCRC to find that Crown has a plan to enhance its approach to risk management. That is largely captured by the Risk Uplift Plan.

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Turning to the matter of audit, Crown has enhanced its internal audit department with the appointment of Jessica Ottner to Group General Manager, Internal Audit. It has improved internal audit processes, including improved reporting lines, independence

of the second and third line functions, ensuring access to all boards, increased resourcing, increased access to specialist resources, the adoption of a risk-based approach to audit and the better implementation of audit findings.

5

The Group General Manager, Internal Audit, the GGMIA, now has a direct reporting line to the Chair of the CRL Audit and Corporate Governance Committee and a dotted reporting line to the Burswood Limited board for matters relating to Crown Perth. Ms Ottner has direct access and the responsibility to provide updates, and be

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A quality assessment of Crown's internal audit department was obtained from the Institute of Internal Auditors Australia in October 2020. That review concluded that the Crown internal audit department is operating professionally and generally

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conforms with the internal audit standards. That is the highest rating that can be achieved. Since commencing in her role as GGMIA, Ms Ottner has undertaken a further review as part of the Remediation Plan to determine any other needs to ensure that internal

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audit is able to respond to new ways of working at Crown. The immediate needs identified, and other actions already taken, are referred to as the Audit Uplift Initiative or Plan. That plan includes, for example, the approval of an annual (inaudible) budget to

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provide for easy access to special skills and expertise, as needed throughout the year, and uplifting the internal audit activity reporting provided to boards and committees. Crown agrees that it is open to find that Ms Ottner, since her appointment in May 2021, has made rapid improvement to the internal audit function and that she is

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competent to lead the review and improvement of the internal audit function. That finding should be made, given her experience, including in highly regulated industries. It should also be made, given the improvements Ms Ottner has already

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made to the internal audit function of Crown. Crown agrees it is open to find that Ms Ottner will implement and manage an appropriate third line for AML/CTF risks associated with gaming operations at the Perth Casino. I then move to the topic of culture. Crown agrees with the definition of culture adopted in the Finkelstein report; namely, culture is comprised of the shared values and norms that shape behaviours and mindsets within a business.

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45

last, change the values and practices of existing employees.

5 Taking those in turn, Crown engaged Deloitte's specialist services to conduct an analysis of its culture, which included a review of Crown's structure and policies in a culture survey used to measure employees' perceptions and experiences of Crown's organisational culture. These two processes formed the basis for the current Culture State Report, otherwise known as the Phase 3 Report.

10 The Phase 3 Report was directed towards identifying vulnerabilities and weaknesses within Crown's culture. In order to implement a reform process, Crown needed an unflinching assessment of its existing culture, including its shortfalls and vulnerabilities. The Phase 3 Report was intended to be, and was, a rigorous  
15 assessment of Crown's existing culture on a warts-and-all basis. Criticism of Crown based on the findings in Phase 3 is misdirected. Only by unearthing this material could Crown genuinely understand and remedy its organisational culture.

As to the second step in the four-step process laid out by Commissioner Finkelstein, that is to develop a new cultural direction, Crown undertook the process of deciding  
20 on a new cultural direction by engaging with its employees across all properties and levels of seniority and working with them to create a new organisational purpose and a new set of values.

25 Based on that input, and with the approval of Crown's board, Crown determined a new purpose. Together we created exceptional experiences with respect and care for our community. That new purpose is underpinned by four new organisational values; we act with integrity, we work together, we care, we strive for excellence.

30 Crown's entire culture reform project is directed towards establishing and embedding this new purpose and these new values within Crown's workplace culture. Mr McCann is personally overseeing the culture reform project in conjunction with Mr Weston, Chief People & Culture Officer.

35 As Commissioner Finkelstein noted, a new cultural direction may best be achieved by recruiting individuals into leadership roles where they can drive the organisation towards its aspirational culture. Crown has done precisely this by recruiting new leaders at board, executive and manager level in order to develop and embed Crown's new culture.

40 During the course of the PCRC, Crown's directors gave evidence about their commitment to changing and improving Crown's organisational culture. Witnesses, including Mr McCann, Dr Switkowski, Mr Carter and Ms Ward gave compelling evidence to the PCRC about their experience in overseeing the transformation of  
45 culture at distressed organisations, their expertise in leading cultural change and their enthusiasm for and personal dedication to establishing Crown's aspirational culture.

The third step in the culture change process outlined by Commissioner Finkelstein is changing tangible structures like Crown's organisational structure and its policies and

procedures, so they reinforce its new values and norms. Crown has created a roadmap which sets out the process for implementing the Culture Change Project.

5 Additionally, it has created a detailed Culture Change Project plan which includes tasks and processes to be undertaken by different individuals and groups across Crown as Culture Change Project is implemented. The project plan provides a blueprint for communications, training and induction, policy uplift and updated ways of working.

10 Together, the roadmap and the project plan scope out each element of the cultural change project and set out the date for completion of each task. Crown has made significant progress in implementing the work set out in the project plan, with more work being carried out every week.

15 Already, Crown has rolled out its new values and purpose across the organisation, Crown has created a group human resources function for their Chief People & Culture Officer, reporting directly to the CEO, has separated the General Counsel and Company Secretary roles and has introduced a new Compliance and Financial  
20 Crime Department which is independent from other units.

Crown has hired highly skilled and experienced professionals to take on critical roles, including Group General Counsel, Group GM Internal Audit and Group EGM for financial crime risk, financial crime and compliance operations, and compliance  
25 and regulatory affairs.

Crown has introduced a leadership development program, including face-to-face training sessions for all board members on CTF and AML, responsible gaming, the regulatory environment, risk strategy, health and safety and the duties of directors.

30 Crown has introduced new remuneration policies, including new short-term and long-term incentive policies which make adherence to Crown's values a mandatory KPI with which all employees must comply in order to be eligible to receive financial incentives. Crown has updated its policies and procedures to reflect its new  
35 values and to implement the recent learnings from the Bergin Inquiry and the Victorian Royal Commission.

Turning then to changing the values and practices of existing employees, being the fourth matter. This is an important step and it involves an ongoing piece of work to  
40 which Crown, its directors, executives and managers are committed.

The expert evidence given before the PCRC was that cultural change can occur rapidly but that sustained culture change is something which requires more years to embed. Crown and its leaders have not shied away from this fact and they accept  
45 that culture change requires a long-term commitment.

The extent of the change achieved so far will be able to be determined by a further national survey carried out in the middle of this year. The survey results from 2021



will provide a baseline against which the results from the 2022 survey will be able to be compared. That comparison will provide valuable insights into how Crown's culture has progressed in the last 12 months, the impact of the Culture Change Project and areas where further work may be necessary.

The Culture Change Project at Crown began in October 2020 and has progressed well in the intervening months. The leaders of Crown are dedicated to ensuring the remaining steps in the project are undertaken and that Crown continues its progress.

I then move to the issue of corporate governance and structure. In this part of the oral submissions I cover the inherited corporate structure of the Burswood entities and why it still works, the significant renewal of the CRL and Burswood Limited boards, the strong capabilities and commitment of the reconstituted boards and the way in which the boards of the Burswood entities function within the group structure, improvements made to governance and the impacts of centralisation on governance.

In summary, as to structure and governance, nothing constitutes a sound basis for finding that Crown is not suitable. Addressing the matter of structure, the roles of each of Burswood Limited, Burswood Nominees and Burswood Management in the governance of the Perth Casino business are consistent with the provisions of the trust deed in the State Agreement. We address that in writing.

Crown agrees that it is open to the PCRC to find that the Government sanctioned Burswood Limited to be the entity which governs the Perth Casino and the casino licence, a matter recorded in the observations. It has control of the legal owner and trustee of the Perth Casino assets, Burswood Nominees, and the manager of those assets, Burswood Management, and has the beneficial ownership of the Perth Casino assets as the sole unit holder of the Burswood Property Trust.

The inherited corporate structure of the Burswood entities still works. That should not be surprising as that structure was mandated by the regulatory framework, particularly the amendments to the State Agreement made in 1997, following the corporatisation of the Crown Perth structure.

Crown accepts there is room for improvement or simplification of the corporate structure, but that does not tell against suitability. If the PCRC is considering recommending changes to the corporate structure, it is important that it first consider the broader implications that might arise from any such changes, such as in the area of tax or industrial relations. Structural changes should not be imposed without due consideration of the associated challenges, costs and risks.

Turning to the topic raised by the PCRC about special responsibilities, PCRC has referred to special responsibilities and special obligations owed by the holder of the casino licence to the people of Western Australia. Crown accepts it is obliged to comply with the terms and conditions of the casino licence, as well as statutory and general law duties and provisions under the State Agreement, the Casino Control Act and the Casino Manual.

5 However, it does not accept that outside of these areas there are other legally established, well-defined special responsibilities and special obligations. The vagueness inherent in such concepts would only create practical difficulties in terms of compliance and enforcement. That should be avoided.

