



WESTERN AUSTRALIA

PERTH CASINO ROYAL COMMISSION

FINAL REPORT

04 March 2022

Acknowledgment of Country

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

Perth Casino Royal Commission

The Honourable Neville John Owen AO (Chair)

The Honourable Carolyn Frances Jenkins

Mr Colin Murphy PSM

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Volume I



PERTH CASINO ROYAL COMMISSION

111 St Georges Terrace,
PERTH WA 6000

4 March 2022

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

Your Excellency

In accordance with paragraph (l) of the amended Commission dated 23 July 2021, we are pleased to present the Final Report on our inquiries pursuant to the terms of reference.

Yours sincerely

Handwritten signature of Neville Owen in black ink.

Commissioner Neville Owen

Handwritten signature of Carolyn Jenkins in black ink.

Commissioner Carolyn Jenkins

Handwritten signature of Colin Murphy in black ink.

Commissioner Colin Murphy

Contents

VOLUME I

Contents.....	3
Foreword.....	8
Answers to Questions in the Terms of Reference	12
Term of Reference 1.....	12
Term of Reference 2.....	12
Term of Reference 3.....	12
Term of Reference 4.....	12
Term of Reference 5.....	13
Recommendations	14
About this Final Report.....	24
References to documents, people and organisations.....	25
Defined Terms	26
CHAPTER ONE.....	42
Subject Matter of Inquiry and Terms of Reference	42
Purpose of Chapter.....	42
Terms of reference 1 to 4	43
Term of reference 5.....	52
Term of reference 6.....	53
Communications with the Gaming and Wagering Commission.....	54
Meaning of 'adequacy of communications'	54
Legislative framework.....	55
Term of Reference 8.....	59
Terms of Reference 9 and 10.....	62
Conflicts of interest.....	63
Term of Reference 11	64
Governance.....	65
CHAPTER TWO.....	72
History of Perth Casino	72
Purpose of Chapter	72
Background to Casino Establishment, Corporate History and Historical Structure	72
Implementation of the casino licence	77
Developments before 1990.....	80
Developments from 1990.....	80
Changes to the structure.....	81
Inquiries into the casino licences.....	82
Perth Casino and Crown Perth Resort.....	83
CHAPTER THREE	90
Overview of Regulatory Framework for Casino Gaming.....	90
Purpose of Chapter.....	90
Reports published prior to the introduction of the Casino Control Act	90
The Statutory Regime.....	90
Modification of the statutory regime	96
Industry and legislative reviews.....	97
Aspects of casino regulation in Western Australia	97

CHAPTER FOUR	110
Corporate Governance	110
Purpose of Chapter	110
Introductory comments.....	111
Perth Casino structure.....	111
The boards.....	120
Activity of the boards	123
Centralisation	129
Risk Management.....	133
BL governance issues	144
The complexity of the Burswood entities structure: analysis	152
BL central management and control.....	158
CRL governance issues	164
Remediation of governance, risk management and culture	169
Issues for future consideration.....	190
CHAPTER FIVE	232
Regulation of Perth Casino	232
Purpose of Chapter	232
Part One: Context for examination of the Gaming and Wagering Commission.....	232
Part Two: Gaming and Wagering Commission members	235
Part Three: Gaming and Wagering Commission governance	238
Part Four: Operational relationship between the Gaming and Wagering Commission and the Department.....	250
Part Five: Financial arrangements	273
Part Six: Regulation of specific risks to the attainment of the regulatory objectives.....	292
Part Seven: Statutory enforcement mechanisms.....	298
 VOLUME II	
Contents	323
CHAPTER SIX	330
Junkets	330
Purpose of Chapter	330
Part One: Context for examination of junkets	331
Part Two: Regulatory framework and implementation by the Gaming and Wagering Commission.....	332
Part Three: Crown’s governance and risk management of Perth Casino’s junket operations.....	360
Part Four: Crown’s communications with the Gaming and Wagering Commission about junket operations	376
CHAPTER SEVEN	400
The China Arrests.....	400
Purpose of Chapter	400
Part One: Context for examination of China Arrests.....	400
Part Two: Background to the China Arrests.....	402
Part Three: Crown’s governance and risk management of Perth Casino.....	409
Part Four: Communications with the Gaming and Wagering Commission and its response to the China Arrests	412
CHAPTER EIGHT.....	432
Money laundering.....	432
Part One: Context for the examination of money laundering.....	432
Part Two: Regulatory frameworks relevant to money laundering	439