10 Turning then to the matter of the composition of the boards, it may be seen that there has been significant renewal of the CRL board since the matters considered by the Bergin Inquiry. All of the current directors, other than Ms Halton, were appointed in 2021. The CRL board has a majority of independent non-executive directors, with significant experience in a number of key areas relevant to the business of CRL in such matters as risk management, regulatory engagement, AML/CTF compliance, gaming management, business transformation and cultural change.

15 There has also been renewal of the Burswood Limited board. Apart from Ms Fewster, none of the current directors were directors during the matters the subject of the Bergin Inquiry. As the PCRC knows from media reports and otherwise, Mr Bossi is to leave Crown Perth after close to three decades of service.

20 The Burswood board has members with significant experience in key areas of risk management. Those matters include AML/CTF compliance, gaming and change management. There is a blend of representation across all important stakeholders, including an independent board member, non-executive representation of the sole shareholder and of senior management.

25 Any proposed finding that the Burswood Limited board is currently half non-executive and half executive is not open. There are now three non-executive directors: Ms Fewster, Dr Switkowski and Mr Carter.

30 The Commission's observations that none of the non-executive directors of Burswood Limited in the period 2008 to 2021 had any prior experience in gaming or in casino risk management, including AML/CTF, is not correct. Mr Carter and Dr Switkowski, both appointed in 2021, have experience in the gaming industry and familiarity with AML/CTF obligations and risk management.

35 The PCRC has asked whether the majority of the Burswood Limited board should be comprised of independent directors and whether those directors should be resident in Western Australia.

40 As to the first part of the question concerning independence, the majority of the board is now comprised of independent directors. If the question is directed to the board being comprised of a majority of directors being independent of CRL, then that would be unusual and potentially problematic from a governance perspective. Directors independent of CRL would still owe duties and could not disregard the  
45 company's shareholder, ultimately CRL, and any utility in avoiding conflicts between Burswood Limited and the parent is likely to be illusory.

As to the second part of that question concerning Western Australian residency, a matter of interest given the residency of one of the members of the GWC, there should be no ironclad rule that the majority of the board be resident in Western  
5 Australia. The imposition of such an arbitrary requirement, rather than benefitting the people of Western Australia, would likely substantially limit the pool of potentially suitable board candidates and, in turn, the optimal operation of the Perth Casino.

10 Whether a prospective candidate has the knowledge and experience to provide the desired degree of input to the Western Australian community or regulatory issues or expectations must be addressed as a matter of substance. Crown agrees it is open to find that the directors of CRL and Burswood Limited boards have experience in  
15 leading remediation or transformation programmes of large corporations and that they are committed to ensuring the boards take an active role in leadership.

There is no reason to question their leadership capabilities, competence and commitment. Evidence from existing CRL board members reflect, without  
20 qualification, a group of highly qualified and engaged governance professionals, each expressing in their own words a commitment to continuing the improvement of the governance practices of the Crown Group and Burswood Limited in particular.

I will address some questions which were raised about Burswood Limited and the operations of Burswood Limited. Questions were raised about the operations of the  
25 Burswood Limited board. The weight of evidence suggests that the Burswood Limited board has functioned as a proper board within the Crown Group structure, making decisions about Burswood Limited and the Crown Perth business.

The current Burswood Limited board recognises its role as providing oversight of the  
30 Crown Perth business and setting its strategic direction. The relevant part of the board charter is clause 5.1.

The function of Burswood Nominees, as trustee and as licensee, and those of  
35 Burswood Management, as manager of the trust deed, are performed for the benefit of Burswood Limited. As Mr McCann said, the reality is Burswood Limited is in charge of the governance of Crown Perth because all of those entities are 100 per cent owned by Burswood Limited. All decisions and governance, as they relate to Perth Casino, ultimately vest with Burswood Limited.

40 Crown does not accept the suggestions about collective failures of the Burswood Limited board, including as to a lack of clarity and common understanding about the role and responsibility of the Burswood Limited board and a failure to reach a consensus position and a failure to proactively oversee risk management.

45 In any event, Crown submits it has taken steps through the board charter to provide greater clarity about the roles and reporting between each of the Burswood entities, the responsibilities of the Burswood Limited board and the role of the directors will be reinforced by the board charter when it is implemented, including its oversight of

the other Burswood entities and its responsibility for maintaining the casino licence. The relevant clauses are clauses 5.1, 5.2 and 5.3.

5 Addressing the matter of centralised functions, the board charter states expressly the relationship between Burswood Limited and CRL. This reflects a version of a decentralised governance structure where the parent company has oversight of the overall strategic direction of the group, but the responsibility for the business of Crown Perth rests with Burswood Limited.

10 Within that group structure there are some centralised management functions, the oversight of which rests ultimately with the Burswood Limited board. The current arrangements in respect of centralised management functions has been formalised through the board charter for Burswood Limited. The intent of clauses 6.1 and 6.2 is  
15 that Burswood Limited remains responsible for monitoring and exercising proper oversight of any centralised management functions as they apply to Crown Perth.

There are obvious benefits in having some centralised management functions within their group structure. Importantly, clause 6.1 of the board's charter includes that the  
20 centralised management of these areas does not abrogate the responsibility of the company's board to monitor and exercise oversight in relation to these matters.

Steps have been taken to ensure that the Burswood Limited board is sufficiently informed to be able to oversee centralised functions through direct reports and expert  
25 subject matter presentations. The depth of those reports and the changes to the way in which reports are given to the Burswood Limited board, with subject matter experts being available to explain matters and take questions, enables the board to properly discharge its oversight function in respect of the business of Crown Perth.

30 Turning then to the matter of the head office requirement, a matter addressed during the course of the hearing. This has been addressed in writing, but three short points can be made.

35 First, Crown does not accept that it has not complied with this requirement. As a matter of fact, Burswood Limited is a decision-making and deliberative body. As a matter of practice, both the day-to-day management of the business of Perth Casino occurs in Western Australia and Burswood Limited, as the body with the governance responsibility for Perth Casino, meets and performs its functions in Western  
40 Australia.

Second, if the PCRC finds differently, Crown submits the finding should have no consequence in relation to present suitability. CRL and Burswood Limited have historically acted in a manner which sought to ensure that central management and control was located in Perth. If they have, on a retrospective analysis, failed to do  
45 this, their default was not intentional and there is a remedy within the State Agreement for dealing with such defaults.

Mr Carter, whose evidence the Commission received, is committed to ensuring the

effective implementation of the governance structure reflected in the board charter.

5 Third, there is an open question as to the continued utility of this requirement, as it is currently worded, where reliance on the physical and geographic presence of the head office is becoming less relevant in determining where the central management and control of a company rests. Moreover, after a world with COVID, things such as physical and geographic presence may well be much differently conceived.

10 Addressing then the point about AML/CTF. The written closing submissions address Crown's AML/CTF strategy and provides Crown's response to section 4 of the PCRC's observations. The written submissions summarise the AML/CTF landscape in which the Perth Casino operates, including the background AML/CTF risk and the key features of the AML/CTF legislation.

15 There are perhaps three points which bear particular emphasis. The first is that the nature and scope of the AML/CTF risk faced by Crown today is quite different to the situation first confronted by the Bergin Inquiry. This is a practical consequence of the various changes and reforms that have occurred since that time, including, for  
20 example, the closure of the Riverbank and Southbank accounts and the cessation of problematic transactions such as third-party transfers and cash deposits. The risk profile has changed materially.

25 The second point seeks to emphasise the distinction between actual money laundering activity and an activity that is potentially indicative of money laundering. An activity may be caught by Crown's AML/CTF controls or flagged by an expert's review and require caution and further investigation, but that does not necessarily mean that actual money laundering has occurred. This is a point explained in one of  
30 Deloitte's reports to which we make reference in writing.

35 Unusual activity must be considered on a case-by-case basis, with a view to obtaining a complete picture of the facts in order to reach a concluded view. It follows that a degree of caution is required before conclusions can properly be drawn from any isolated example that has arisen in the course of the evidence.

40 The third point is to say something briefly about the AML/CTF Act and Rules. We deal with the legislation in some detail in section B2 of chapter 5. The core of the legislative regimes for reporting entities to establish and comply with an appropriate AML/CTF program in order to identify, mitigate and manage the ML/TF risk they reasonably face and to report various matters to AUSTRAC, it is not the object of the legislation and rules to eliminate all AML/CTF risk. These matters form a key part of the background matrix informing the assessment of AML/CTF suitability.

45 Our written submissions are organised around the three main areas corresponding to the three main planks of the PCRC's conception of AML suitability. Those three areas are current and past failures, Crown's present management of AML/CTF risk, including compliance with the legislation and, third, Crown's future plans for continued enhancement.

- I propose now to highlight a few of the key points across each aspect of suitability. With respect to past failures and Crown's response, I have already spoken about the relevance of the past to the assessment of present suitability under the Terms of Reference. To recall, in Crown's submission, the relevance of the past goes principally to two matters; first, whether past deficiencies have been adequately addressed and, second, whether past events continue to have some ongoing impact on present character.
- 5
- 10 For the reasons developed in chapter 5, Crown respectfully submits that it has earned a passing grade on this aspect of the suitability question. Crown has implemented a raft of changes and reforms to address the AML/CTF deficiencies of the past. We detail those in section D1.
- 15 Alongside specific reforms directed to specific deficiencies, there has been a wholesale reconception and reorientation of how financial crime is addressed at Crown through the Financial Crime & Compliance Change Program, FCCCP. In short, Crown now has a complex Financial Crime & Compliance structure, staffed by a team of over 100 with a broad spectrum of financial crime experience. It could well be the most sophisticated financial crime setup in the casino industry. The effect of these changes and reforms is that the deficiencies of the past have been appropriately acknowledged and addressed.
- 20
- The second dimension of the past is the impact, if any, of historical failures on Crown's present character. In Crown's respectful submission, there is no continuing impact. Crown has accepted its historic failures and embarked upon a comprehensive program of reform, made appropriate concessions and demonstrated insight.
- 25
- 30 Many persons the subject of attention in section 4 of the observations had already departed Crown before the inquiry and are no longer associated with the business, names such as Mr Felstead, Mr Barton and Mr Preston. More recently, there have been other departures, including those of Mr Bossi, Mr Brown and Mr Costin, each of whom received some attention in section 4 of the observations.
- 35
- There are a number of new post-Bergin recruits, being Mr Carter, Mr Morrison, Mr McCann, Mr Blackburn and Ms Slattery. Each of those have received positive endorsements, placing Crown in safe hands with respect to AML/CTF risks.
- 40
- It follows that the organisation today is not the same organisation that enabled the AML/CTF deficiencies of the past. Recalling the International Sporting Club decision, the material change in the composition of Crown is significant in the assessment of the relevance of past conduct to present character.
- 45
- Written submissions identify how Crown presently manages its ML/TF risk, which is the second aspect of the analysis. Crown's AML/CTF systems have received what is probably unprecedented attention from industry experts. Some of the main reports

are listed in writing. There are 18 separate reports --- this is paragraph 138 in chapter 5. There are 18 separate reports noted there, not including other reports such as those of McGrathNicol.

5

Crown has taken or is in the process of taking steps to implement the experts' recommendations and we deal with that in writing in appendix 5C. That considerable expert work has fed into the Financial Crime & Compliance Change Program and provided the background to the revised joint AML/CTF program adopted by Crown in December 2021.

10

The details of the new program are set out in the closing submissions. As explained there, the program meets all the requirements of the AML/CTF legislation and is supported by an enterprise-wide risk assessment. The program is being subjected to an independent expert review by Exiger in accordance with the AML/CTF rules. That review is underway and is due to be completed by the end of March. There is no evidentiary basis to conclude that Crown's AML/CTF program is sufficient or noncompliant.

15

The PCRC received evidence from Ms Waldren about the predecessor November 2020 program. That evidence has been overtaken by the December 2021 program. But, in any event, the written closing submissions set out in some detail why it would be unsafe to rely on Ms Waldren's opinion in the circumstances attending her review of the November program.

20

The available evidence indicates the incidence of activity eventually indicative of money laundering had fallen in conjunction with the AML/CTF changes and reforms. The external review provides an additional layer of comfort and the results of that review can be reported when available.

25

For these reasons and those set out in the written submissions, it is open to find that Crown is presently addressing its AML/CTF risk in an adequate manner, consistent with the requirements of the AML/CTF legislation.

30

As to the future plans for the AML/CTF regime, these matters may be observed. The Financial Crime & Compliance Change Program places Crown on a trajectory towards continued uplift and the attainment of a higher level of maturity. The evidence is that Crown remains on track to achieve an advanced state of maturity by its target of the end of 2022.

35

The PCRC raises a finding that Crown's AML/CTF suitability should be contingent upon the achievement of advanced maturity. Crown resists that proposed finding for the reasons set out in writing. But, in essence, the touchstone identified by the PCRC for AML suitability is whether the public can reasonably have confidence that AML/CTF risk is or will be appropriately identified, managed and mitigated.

40

Advanced maturity is not a precondition to public confidence. The maturity concept is not intended to be a categorical and objective method of assessment, and the public

would not see it that way. Rather, it was a measure deployed by Mr Blackburn to situate his expectations and to ground his program of reform.

5 Under Mr Blackburn's metric, a foundational entity is nevertheless compliant with the laws enacted by Parliament in the AML/CTF legislation. Mr Blackburn's evidence was that Crown is presently managing its AML/CTF risk effectively. The evidence suggests that even some major banks have not yet achieved advanced maturity, and there is no evidence of general industry practice in the casino sector as  
10 to the prevailing state of maturity.

Crown should be given due recognition for its goal to achieve advanced maturity and not penalised by linking suitability to the attainment of that goal. To proceed otherwise would be to distort the touchstone of public confidence and impose a  
15 higher standard beyond industry practice and the requirements of the AML/CTF Act.

Those are the matters we would highlight by way of oral submissions. Crown's ultimate submission is that the extensive and comprehensive AML/CTF reforms have elevated Crown to a position where applying the test identified in the  
20 observations, the public can reasonably have confidence that AML/CTF risk is or will be appropriately identified, managed and mitigated.

Turning then to the topic of criminal infiltration and related matters. In writing, we address the systems and procedures in place to minimise the risk of criminal  
25 infiltration at the Perth Casino. The section covers Crown Perth's involvement and conduct, the subject of the Bergin Inquiry, regarding the approval of junket operators and the China arrests, and the impact of those past events on current suitability.

This section addresses the systems and controls used to minimise criminal activity.  
30 These systems and controls include safety and surveillance at the complex, Crown Perth's cooperation with law enforcement agencies and the enhancements to Crown Perth's Person of Interest and significant player review.

Crown acknowledges its failings as they relate to the operation of junkets in Perth.  
35 That was the subject of evidence before the Bergin Inquiry. Those failings are properly regarded as historic and do not bear upon Crown's current culture or suitability. Crown has taken significant steps to remedy the underlying conduct and to ensure that such conduct cannot recur.

40 The submissions set out the actions taken by the Crown Group since 2020, which evidences Crown Perth's commitment to higher standards and more effective risk management. Crown has followed the recommendations made by Deloitte in relation to the Person of Interest process and has withdrawn the licenses of a large number of patrons.  
45

All junket operators the subject of the 2019 junket media allegations have been banned. Of key importance is Crown's announcement that it would permanently cease dealings with junket operators in early 2020. Crown will only recommence



dealing with a junket operator if that junket operator were licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates.

5

Addressing then the China arrests. The China arrests was a traumatic experience for the organisation and the people involved, and Crown's response is set out in the submissions. Crown has closed all offshore offices and the VIP International team has been integrated into the broader business.

10

The dealings in relation to the China investigation were largely conducted by individuals who no longer work for or advise Crown. With Crown now under different stewardship, the PCRC can be satisfied that Crown has learnt from its past mistakes and will not repeat them.

15

Crown has now been subject to three scorching public inquiries. Public inquiries add positively to the retention and institutionalising of knowledge, and promote lesson learning and resilience with respect to future crises.

20

With respect to measures to restrict criminal infiltrations, Crown accepts that one of the extant risks associated with casino operations is criminal infiltration. Crown's view, shared by the Department, is that the risk of criminal infiltration properly refers to organised crime using the casino or aspects of casino operations for criminal purposes, rather than simply all forms of crime which might occur within the footprint of the casino. Nonetheless, Crown accepts it has an obligation to run a safe casino. It has conducted its business on the basis that it has a responsibility to avoid and minimise criminal exploitation. Crown does so in at least three ways.

25

30

First, Crown maintains a safe and secure environment at the resort with well-resourced and well-trained security and surveillance teams. The Commission itself has seen how powerful the security and surveillance systems are.

35

The PCRC has said it is open to the Commission to find that the Perth Casino has in place well-resourced security and surveillance departments and that the systems, policies and procedures are generally adequate to mitigate the risk of criminal infiltration. The PCRC has noted that the Perth Casino employs a significant amount of technology, including military grade FRS and thousands of CCTV cameras to ensure that the risk of infiltration is mitigated. Those findings should be made.

40

Despite the adequacy of those measures, in recent years Crown Perth has enhanced its system and controls. For example, it has doubled the number of cameras using facial recognition software both at the Perth Casino and at the resort.

45

The second point to be made is that Crown has long had and continues to have close relationships with law enforcement agencies. The evidence led before the Commission reveals that the working relationship between Crown and these agencies, and in particular the Western Australian police, are collaborative and

effective. Those relationships have the effect of reducing the risk of infiltration.

5 Crown's assistance to law enforcement agencies comes in many forms. Crown provides a large amount of information to law enforcement agencies. Members of both Crown and WA Police gave evidence that the volume of such information was significant and played an important role in the detection and investigation of crime.

10 Crown assists with and causes to be initiated criminal investigations. Some of these are in respect of what might be regarded as volume crime, such as assaults, theft or damage. But others are more serious, such as investigation and prosecution of Mr Lim for dealing with the proceeds of crime.