Part Three: The GWC’s regulation of money laundering at Perth Casino	445
Part Four: Management of money laundering risk at Perth Casino between 2010 and 2019.....	450
Part Five: Communications with the Gaming and Wagering Commission	476
Part Six: Management of money laundering risk from 2019 to present date.....	479
Part Seven: The path ahead in respect of ML/TF risk management.....	505
CHAPTER NINE.....	532
Other Criminal Activity	532
Purpose of Chapter	532
Part One: Context for examination of other criminal activity.....	533
Part Two: Regulation of criminal infiltration and activity by the Gaming and Wagering Commission	533
Part Three: Perth Casino’s systems, policies and procedures.....	542
CHAPTER TEN	554
Tax	554
Purpose of Chapter.....	554
Part One: Regulatory framework relevant to casino tax.....	556
Part Two: Non-cashable credits and casino tax.....	557
Part Three: Tournament fees.....	567
Part Four: Regulation of the payment of casino tax.....	572
CHAPTER ELEVEN	584
Conflicts of Interest.....	584
Purpose of Chapter.....	584
Part One: Main concepts.....	584
Part Two: Systems and processes to identify and manage conflicts of interest.....	587
Part Three: Identifying and managing conflicts of interest in practice.....	599
Part Four: Connolly’s friendships with Crown officers.....	603
Part Five: The regulatory relationship.....	614
Part Six: Director General’s Macau trip.....	618
VOLUME III	
Contents.....	633
CHAPTER TWELVE	640
Harm Minimisation	640
Purpose of Chapter.....	640
PCRC’s approach.....	640
Part One: Context for discussion	641
Part Two: Current regulation of harm minimisation	650
Part Three: Crown’s management of the risk of gambling-related harm at Perth Casino.....	666
Part Four: Adequacy of communications	699
Part Five: Recommendations for reform to Perth Casino’s gaming operations.....	702
CHAPTER THIRTEEN	732
Electronic Gaming Machines	732
Purpose of Chapter.....	732
Part One: Electronic Gaming Machines and Poker Machines.....	732
Part Two: The EGMs at Perth Casino	744
Conclusion.....	755
Recommendations	756

CHAPTER FOURTEEN	766
Evaluation of Regulation of Perth Casino	766
Purpose of Chapter	766
Part One: Overview	766
Part Two: Particular deficiencies in the regulatory framework.....	768
Part Three: Deficiencies in the Gaming and Wagering Commission’s manner of operating	773
Part Four: Department’s support of the Gaming and Wagering Commission.....	777
CHAPTER FIFTEEN	786
Enhancements to the Regulatory Framework	786
Purpose of Chapter	786
Part One: Structural regulatory reform.....	786
Part Two: Legislative reforms.....	792
Part Three: Operational reforms	814
CHAPTER SIXTEEN.....	822
Financial Capacity	822
Purpose of Chapter	822
Financial Capacity	822
CHAPTER SEVENTEEN.....	826
Assessment of Crown Suitability and Path Forward	826
Purpose of Chapter	826
Part One: Assessment of present suitability.....	827
Part Two: Pathway to suitability.....	839
External Monitor.....	843
VOLUME IV	
Contents	851
APPENDIX A	858
Commission dated 12 March 2021	858
APPENDIX B.....	861
Executive Council Minutes	861
APPENDIX C.....	862
Commission dated 23 July 2021	862
APPENDIX D	868
Methodology	868
Establishment	868
Scope of the inquiry and background.....	868
Other Inquiries into casino gaming and regulation in Australia.....	868
Process of evidence gathering	870
Use of Evidence	875
Procedural fairness.....	876
Record Keeping	879
APPENDIX E.....	882
Corporate Governance Theory	882
Purpose of Appendix	882
Nature and conduct of a corporation.....	882
Private Sector Governance	883
Public Sector Governance	904