15 Crown's good working relationships with law enforcement agencies reflects positively on its honesty, integrity and competence as a casino licensee.

20 The third matter to be observed under this topic is that Crown has systems in place to address the risk of infiltration in general, in addition to the matters concerned with money laundering. Crown accepts these systems may be capable of improvement but is committed to monitoring and implementing enhancements where they are identified. Nonetheless, Crown's current systems are robust and effective for the minimisation of criminal infiltration of the casino.

25 Turning then to the topic of communications with the GWC. The written submissions address the topic of Crown's dealing with the GWC. It places that topic in the relevant context considering the Terms of Reference and the appropriate standard for communications with the regulator.

30 The written submissions cover the history and nature of the communications between the GWC and Crown, dealing with the adequacy of its communications on specific topics, and considers the approach to certain regulatory questions, including about the regulatory presence at the Perth Casino. The written submissions respond to the matters raised concerning conflicts of interest and addresses the matter of regulatory capture.

35 Dealing first with the standard for assessing past communications. The assessment of Crown's past communications should not proceed on the basis that adequacy is an expression that is referable to an obligation in the current regulatory framework equivalent to continuous disclosure. If Crown is now to be judged on the adequacy of its past communications with the GWC by a standard that did not apply to it at the time of the relevant communication, there would be an element of unfairness that could not be remedied.

45 For the purposes of item 6 of the Terms of Reference, Crown accepts that the adequacy of its communications with the GWC and the Department can be assessed having regard to the matters noted by the PCRC in the observations. That is, information should be objectively accurate, the information should be objectively fulsome, communication should be made honestly, carefully and with candour.

These are the standards that Crown strives to meet.

5 Crown has made frank concessions about the instances of past communications where it has fallen short of those standards. Crown's objectives in its dealings with the GWC is to foster a relationship based on trust and transparency and its current leadership is committed to that purpose. That is reflected in Crown's apology to the GWC and the assurances given by its senior leaders.

10 Crown accepts that specific communications the subject of concessions in its closing submissions reflect poorly on it. It does not seek to diminish them. Attempts to suggest that instances of poor communication reflect a pattern that bears upon Crown's present suitability cannot be sustained for at least three reasons.

15 First, the more serious failings in Crown's communications with the GWC occurred some time ago. They were made by employees who have moved on and at a time when different leadership prevailed at Crown.

20 Second, Crown's record of reporting should be looking at in its entirety, comprising daily reporting, including self-reporting of operational non-compliance, attendance at the meetings of the GWC and meetings with the Department, and formal disclosures by Crown, again including matters of non-compliance.

25 Third, Crown's recent dealings with the GWC and the assurances of its senior leaders reflect favourably on Crown's present suitability. Crown respectfully submits that it may be accepted that its mistakes of the past are aberrations and will not be repeated.

30 Dealing then with the matter of conflicts of interest which occupied some time at the hearing. Crown accepts it is open to the Commission to conclude that Mr Connolly's friendships with Mr Hulme and Mr Marais put Mr Connolly in a position of perceived conflict in the performance of his role as CCO and Deputy Director-General of the Department.

35 Those relationships have been thoroughly examined, both by Crown and the PCRC. No evidence has emerged that shows these relationships involved actual, as opposed to perceived, conflicts. Evidence shows that Mr Connolly, Mr Hulme and Mr Marais were open about their friendship. They were alive to the fact there was potential for a perception of conflict to arise in some instances and took steps to manage that potential perceived conflict by disclosing it to their supervisors.

40 In retrospect, more could and should have been done to manage the potential for a perception of conflict of interest to arise. Crown acknowledges that insufficient attention was given to whether these friendships were appropriate. Nonetheless, the evidence does not support any finding of actual conflicts of interest or of any  
45 impropriety on the part of either Mr Connolly or Crown employees, nor is there any evidence that these relationships were formed or maintained as part of a coordinated strategy by Crown.

That then leads to the issue of regulatory capture. Crown's submissions deal at some length with the concept of regulatory capture, including its fragilities and the risks associated with analysing an extant strategic risk in those terms.

5

There are no settled criteria by which capture is determined. Diagnosis of capture is often made using low evidentiary thresholds and flawed reasoning. Regardless of the conception of capture that is ultimately adopted by the Commission, it is clear on the evidence that there has not been any capture of either the GWC or the Department by Crown.

10

The evidence supports the finding that there was a close working relationship between Crown, the Department and the GWC. That close working relationship led, in some instances, to employees of both Crown and the regulator forming friendships. Neither the close working relationship, nor those friendships are sufficient to find there was regulatory capture, either by design or in effect.

15

It is clear the GWC retained its own mind and exercised its powers adversely to Crown's interests when it thought appropriate to do so, including by and of its own volition, calling for a formal inquiry into Crown's suitability. Whatever the position historically, Crown's current directors gave unanimous and clear evidence that Crown supports a robust, independent regulator.

20

Moving then to the topic of revenue and tax. Chapter 8 of Crown's closing submissions addresses the topics of revenue and taxation. Crown's financial status and financial background are, together, one of the five express indicia of "suitable person" as defined in the Terms of Reference. As such, it is important for the Commission to consider and make a positive finding about Crown's financial suitability on the available evidence.

25

30

That evidence, principally in the form of an expert report from McGrathNicol and Crown's response to it, supports a finding that Crown Perth is in sound financial health and is financially suitable, satisfying that aspect of the definition of "suitable person". In Crown's respectful submission, that finding should be made in clear terms in the final report.

35

There is a related topic of the casino tax. This is addressed in writing. It is fair to say that the casino tax received a considerable degree of attention in the course of the summons in public examinations, leading to the provision of a position paper by Crown. The PCRC's investigation revealed that, unlike the position in Melbourne, there was no evidence of any substantive issue with respect to the calculation and payment of the casino tax by Crown Perth. That outcome ought to be recorded as a positive finding in the PCRC's final report, reflecting the evidence that was gathered by the inquiry.

40

45

Crown notes that the observations were silent with respect to the substantive issue of the casino tax, even though the matter was the subject of inquiry. It would not be appropriate for there to be no finding on the substantive issue merely because the

outcome of the inquiry was not adverse to Crown.

5 The PCRC considers casino tax in the context of adequacy of Crown's communications with the GWC. The observations focus in particular on the tax treatment of tournament entry fees and of non-cashable credits across EGMs and table games.

10 It is suggested that it would be open to find that Crown Perth did not communicate with the Department or the GWC as a cooperative, open and frank casino licensee would have done in relation to those two tax issues. In Crown's respectful submission, that finding is not reasonably open on a fair reading of the evidence before the Commission.

15 The relevant evidence is summarised chronologically in writing. In our submission, that evidence shows that Crown was open and transparent in its dealings, to the point of sharing privileged legal advice, and that the Department and the GWC operated with their eyes open and formed their own views, relying on advice sought and obtained from the State Solicitor's Office. In the circumstances, the findings  
20 proposed tentatively in relation to Crown's dealing with the Department, the GWC and the casino tax are not fairly open.

25 Moving then to the last topic on the list of topics, which is the Responsible Service of Gaming. Crown's written submissions address the matters raised in the observations concerning the responsible service of gambling, both with respect to Crown Perth's suitability and regulatory reform.

30 Taking the matter of suitability first, the PCRC identifies possible deficiencies in Crown Perth's past approach to RG. Questions are raised as to whether Crown's leadership change and RG Change Program are sufficient for the Commission to be satisfied as to the adequacy of Crown's approach, leadership and culture concerning RG.

35 Crown's submissions are to the broad effect that the alleged deficiencies are overstated and do not derogate from Crown Perth's suitability, when considered in context, and that there can be no doubt as to the commitment of Crown's current leadership to RG or as to Crown's capability to deliver a world-leading RG Change Program.

40 Crown's written submissions deal with these matters in detail. It is worth emphasising nine matters.

45 First, it is not the case that Crown Perth has failed in the past to recognise its responsibility as to RG. On the contrary, Crown Perth has developed a substantive RG framework over the last decade and a half; it has had an RG team and an RG management committee since 2005; it has had RG training for all staff and a dedicated RG centre since 2009; it moved to a 24/7 operation in 2012; it has continued to develop its RG initiatives. It has reinforced over and over again the

message to its employees that RG is every employee's responsibility. In the last year it built a new larger RG centre and substantially increased the size of its RG team.

5 Second, it cannot be said that Crown's RG framework has been limited to a passive informed choice model. It is true that Crown has a self-exclusion program and disseminates information about RG and its gaming product. Those are good initiatives.

10 Gambling operators should assist people who seek help and assist patrons to make informed choices about their gambling, but Crown has long had initiatives that go beyond mere informed choice.

15 By way of example, it has a third-party exclusion scheme by which family and friends can apply to have a gambler excluded from the casino. It uses staff observations as well as behavioural tracking technology to identify customers who might require assistance or intervention. It has an advanced facial recognition software system to identify customers breaching exclusions. It has robust processes governing whether a customer will be permitted to return to gambling after an  
20 exclusion period, as well as to monitor and assist a customer if they return to gambling.