APPENDIX F	923
Regulatory Theory	923
Purpose of Appendix.....	923
Part One: theories of regulation.....	923
Part Two: legislating regulatory objectives.....	925
Part Three: approaches to attaining regulatory compliance	929
APPENDIX G	940
List of Parties granted leave to appear	940
APPENDIX H	942
List of public hearings	942
APPENDIX I	945
List of Key People	945
APPENDIX J	950
Crowns Resorts Limited Corporate Structure	950
APPENDIX K	951
Significant provisions in the Trust Deed for the Burswood Property Trust	951
APPENDIX L	953
Directors of Crown Entities: September 2004 – 2022.....	953
APPENDIX M	956
Chronology of Gaming and Wagering Commission delegations.....	956
APPENDIX N:	960
Comparative regulatory framework analysis – Australian jurisdictions	960
APPENDIX O	961
Summary of themes discussed in AML expert focus groups with Perth casino employees.....	961
Summary of themes arising from PCRC AML expert survey completed by Perth Casino employees.....	965
APPENDIX P	981
Public Call for Information	981
APPENDIX Q	982
List of Public Submissions	982
APPENDIX R	986
List of Discussion Papers and Responses.....	986
APPENDIX S	987
Summary of Responses to Regulatory Models.....	987
Responsive submissions: Model One.....	987
Responsive submissions: Model Two	988
Responsive submissions: Model Three.....	988
Responsive submissions: Model Four	989
APPENDIX T	991
Practice Directions.....	991
APPENDIX U	992
Acknowledgements	992

Foreword

This Royal Commission was appointed to inquire into two areas. The first was an assessment of the suitability of Burswood Nominees Ltd to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino and to continue to hold the casino gaming licence for Perth Casino. This area also included an inquiry into the suitability of Crown Resorts Limited and subsidiaries Burswood Limited and Burswood Resort (Management) Limited to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino. The second area was the adequacy of the framework to regulate casinos in Western Australia.

Save for a 1996 review of the then *Gaming Commission Act 1987 (WA)*, this is the first time since the grant of the casino licence in 1985 that there has been an inquiry into these issues.

This inquiry occurred against the backdrop of findings in New South Wales and Victoria that two of Crown Resort Limited's other subsidiaries were either not suitable to be granted a casino license or not suitable to hold a casino license. At the date of this report in both of those states the relevant Crown entities are being monitored to determine their suitability to attain or retain a casino license.

The New South Wales and Victorian inquiries did not, and could not, address the suitability of the Perth Casino licensee to be associated with the organisation and conduct of casino gaming at Perth Casino. This inquiry was therefore established to look at the matters raised in those other findings in the context of Perth Casino.

The inquiry in New South Wales prompted the need for this inquiry to consider the risks that money laundering and junkets posed to the proper operation of Perth Casino. It also drew attention to the fact that Crown's promotion of gambling in Australia to Chinese residents had resulted in the imprisonment of Crown employees in China. These matters are specifically referred to in the Commission for this inquiry.

The Victorian Royal Commission highlighted the need to consider additional issues, including the harm caused by casino gambling, the nature of the relationship between the regulator and the casino licensee and the proper payment of casino tax.

We were also tasked with reporting on casino regulation. We have inquired into the adequacy of the regulatory framework in Western Australia for the regulation of Perth Casino; the way the regulator, the Gaming and Wagering Commission, exercised its powers and discharged its functions and the support provided to the regulator by the Department.

Given the breadth of this inquiry it was not feasible to investigate all aspects of casino operations and regulation. We therefore selected issues that are relevant to the assessment of suitability or the regulatory framework, or both, for in-depth analysis. These topics guided our evidence gathering, the examination of witnesses and are reflected in the chapters of this report.

In answer to the questions posed in the Commission about suitability of Crown entities, we have found that:

- a. each of Burswood Nominees Ltd, Crown Resorts Limited, Burswood Limited and Burswood Resort (Management) Limited is not a 'suitable person' to be concerned in or associated with the organisation and conduct of gaming operations of a licensed casino; and
- b. Burswood Nominees Ltd is not a 'suitable person' to continue to hold the gaming licence for Perth Casino.

Once we made these findings, our terms of reference required us to determine what if any changes would be required to render each entity suitable. We determined that in order to become suitable each entity would be required to embark on a pathway to suitability, with their remediation activities overseen by an independent monitor. This pathway would take about two years to travel. At the end of it, the monitor would provide a report to the Gaming and Wagering Commission.

The pathway to suitability would require each entity to remediate the deficiencies which we found rendered them unsuitable. These are detailed in the chapter on suitability which is based on a more detailed analysis in individual chapters.

The Perth Casino licensee and its associates have embarked on numerous remediation activities over the past two years. The Remediation Plan developed and partially implemented by Crown during 2021 and into 2022 means that the factual matrix in respect of which the PCRC is required to opine is different from the one with which the New South Wales inquiry dealt and different again from that which confronted the Victorian inquiry. A lot has changed, mainly for the better, even since the Victorian inquiry reported in October 2021.

We have detailed the changes that would be required in order to render each entity suitable. There are many aspects that require attention but some of them are the Crown corporate and governance structure, Perth Casino's risk management program, Perth Casino's gambling-related harm program and its money laundering program.