It conducts RG reviews over its marketing material and over applications for Pearl Room membership.

25 Third, all of these RG initiatives had been voluntarily implemented by Crown Perth. That reflects positively on Crown's character.

30 Fourth, Crown Perth cannot be said to have failed to meet the expectations of the community or the regulator in circumstances where those expectations have not been made clear or have not been specified. The regulator has not previously raised any substantive concerns about Crown Perth's RG framework. There are no regulatory or legislative directives guiding Crown as to the community's expectations.

35 Fifth, there is no suggestion that Crown Perth's past practices have been below industry practice. Rather, Professor Rockloff's evidence suggested that Crown's practices are in line with industry practice. Crown voluntarily took the step of appointing the RGAP in 2019 to review its framework and make recommendations to ensure it achieves best practice. That is commendable, not condemnable, because  
40 the experts are paid for their views.

45 Sixth, the criticism of Crown's RG framework failed to appreciate the complexity of the area. Gambling-related harm is a multidimensional issue. There is no silver bullet. There are legitimate differences of opinion as to the appropriate extent of intervention and as to what measures are effective. Measures may have unintended adverse consequences, a matter on which expert evidence was received. Questions of public policy may be involved, as measures can impinge upon the autonomy, privacy and recreational enjoyment of patrons.

Crown should not be seen as failing or flawed for not taking particular steps where there is uncertainty as to their effectiveness or appropriateness.

5 Seventh, some measures that Crown Perth has been criticised for not introducing, such as mandatory carded play and the regulation of structural features of EGMs, are properly matters for the regulator or government to consider from a holistic perspective. Crown Perth should not be seen as a bad corporate citizen for not introducing them.

10 Eighth, Crown readily accepts there have been some weaknesses and areas for improvement in its approach, but that does not mean Crown Perth lacks good character and capability or commitment in this area. Suitability does not require perfection.

15 Crown has launched a transformative RG Change Program to address these weaknesses and to further evolve its framework into a globally leading approach. The RG Change Program includes the development of an integrated customer data set to support RG analytics, a more robust customer risk assessment methodology, investment in technologies to enhance customer monitoring, including with respect to uncarded play, a reconsideration of play periods based on operational data, commissioning research with respect to loyalty programmes and observable signs, establishing RG key performance indicators for employees, and the enhancement of Crown's RG training program.

25 Importantly, the RG Change Program includes building an evaluation framework by which the efficacy of Crown's RG initiatives will be evaluated, with the outcomes fed back into policy. There are a number of new roles specifically mandated to focus on data analytics and evaluation, including an evaluation manager in Perth.

30 Ninth, there can be no doubt as to the commitment and capability of Crown's current leadership. The RG team in Perth is led by Melanie Strelein Faulks. She has over 10 years' experience in the area, she has an evident commitment to her role and has long been a strong advocate for resourcing of the RG team and leading practices.

35 The RG function is now headed by Mr Blackburn and a new group executive for the RG role. Mr Blackburn is a dynamic and capable leader. He has a direct reporting line to the CRL board and their full support for his world-leading RG Change Program. Mr Blackburn has already implemented extensive improvements.

40 The new group executive role is, to Crown's knowledge, the most senior fully dedicated RG role at any casino globally. The person recruited to that position is an international global expert in Responsible Gaming with a Doctorate in Psychology.

45 Crown's RG team is well advised by the expertise of the RGAP panel. The criticisms of the members of this panel are without merit. There can be no doubt as to their

expertise, integrity and capability. There has been a significant increase in the resourcing of the RG team and Crown is committed to evaluating the appropriateness of this resourcing, as the RG Change Program professes.

5

In summary, Crown's current approach to RG, including its RG Change Program, should be seen as reflecting positively on Crown Perth's suitability.

10 Turning then to the matter of regulatory reform. The Commission has contemplated numerous potential options for regulatory reform concerning RG and possible recommendations for minimising the risk of gambling-related harm at the casino. These are dealt with in the written submissions.

15 Three matters of importance ought to be highlighted in respect of these recommendations. First, fundamental to any such findings and recommendations is the conception of gambling-related harm. It is the keystone upon which any analysis of the causes of gambling-related harm, the prevalence of such harm and how best to minimise it rely.

20 Crown's submissions address why a low threshold for gambling-related harm, such as that proposed by Professor Rockloff, should not be accepted. One key reason is because it would, in effect, have the Commission trespass upon the policy determination in this State made long ago that casino gambling should be lawful and that a commercial enterprise should be sanctioned to establish and run the casino in  
25 exchange for a portion of its revenue.

Each of the Department, the GWC and Crown have been at pains to emphasise that the Commission's analysis of and recommendations in respect of measures to  
30 minimise gambling-related harm must not seek to revisit by design or effect that policy decision.

To advocate against a low threshold for harm is not to say that Crown views gambling-related harm as something that is only suffered by (inaudible). Crown accepts that gambling-related harm occurs across a continuum and is capable of  
35 being suffered both by those who have a clinically diagnosable condition and those who do not. Crown accepts that a gambling-related harm minimisation strategy should contemplate that harm occurs across such a continuum.

40 But any such conception of harm adopted by the Commission must have a threshold that is informed by and conforms to the reality that Parliament has determined that casino gambling is legal in Western Australia and the community can enjoy the benefits that flow from recreational casino gambling.

45 That leads to the second matter, which is that the recommendations proposed by the Commission are made without analysis of the overall impact that these recommendations may have, either alone or in combination. It was noted as essential in both the observations and by the Commission's own expert witness that such an analysis occurred because, absent it, no assessment can be made as to whether the



recommendation is either proportionate or necessary.

5 Because of this, each of the Department, the GWC and Crown have in their written submissions respectfully cautioned the Commission against making recommendations in respect of these measures. Crown's position is, in the first instance, that most of the proposed recommendations should not be made for the reasons articulated and these matters should be left to another day and another forum for fulsome evaluation.

10 However, if the Commission is minded to make recommendations as to these measures, they should be cast, as the Department suggests, in the form of a recommendation that the GWC give consideration to implementing them.

15 That is not to say it is Crown's view that the Commission has not identified any aspects of the regulatory framework that can be improved immediately. It has. For example, Crown accepts it is open to the Commission to recommend that a mandatory Code of Conduct be imposed by the GWC and the recommendation to reduce the maximum debt size on EGMs on the main gaming floor to bring them in line with NSW and Victoria can be made.

20 Crown's submission is, rather, that in respect of most of the measures proposed by the PCRC, careful consideration needs to be given to them and a holistic assessment of the impact made before they may properly be implemented. This is particularly so in respect of measures which have not been demonstrated to be effective in minimising gambling-related harm. It applies with even greater force in circumstances where the cost of implementing the measures is unknown and where such measures may have significant impact, financial and otherwise, on Crown Perth and other interested parties.

30 This then leads to the third important matter, which is proportionality. The decision to legalise casino gambling involved the balancing of many public considerations, including harm minimisation, promotion of recreational enjoyment, encouragement of tourism and the generation of revenue for the State. No remedial measure proposed should be disproportionate to the mischief it seeks to address, nor seek to elevate any one of those considerations as paramount above the others, bearing in mind it was the decision of the State to grant the licence under the State Agreement.

40 Given that, it is important to recognise that gambling-related harm is low in Western Australia, both in real terms and relative to the levels of harm suffered in other Australian jurisdictions. Despite that, Crown accepts that additional measures can and should be put in place to further minimise the risk that people will suffer such harm. However, it should be borne in mind that in assessing the merits of the measures proposed, particularly when considered in totality, these measures seek to address a problem that is relatively confined and that the object of preventing harm must be weighed with the other policy objects that the legalisation of casino gambling sought to promote.

I will then say a few words by way of conclusion. Crown otherwise relies on its written submissions on the various topics covered orally this afternoon. As the steps that were required to be taken before entry into the hearing room revealed tangibly,  
5 we are living in a changing world. In that world, Crown has set itself the task of changing itself. There is no small endeavour, but Crown is progressing well and on track with its program.

10 It bears mentioning that a central principle of our justice system is that we reject what Wigmore described as a human tendency to punish not because the accused is guilty this time, but because he has been bad in the past. Such a process of reasoning ought not to be followed. That, we say, has pertinence to the temporal considerations evident in the Terms of Reference.

15 One further cardinal aspect of our justice or moral system ought, with respect, to be kept in mind. That is, the scope recognised for rehabilitation and redemption. The evidence before the Commission, particularly of the program of remediation, shows that Crown has reformed itself and is presently suitable.

20 Those are the submissions we wish to make.

COMMISSIONER OWEN: Thank you, Mr Dharmananda. I am tempted to go first, so I can take this mask off, but I will resist the temptation.

25 COMMISSIONER JENKINS: Then that allows me to take mine off, doesn't it.

### **QUESTIONS BY THE COMMISSION**

30 COMMISSIONER JENKINS: Mr Dharmananda, can I ask you a question, first of all, in relation to the suitability issue and the Terms of Reference. You will aware of the two limbs of the suitability inquiry for BNL.