We have then reported on the regulatory framework and made a number of observations about enhancements to that framework. We have concluded that the legislation by which Perth Casino is regulated is not fit for purpose and requires replacement with a modern regulatory framework. The regulatory framework is anachronistic in that it is nearly 40 years old and was built on earlier forms of the same framework which were developed without the experience or understanding of modern casino gaming operations and the risks which they pose to the public. It was flawed from conception in that it failed to identify the legislative objectives of casino regulation and to clearly express the associated duties and powers of the regulator to meet those objectives.

The legislative framework, in particular the *Casino (Burswood Island) Agreement Act 1985 (WA)* and the State Agreement which it ratified, were designed to regulate a casino licensee with a particular corporate and governance structure. The framework has not been changed sufficiently to accommodate alterations to the Perth Casino licensee's corporate and governance structure that have occurred over the life of Perth Casino.

We have further found that there have been numerous deficiencies in the manner in which the Gaming and Wagering Commission has exercised its power and responsibilities in relation to casinos and casino gaming. The Department has contributed to these failures by not adequately supporting the Gaming and Wagering Commission.

The Gaming and Wagering Commission has not been assisted by over time being given more duties and functions without a corresponding or sufficient increase in expertise, numbers and funding. Neither has it been helped by the legislative framework failing to establish with clarity the relationship between it and the Department. This has resulted in neither organisation having an adequate or accurate understanding of its role in casino regulation.

As a consequence of the way in which the Gaming and Wagering Commission is constituted and the often inadequate support it receives from the Department, the Gaming and Wagering Commission has failed to identify its strategic objectives, organise itself to be a vigilant and modern casino regulator and garner resources to ensure that it meets its strategic objectives.

These matters are identified in Chapter Fourteen: Evaluation of Regulation of Perth Casino.

The deficiencies which we identified in the regulatory framework and the inadequate regulatory actions of the Gaming and Wagering Commission and the support it received from the Department, have resulted in deficient regulation of the risks from the organisation and conduct of gaming operations at Perth Casino. This regulatory failure has, in turn, contributed to the past and current failure of the Perth Casino licensee and its associates to adequately mitigate those same risks.

The failures of Crown Resorts Limited and its subsidiaries have been identified in both the New South Wales and Victorian inquiries. At Perth Casino they include:

- a. facilitating money laundering through the Riverbank accounts;
- b. failing to have an effective anti-money laundering program to ensure that financial transactions which were suspicious of money laundering were detected, reversed and reported to relevant authorities;
- c. permitting junkets with links to criminals to operate at Perth Casino;
- d. failing to minimise casino gambling-related harm in many ways including by seeking changes to the speed of play of electronic gaming machines without adequate investigation of its effect on harm; and
- e. failing to be open and accountable in communications with the Gaming and Wagering Commission about various matters, including allegations made in the media about the arrest in 2016 of China-based staff.

Like the Victorian inquiry, we have focussed on the extant risk of gambling-related harm. That casino gaming operations may result in some patrons suffering harm as a result of spending more money or time on gaming than they can afford, is an obvious risk and one that was recognised by the Western Australian Parliament when the *Casino Control Act 1984 (WA)* was passed. Our inquiries have revealed that Perth Casino's efforts to ensure that risk was kept to a minimum, have fallen well short of what might reasonably be expected. Consequently, some of Perth Casino's patrons have suffered considerable and avoidable harms as a result of their gambling. While Crown has begun taking steps to address its failings, it is at an early stage of the journey to comprehensively reform the harm minimisation framework at Perth Casino.

The public of Western Australia are entitled to have confidence that the licensee of Perth Casino and its associates will conduct and organise the gaming operations of Perth Casino in a socially responsible, lawful and efficient manner. By examining the extant and emerging risks of casino operations, we have found that the trust that has been placed in the licensee and its associates has been compromised.

That being the case, we have considered ways in which the trust can be restored and measures can be introduced to ensure that confidence in casino operations and its regulation can be maintained. These measures are the subject of our recommendations. Our recommendations are summarised at the front of this Final Report and also contained in the relevant chapters.

We consider that our recommendations for reform of the regulatory framework may have the most long-term benefit to the people of Western Australia.