35 MR DHARMANANDA: Yes.

COMMISSIONER JENKINS: I think the parties were all asked to opine whether there was any difference or what was the difference between those two limbs. Could it be that BNL, for example, could be found to be unsuitable as a licensee because,  
40 for example, of its governance structure? This is entirely theoretical. But then still be suitable under the second limb, in effect, to be associated with the licensed casino operations, and that could be what the distinction is, what the two limbs are driving at?

45 MR DHARMANANDA: With respect, Commissioner, that is an interesting reading of that section but I don't think that is what is intended by the Terms of Reference.

COMMISSIONER JENKINS: So what do you say?

MR DHARMANANDA: I think it is just not particularly clear drafting and it is to be undertaken as a holistic exercise.

5 COMMISSIONER JENKINS: You say that interpretation I have put is "interesting". What is wrong with it, though?

MR DHARMANANDA: Well, it is a conjunctive, not a disjunctive, that is what is problematic with it.

10 COMMISSIONER JENKINS: That's the problem. Thank you.

Now, turning to the role of the public interest, I want to understand this a bit better from your perspective. Comparing what you said today to what is in your written submission, is it Crown's submission that the public interest is not captured in the Terms of Reference or that it should not be --- that is, the PCRC should not assume that it is captured? I think the assumption is the terminology that is used in the written submissions.

20 MR DHARMANANDA: We did use that language in the written submissions and today I said on a plain reading of the Terms of Reference, especially when you compare it to the Victorian Terms of Reference, public interest is not mentioned.

25 COMMISSIONER JENKINS: Is Crown's position that it is not?

MR DHARMANANDA: Our position is as is reflected in writing, which is there is a question as to whether it is covered. If it is covered, then query what the process was directed to in the course of the proceedings to address the matter of public interest.

30 COMMISSIONER JENKINS: Right. I want to put that to one side for the moment. I'm not interested in what we did or didn't do to examine it. I want to ask you about what Crown says is the proper construction of the Terms of Reference.

35 MR DHARMANANDA: The proper construction of the Terms of Reference is that public interest is not squarely covered.

COMMISSIONER JENKINS: Squarely. All right. I want to ask you about ---

40 MR DHARMANANDA: With respect, they are your Terms of Reference ---

COMMISSIONER JENKINS: I know.

MR DHARMANANDA: --- that's why I'm expressing it in the way I am.

45 COMMISSIONER JENKINS: That's fine, if that is how I am to understand your submission. Can I ask you a couple of questions about that. The first is, is it possible

to exclude the public interest entirely from the criteria of suitability in H? For example, when the PCRC inquires into the character of a casino licensee and whether it is a suitable person to be a licensee, doesn't the public interest play a part in determining what is the appropriate character for a casino licensee?

MR DHARMANANDA: That inquiry as to the aspects of public confidence may well be captured within the definition of suitability, but the question of public interest, that is the broader question as to the benefits and disbenefits, that is the point of the submission we make.

COMMISSIONER JENKINS: That is what I wanted to identify. I suspected that was the case but I wanted to make sure you are not suggesting that when looking at some of these criteria of suitability, we are prohibited from taking into account what is the public interest. For example in the character, what standard of character is required of a casino operator, what standard of honesty is required, what does the public require by an honest casino operator.

MR DHARMANANDA: We are not suggesting that at all. It is public interest as that term is understood in the authorities, meaning, broadly, matters of benefit and disbenefit to the public.

COMMISSIONER JENKINS: I won't quibble with you about what the authorities say because you, yourself, in the written submissions say public interest is a very broad concept and means different things in different places, so we will leave it at that.

Can I finish this part of my questioning with asking you, in respect of paragraph H(f) of the Terms of Reference, which say we can take into account other things, why in that respect can't we take into account what you say you mean by the public interest?

MR DHARMANANDA: Well, there would be aspects of the proceedings directed to those other matters, including an invitation to address the public interest, if that was the intent of the Commission.

COMMISSIONER JENKINS: But theoretically?

MR DHARMANANDA: Theoretically, if the Commission saw fit to enquire into that and steps were taken within the course of the proceedings to allow those matters to be investigated, then that would be possible, yes.

COMMISSIONER JENKINS: Moving on then from the public interest, you said in your oral submissions that Crown did not accept that there were special obligations on the casino licensee.

MR DHARMANANDA: Yes.

COMMISSIONER JENKINS: Your written submissions accept that Crown has

a social licence.

MR DHARMANANDA: Yes.

5

COMMISSIONER JENKINS: Can you explain to me what you regard as the difference between special obligations to be implied from the framework, as opposed to the conditions of a social licence?

10 MR DHARMANANDA: Well, phrased in the manner it was in the discussion paper, as involving special obligations and responsibility without much definition, it became difficult to accept that those matters exist, just from the perspective of a practical operation of discharging those duties. But as Crown has accepted before  
15 Commissioner Finkelstein and elsewhere, it has a responsibility generated by virtue of the fact that there is a social licence to operate.

As to exactly the confines or limits of that concept, it is not exactly clear, but it is brought to bear when attention is given to such matters as responsible service of gambling. These are the type of areas where it seems to flesh itself out.

20

COMMISSIONER JENKINS: So your main complaint about the idea or concept of special obligation is that you simply don't know what they might be?

25 MR DHARMANANDA: We don't see that as grounded in a legal responsibility, as imposing a legally defined duty.

COMMISSIONER JENKINS: The same could be said of the conditions of a social licence?

30 MR DHARMANANDA: The same may be said about that and that's why I say the social licence idea manifests in particular areas as is evident from the findings made by Commissioner Finkelstein.

35 COMMISSIONER JENKINS: In regards then, you mentioned just then the RSG context. One of the submissions you seem to make, and I don't want to misrepresent, but this is how I understood it, was that you were saying that one of the reasons why Perth Casino could not be blamed for having an inadequate RG program in the past was because the regulator never required more of the casino?

40 MR DHARMANANDA: More to contextualise the behaviour of Crown Perth where it has embarked on a voluntary process of Responsible Service of Gambling where the GWC didn't call for it and where there is no mandatory Code of Conduct. So that is taking steps to achieve a level of responsibility of one's own initiative. So it is highlighting that Crown takes that responsibility, recognises it and takes it seriously,  
45 even without someone telling it to do something.

COMMISSIONER JENKINS: Yes. So isn't that in fact saying that the Perth Casino can't be blamed for having an inadequate program because it took steps to have one,

not because the regulator didn't tell it what to do, but rather that actually it was behaving as a casino regulator ought?

5 MR DHARMANANDA: That's an aspect of it. That's the flip side of the submission I just made because it is hard to say "you have failed" when there isn't a relevant regulated standard against which to judge that failure.

10 COMMISSIONER JENKINS: Can I put this to you: doesn't the concept of a suitable person to be a licensee carry with it the idea that that person will behave, that person or entity, will behave to a certain standard or level because of their character, their honesty, their integrity without any regulation.

15 MR DHARMANANDA: Crown did that.

COMMISSIONER JENKINS: That's the point. That's the point I'm making, Mr Dharmananda.

20 MR DHARMANANDA: Yes.

COMMISSIONER JENKINS: That you would say that is what Crown did.

MR DHARMANANDA: Yes.

25 COMMISSIONER JENKINS: And it wasn't the --- it's not that it can't be blamed because the regulator didn't require more, you would say that you can't be blamed because you did what a suitable casino licensee could be expected to do in the circumstances?

30 MR DHARMANANDA: Certainly that is one aspect of it. The other aspect is just the traditional abhorrence of imposing a finding against someone in circumstances where it is in fact retrofitted, the law doesn't readily embrace that.

35 COMMISSIONER JENKINS: Well, that comes down to whether there is a standard that can be expected.

MR DHARMANANDA: Yes. There is no external standard is the point we were making.

40 COMMISSIONER JENKINS: You said when speaking about an independent monitor, and you said that one was not required in Western Australia, you said that one of the reasons of why that was was because there were the existence of equivalent monitors in Melbourne and Sydney. How would an interstate monitor have any ability to monitor implementation of remediation plans at the Perth Casino?

45 MR DHARMANANDA: As the Commission already knows, some of the functions operate under a centralised basis. So obviously the review of those centralised functions will be discharged by both Sydney and Melbourne. That's one aspect of it.

So that will cover inevitably Perth to the extent that --- AML is a classic example. As Mr Blackburn gave evidence, AML is across (inaudible). The other aspect of that is in the course of the work done by those bodies, inevitably, they will take an all-of-  
5 Crown approach to examine what is happening, for example, risk management, across all of Crown.

COMMISSIONER JENKINS: Including Perth Casino?

10 MR DHARMANANDA: Well, it is one of those aspects of the business that needs to be dealt with at a particular level so they will examine relevant papers which would affect all parts of the business.

COMMISSIONER JENKINS: Can I ask you about a few specific things. First, in  
15 relation to the Perth Casino, it has no CEO at present; that's correct?

MR DHARMANANDA: Yes, that is so, yes.