Our recommendations are many and cover a large range of topics. We have carefully considered them and their effects before making them. We are cognisant that our recommendations in respect of harm minimisation are significant. After careful consideration we have decided that they are necessary given that the evidence suggests that the most harmful form of casino gaming, non-interactive electronic gaming machines, was only in its infancy and perhaps not fully understood at the time the *Casino Control Act 1984 (WA)* was passed. The design of these devices may increase the level of risk of gambling dependence or addiction. Accordingly, the leading recommendation made by the PCRC to address the risk of gambling-related harm is a comprehensive scheme that will empower casino patrons to set their own spend and time limits for electronic gaming machine use. As Perth Casino is a monopoly supplier of electronic gaming machines in Western Australia, the scheme does not face many of the barriers to its implementation that exist in other Australian States and Territories. We consider that every effort should be made to implement the scheme as soon as possible.

We wish to acknowledge a number of people whose work was invaluable both to our operation, and the production of this Final Report.

We wish to acknowledge the tireless and dedicated efforts of Danielle Davies in her role as Project Director. Without her leadership, this report would not have been possible.

Patricia Cahill SC, Michael Feutrill SC, Kirsten Nelson, Adam Sharpe, David Leigh, Ann Spencer, and Verity Long-Droppert as counsel assisting were each essential to the operation of the Commission.

Their hard work and dedication is appreciated.

The support and assistance provided by Solicitors Assisting Corrs Chambers Westgarth, led by Kirsty Sutherland, Michelle Dean and David Yates is also appreciated.

We also acknowledge the support of the PCRC Secretariat, special investigators, technical support and the Department of Premier and Cabinet. We are particularly grateful to Mei Wood, Deputy Project Director, who kept us all well-nourished.

We also were assisted by the co-operation of the interested parties.

Commissioner NJ Owen

Commissioner CF Jenkins

Commissioner CP Murphy

Answers to Questions in the Terms of Reference

Terms of reference (**ToR**) 1 to 5, in effect, pose questions for the PCRC to answer as to the suitability of the Perth Casino licensee and associated entities. The PCRC's answers to those questions are set out below.

Term of Reference 1

- Question:** Whether Crown Perth [Burswood Nominees Ltd] (**BNL**) is a suitable person:
- i. to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino; and
 - ii. to continue to hold the casino gaming licence for the Crown Casino Perth.

- Answer:** BNL is not presently a suitable person:
- i. to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino; and
 - ii. to continue to hold the casino gaming licence for the Crown Casino Perth.

Term of Reference 2

- Question:** Whether Crown Resorts Limited (**CRL**) is a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

- Answer:** CRL is not presently a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

Term of Reference 3

- Question:** Whether Burswood Resort (Management) Limited (**BRML**) is a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

- Answer:** BRML is not presently a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

Term of Reference 4

- Question:** Whether Burswood Limited (**BL**) is a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

- Answer:** BL is not presently a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

Term of Reference 5

Question: In the event that the answer to [Paragraphs 1(i), (ii), 2, 3 or 4] is no, what, if any, changes would be required to render that entity suitable.

Answer: The changes that the PCRC has identified as being required to render the entities suitable together with appropriate monitoring arrangements, are set out in Chapter Seventeen: Suitability, paragraph 108 to 159.

Recommendations

The PCRC makes recommendations, related to the trust and (or) corporate structure of Burswood Nominees Limited and the governance of the Burswood entities, that:¹

- 1 The Burswood entities and Crown Resorts Limited, in conjunction with the Gaming and Wagering Commission and the Minister, give consideration to adopting a trust and (or) corporate structure that has more clarity than the current arrangement concerning operational and governance responsibilities, roles and accountability.²
- 2 The roles of, and division of responsibilities between, each of the Burswood entities be clarified and that:³
 - a. formal reporting mechanisms between the Burswood entities and between Crown Resorts Limited and Burswood Limited be documented and implemented;
 - b. reporting lines by senior management and management committees of Crown Perth Resort to Crown Resorts Limited, Burswood Limited⁴ and committees of those boards be documented and implemented;
 - c. reporting lines by group managers of shared services to Burswood Limited and to committees of Burswood Limited be documented and implemented;
 - d. the Burswood Limited board charter as adopted on 10 December 2021 be reconsidered in light of the matters raised in this Final Report; and
 - e. board charters be developed and adopted for Burswood Nominees Limited and Burswood Resort (Management) Limited.
- 3 The Gaming and Wagering Commission and the Minister, in conjunction with Crown Resorts Limited and the Burswood entities, consider:⁵
 - a. whether the head office requirement, is a necessary or desirable mechanism to achieve the community and regulatory objectives for which it is apparently intended; and
 - b. whether there are alternative means to achieve those objectives.
- 4 The Burswood Limited board be reconstituted to:⁶
 - a. increase its size from the current complement of four;
 - b. comprise a majority of non-executive directors; and
 - c. include at least two persons who are independent of Crown Resorts Limited.
- 5 The Burswood Limited board establish board committees. Although the number of committees and the subject area responsibilities may change over time, there should be a board risk committee (that should deal with audit, risk and compliance), and a responsible gaming committee. The Burswood Limited board committees be chaired by non-executive, preferably independent, directors.⁷
- 6 As a consequence of the recommendation to establish board committees, consideration be given to whether it is desirable to amend Schedule E of the State Agreement to include board committees in arts 3.18 and 3.20 of BL's constitution.