COMMISSIONER JENKINS: And is there anything that Crown wants to tell the  
20 PCRC about that position and what might occur in respect of it?

MR DHARMANANDA: Well, the announcement made about Mr Bossi is he is available to assist until June of this year. So, in terms of a functional capacity, Mr Bossi is available to lend assistance. There is, of course, the plan to replace Mr Bossi  
25 with a new CEO and I can't report today exactly how far that process has gone given the recent nature of the announcement.

COMMISSIONER OWEN: There was also in the same announcement the talk of an imminent appointment of an acting COO. Are you able to tell us anything about  
30 that?

MR DHARMANANDA: I might be able to do so in a few moments.

COMMISSIONER OWEN: Perhaps you can come back to that.  
35

MR DHARMANANDA: Yes.

COMMISSIONER JENKINS: In respect of the RCCOL recommendations, without wishing you to give evidence from the bar table, but when these came out I asked  
40 various Crown Directors how they and management, how they saw those being implemented and affecting Crown Perth. There was nothing in your oral submissions about how the implementation of those recommendations might affect governance and management of Crown Perth. Is that because Crown doesn't see them as affecting governance or management of Crown Perth?  
45

MR DHARMANANDA: I don't have instructions on exactly how that is seen. That might be something that we can --- as Mr Evans has suggested, respond in writing to the PCRC.

COMMISSIONER JENKINS: Thank you.

5 MR DHARMANANDA: I can now report on the COO situation. The interim COO is to be appointed until the new CEO has been found. There are still some steps before the interim COO can be appointed.

10 COMMISSIONER JENKINS: In respect of other matters that might impact on the suitability issue, first in respect of the ownership of CRL and what one hears in the press, reads in the press about that. Is that not an instability issue that is relevant for the PCRC to take into account in determining suitability of CRL?

MR DHARMANANDA: With respect, no.

15 COMMISSIONER JENKINS: And why not?

20 MR DHARMANANDA: I don't see where the instability arises. This is a corporate transaction from a reputable private equity firm. They are about to make an acquisition if it proceeds. If they proceed to make the acquisition, then the transaction is completed. The scope of the capacity for that transaction to be completed will be subject to other regulatory approvals in any event.

25 COMMISSIONER JENKINS: Then moving on to the position in Melbourne and Sydney, can I put the same question to you in that context. CRL and/or its subsidiaries in those jurisdictions have been found unsuitable to hold an Australian casino licence, or to be closely associated with a casino licensee in those jurisdictions. Is that not a matter that goes --- that the PCRC should take into account in determining the suitability of CRL and the Burswood entities?

30 MR DHARMANANDA: Those matters can be taken into account but they need to be taken into account in the present setting. The present setting being whatever ILGA decides to do with respect to Sydney, there may be information about that before this Commission hands down its final report, and the circumstance that despite the finding in relation to CRL made in Melbourne, CRL is able to continue and Crown Melbourne is able to continue subject to the steps Commissioner Finkelstein recommended. So those are pertinent from the developments in Sydney and Melbourne.

40 COMMISSIONER JENKINS: Thank you.

Under section 19, subsection 4 of the Casino Control Act, only the casino licensee can conduct gaming at the casino. I will give you a moment to refresh your memory about that.

45 MR DHARMANANDA: Yes.

COMMISSIONER JENKINS: Who conducts the gaming at Perth Casino?



MR DHARMANANDA: It comes back to the discussion that Commissioner Owen had with Mr Evans that the interrelationship between Burswood Limited, Burswood Nominees and Burswood Management is such that it is taken as a whole that Crown Perth is comprised of those entities, which includes the licensee.

COMMISSIONER JENKINS: I don't know that answers my question, Mr Dharmananda. Who conducts the gaming at the Perth Casino; which entity conducts the Perth Casino?

MR DHARMANANDA: It is, with respect, the same type of analysis as was the subject of discussion between Commissioner Owen and Mr Evans, which is to say that the structure is such that in circumstances where although Burswood Management and Burswood Nominees have particular assets or particular holdings, they are all done together with Burswood Limited. It was the evidence given by Mr McCann in relation to the centrality of the work of Burswood Limited.

COMMISSIONER JENKINS: So Burswood Nominees has no employees, has an executive board and doesn't on Crown's position, operate Perth Casino, that is done at the Burswood Ltd level and it is governed at the Burswood Limited level ; is that right?

MR DHARMANANDA: Yes.

COMMISSIONER JENKINS: So how can it be said in those circumstances that Burswood Limited carries on the gaming. What is the terminology, I will find it there.

MR DHARMANANDA: The subsidiaries act for the benefit of Burswood Limited.

COMMISSIONER JENKINS: Conduct games at the premises casino.

The situation is that BRML employs all the employees?

MR DHARMANANDA: Yes.

COMMISSIONER JENKINS: How is that appropriate given BRML has no assets, therefore no day-to-day --- well, no assets?

MR DHARMANANDA: Well, it is a structure that arose after the 1997 amendments, and in circumstance where, as Mr McCann said, they are all working together with respect to the Crown Perth Casino with Burswood Limited being, in effect, either the sole controller or the sole shareholder of the relevant entities.

COMMISSIONER JENKINS: Is there any reason why BRML could not have a service agreement under which it agreed to supply the labour and BNL, really, agreed to pay for it so as to regularise the arrangement?

MR DHARMANANDA: Well, informally, it seems to operate in such a way as Mr McCann described in the sense that the work of these two subsidiaries is done for the benefit of Burswood Limited which exercises control over them and implicit within that might well be an arrangement with respect to the sharing of resources or labour. But it is a matter that we can certainly consider and respond in writing in that is required.

COMMISSIONER JENKINS: I've been asking these questions for a year now, Mr Dharmananda. I think you've had time to respond. But in respect of --- I withdraw that which I just started. You spoke about it being inappropriate for Perth Casino or Crown to have an advanced level of maturity of its ML/TF program before it can be found suitable. In that respect can I ask you: would it be reasonable to require a more advanced level of maturity in circumstances where a casino licensee had previously failed to management ML/TF risk than in respect of a casino licensee who had not previously failed to manage the risk?

MR DHARMANANDA: No. And the evidence given by Mr Blackburn addresses that.

COMMISSIONER JENKINS: The tax situation, and I will have to consider everything you said in respect of tax, but should not the Perth Casino have paid tax on poker tournament entry fees?

MR DHARMANANDA: We have addressed all of this in writing.

COMMISSIONER JENKINS: Well, I'm just wondering because I thought that issue had been squarely raised with you and yet you said in oral submissions that in effect we'd made no comment in respect of the tax issue and only in respect of GWC communications or communications with the GWC about tax.

MR DHARMANANDA: Well, Commissioner, that's how we read the observations.

COMMISSIONER JENKINS: So, really, that is what I wanted to make sure that we were on the same panel about that issue. Are you saying that you haven't made submissions about the substantive issue about whether tax should have been paid?

MR DHARMANANDA: Insofar as we read the observations, that substantive issue was not raised.

COMMISSIONER JENKINS: It's fine, Mr Dharmananda, I accept what you say in that respect. I just wanted to make sure that we understand what your position is.

And would you say the same thing about whether there should be a consistent approach as to whether tax is payable on non-cashable credits at EGMs and table games?

MR DHARMANANDA: Again, that substantive issue was not raised but it is the subject of attention in the discussion paper that we sent.

5 COMMISSIONER JENKINS: When do you expect the RG expert to commence employment?

MR DHARMANANDA: We don't know. There are certain issues in relation to approvals and visas.

10 COMMISSIONER JENKINS: And, finally, I wanted to ask for some clarification on one of your very last submissions to the effect that adopting a low threshold for casino gaming harm would be inconsistent with the position that the Government had legalised licensed casino gaming. I just don't quite understand what you are saying  
15 there.

MR DHARMANANDA: It's a point that I think the GWC has made. It is this: if you adopt a low threshold for gambling harm, so according to Professor Rockloff, if you feel bad about losing at the casino, that is gambling harm, then adopting that  
20 type of approach to determining minimisation strategies runs the risk of challenging the revenue capable of being raised by a casino operator in relation to the licence that the State has decided to grant for the purposes of enabling recreational gambling. So you've got to be conscious of that threshold when you come to make determinations about reform. It is an important part of the analysis.

25 COMMISSIONER JENKINS: Thank you, Mr Dharmananda, I don't have any further questions.

COMMISSIONER MURPHY: Just one if I may.

30 Mr Dharmananda, you touched on the Melbourne arrangements. But the Crown Remediation Plan seems to me to rely very heavily on CRL. You talked about AML and mid-term audit and those sort of arrangements. To what extent does the success of the Remediation Plan in Perth rely on stability of arrangements in Melbourne,  
35 particularly given the light of the Royal Commission, the Victorian Royal Commission?

MR DHARMANANDA: Well, there is an interconnectedness, we accept that. But the manner in which CRL would see the operations of its businesses would seek to  
40 ensure that Crown Perth can succeed, even if there are issues around Crown Melbourne.

COMMISSIONER MURPHY: It may be an issue but Crown Perth is in a position to deal with it?

45 MR DHARMANANDA: Yes.

COMMISSIONER OWEN: Mr Dharmananda .....

MR DHARMANANDA: I beg your pardon, Commissioner?

5 COMMISSIONER OWEN: Mr Dharmananda, can I start --- come back to the proposition of the special obligations and come at it in a slightly different way. Is there a way of looking at it in this sense, to concentrate not so much on the special obligations of the licensee, but the special nature of the licence. And the concept that you have accepted of a, call it a social licence, which isn't a phrase that I favour, I prefer the old terminology of corporate social responsibility, but it takes its flavour from the context. And the special nature of the licence may well condition the corporate social licence to use the terminology, and the special nature of the licence is that it is the only one in the State - I know that it is possible under the legislation to issue further casino licenses, but it is operating in a protected environment in that sense - and it is in relation to the provision of services which are acknowledged to have the potential to cause harm. So it has a special nature that licence. Would that not condition the corporate social licence or the corporate social responsibility and give it some context and some meaning?

20 MR DHARMANANDA: The difficulty one encounters immediately with that type of analysis, with respect Commissioner, is how, what? The critique that is levelled at CSR as a branch of corporate governance is to try to identify in terms of brass tacks exactly what it means to say there is a corporate social licence in a particular context. That's where the academics who don't favour going down that path have raised the prospect that it is nebulous. It is not clear exactly what it means. We may recognise that a statement agreement is a special privilege. Rio Tinto, BHP, they all enjoy the benefits of a State Agreement in various areas. Do they then have a special responsibility and a special obligation by virtue of the entry into the State Agreement or is it because this is in respect of an industry that has the potential to cause harm? Well, mining can too.

30 COMMISSIONER OWEN: Can I come to the issues which have been raised with you about the working out, if I can call it that, the working out of some of the recommendations of the Victorian Royal Commission. And if you look at Recommendation 30, which is the independence of senior management, it's the independence of senior management from anyone other than the board, effectively of the board of Crown Melbourne Ltd. So that a person in senior management could not report to a centralised CRL group manager. Now, I know this is only a recommendation, but it has been accepted in principle by the Government. I think that is the terminology.

40 MR DHARMANANDA: Yes. There are ongoing developments with respect to the implementation of those recommendations and that is a matter that moves on a weekly basis, Commissioner.

45 COMMISSIONER OWEN: It is. And that's what I was going to raise with you. It puts us in a position where there is considerable uncertainty as to how we --- how do we measure these things? If taken to its logical conclusion, that recommendation

would have ramifications for the shared services model, wouldn't it?

5 MR DHARMANANDA: It would, depending on exactly how its looks, yes. But one way to address that in your reports, Commissioner, maybe to express such findings as one may wish to make on structural governance as subject to any implementation of the reforms in legislation in Victoria.

10 COMMISSIONER OWEN: Yes. And then moving to Recommendation 29, you raised the issue of a board that had a majority of independent directors. Now, the reason that that was raised in the written closing observations was because it was a recommendation of the Victorian Commission and we wanted to gauge reaction as to how people saw that translating to the Western Australian environment. You've made your position clear that that's not a recommendation that Crown would support.  
15 But can I approach it from a slightly different angle. That is, one of the other matters that we are considering, haven't formed a view on but are considering, is the formation of actual board committees of Burswood Limited or whichever entity it is. And the common experience in the corporate world is that board committees work best when it is the independent directors that run them.

20 MR DHARMANANDA: Run them.

25 COMMISSIONER OWEN: Now, might that not be an argument in favour of strengthening the independent director component of the Burswood board?

MR DHARMANANDA: It depends on how many committees one envisages. It also would have to work with analysis of the capacity for ex officio members of that committee to be in charge of it.

30 COMMISSIONER OWEN: Yes. Right. Can I come to the structure. As you heard me say to Mr Evans, it's still not sitting easily with me and I'm hoping to get some assistance from you and perhaps others over the next 1.5 days to clarify my thinking on this. But the position that Crown is adopting seems to be that since  
35 corporatisation in 1997, it is Burswood Limited that has owned and operated the Perth Casino under the trust structure. But there is now --- it is put in a slightly different way that it is now the --- really it is the Crown Perth concept with the three entities working together and that you find the answer to any problem that we might raise, you find the answer by saying, "Well, you don't have to identify an individual from within those three entities, you will find the answer in the whole." Is that a fair  
40 summation?

MR DHARMANANDA: I think it is a reasonably fair summation. The way that it was put is that we are seeking to evade the articulation of exactly who is responsible. It is more that it works organically in that way and that's what it has been doing for a  
45 number of years.

COMMISSIONER OWEN: Yes, well, that's what doesn't sit easily with me when you have a trust structure. If it were simply a corporate group, the holding company

working with its subsidiaries, it would be much easier. But you have got a trust structure. And this is not a flight of fancy by some academic equity lawyer because these things can have consequences under the law of trust. And there are obligations which are extant in the trust deed. They've never been changed. When the changes were made to the State Agreement and ratified by Parliament that implemented this corporatised structure with Burswood Limited as the overall governance seems to reside, the trust structure was left in place and it is still there and there are obligations. Just as an example; Burswood Resort (Management) Ltd has the obligation to manage any business conducted by --- of the trust fund. Now, I will read once again your written submissions as to why Burswood Resort Management is actually doing that in complying with the trust deed but at the moment I'm struggling with it because it seems to me that the mere employment of staff that you make available to someone else when you have no assets, no capacity to direct the staff, whether that is conducting business I'm still struggling with that.

MR DHARMANANDA: Yes. The distillation of our thinking on this question is set out in writing and some of those concepts are subtle. We accept they are subtle. But the way that we can conceive of things is as I have explained this afternoon, and it is best reflected in writing in chapter ---

COMMISSIONER OWEN: Yes. But if I could just raise a couple of other examples.

MR DHARMANANDA: Yes.

COMMISSIONER OWEN: If Burswood Limited is the boss, if I could put it that way to use the vernacular, there is clauses 20.1 and 20.2 I think it is of the trust deed which says that a unit holder cannot interfere with the operations of the trust and is not entitled to exercise any rights or powers in relation to an authorised investment. And of course the casino licence is an authorised investment. So that if Burswood Limited is directing the operations of the casino, it is, at least theoretically, in conflict with the trust deed.

MR DHARMANANDA: Except if the trustee authorises that behaviour and approves of it and works collaboratively with it so then that is not an interference. It is not an interference of the trustees involved.

COMMISSIONER OWEN: I wonder about that. How far can you take that?

MR DHARMANANDA: Well, to the extent that there are established rules in relation to the performance of trustees, then a trustee that participates, is aware of, condones, and otherwise approves of behaviour can't be heard to say that the intermeddler is in charge.

COMMISSIONER OWEN: That might mean that it's not actionable by the trustee or the unit holder but it still might be contrary to the trust obligations might it?

MR DHARMANANDA: It depends on exactly what might be had in mind. But one would have thought that consent would be an answer to most things.

5 COMMISSIONER OWEN: All right. Only one more example. At one stage there was inserted into the trust deed a clause, I think it is 2A, which allowed the trustee, gave the trustee the power to delegate its responsibilities. In the 12th supplemental deed in October 1997, that was removed. Now, you take a situation where in AML, Burswood Nominees, which is said to be the provider of the designated services in  
10 relation to the operations of the Perth Casino, has delegated its AML functions to Crown Resorts Ltd as a member of the designated business group. Again, at least theoretically, is that not in breach if there is no ability to --- no authority to delegate?

MR DHARMANANDA: Again, we come back to the point about consent,  
15 Commissioner.

COMMISSIONER OWEN: Well, I've still got some thinking to do and I will read your submissions again.

20 MR DHARMANANDA: Commissioner, in the observations at paragraph 37, chapter 3, page 164, there are certain remarks made by those who drew this part of the observations with or without input from the Commissioners but that seems to record some thinking which reflects our own. Unless there is anything further, Commissioner?  
25

COMMISSIONER OWEN: Can I --- still on the question of delegation, I want to come now to the three companies, the three Burswood entities. What is Crown's position if you can articulate it for me in simple language as to who exercises the powers of the directors in relation to each of those three companies; is it the directors  
30 themselves or did they delegate to officers or employees?

MR DHARMANANDA: Which entities are you talking about?

COMMISSIONER OWEN: Burswood Limited, Burswood Nominees and Burswood  
35 Resort Management.

MR DHARMANANDA: Burswood Limited exercises the functions relevant to the board, detailed how that is to occur in the future by reference to the charter. And the evidence given by Mr McCann was that the subsidiaries work together with and for  
40 the benefit of Burswood Limited and to that extent it might well be in certain instances delegations to particular persons within those two entities.

COMMISSIONER OWEN: Right. I think that probably is enough. All right, Mr Dharmananda, thank you very much for your submissions. They have been of  
45 assistance and we will now adjourn and resume at 10 am tomorrow. Thank you.

**HEARING ADJOURNED AT 4.37PM WEDNESDAY, 02 FEBRUARY 2022  
AT 10AM**

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