The PCRC makes recommendations, related to mitigation of risks of the conduct and organisation of gaming operations at Perth Casino, that:⁸

- 7 The Deans recommendations be adopted and implemented by Crown and any failure to do so be explained in an update of the Remediation Plan provided to the regulator.
- 8 The Gaming and Wagering Commission direct Perth Casino⁹ to introduce a full, mandatory,

binding loss pre-commitment and play period limits scheme for electronic gaming machine (EGM) play at Perth Casino (EGM Scheme) as soon as practicable.

- 9** The Gaming and Wagering Commission stipulate that:
- a. the EGM Scheme require patrons to pre-set weekly loss and time limits, with a default loss limit to be set taking into account research as to 'safe' gambling limits;
 - b. patrons should be able to unilaterally raise their loss limit to a prescribed maximum figure, with increases taking effect after a period of delay to be determined by the Gaming and Wagering Commission;
 - c. the prescribed maximum figure is to be specified by the Gaming and Wagering Commission;
 - d. patrons wishing to raise their limit above the prescribed maximum be required to apply to Perth Casino for approval and provide documentation, to be specified by the Gaming and Wagering Commission to demonstrate that they can afford gambling losses up to that limit;
 - e. Perth Casino be under no obligation to raise a patron's loss limit above the prescribed maximum and, if it does, it must substantiate to the patron the reasons why; and
 - f. an approved limit is to be in place for a fixed period only and not indefinitely, save that patrons may decrease their limits with immediate effect at any time. If after the fixed period a patron wishes to again raise their limit above the prescribed maximum they should again apply for approval and provide updated documentation.
- 10** The Gaming and Wagering Commission stipulate the following interim play period time limits for the EGM scheme, to be reconsidered in the light of further research;
- a. a patron is required to take a minimum 15 minute break after three hours of continuous gambling on an EGM;
 - b. a patron may gamble on EGMs for no more than 12 hours in a 24-hour period; and
 - c. a patron may gamble on EGMs for no more than 28 hours in a seven-day period.
- 11** The EGM Scheme is to be administered by Perth Casino through mandating carded play on EGMs (so as to capture player data and to enforce loss and play limits).
- 12** The Gaming and Wagering Commission direct Perth Casino to:
- a. impose as a condition of applying for Pearl Room membership that patrons produce to Perth Casino documentation evidencing their financial capacity;
 - b. as a pre-requisite to accepting a patron as a Pearl Room member, provide to the patron a certificate stating that it has considered the information with which it has been provided; has requested and considered any further information that it considers appropriate; and is satisfied that the patron has the capacity to meet the losses ordinarily associated with being a Pearl Room member;
 - c. at periodic intervals to be determined by the Gaming and Wagering Commission, request and consider updated documentation evidencing each Pearl Room members' financial capacity and, in the event that it is satisfied of their ongoing financial capacity, provide to the patron the updated certificate;
 - d. in the event that financial documentation, or updated financial documentation, is not provided, decline or cancel the patrons' Pearl Room membership; and
 - e. retain a copy of patron certificates (including updated certificates) for a period of five years after their date of issue and provide them to the relevant patron or produce them to Gaming and Wagering Commission officers on request.

- 13** The Gaming and Wagering Commission direct Perth Casino to reduce the maximum bet size of all EGMs on the main gaming floor to \$10.

The PCRC makes recommendations, related to enhancements of the regulatory framework, that:¹⁰

- 14** The *Casino Control Act 1984 (WA)* be replaced by a new Act and a revised Gaming and Wagering Commission Act (if required) containing all matters relating to the regulation of licensed casinos in Western Australia and the composition and structure of the regulator, as set out in Chapter Fifteen: Enhancements to the Regulatory Framework.

- 15** The new Act and revised legislation:

- a. contain an objects clause, including the three objectives of casino regulation;
- b. contain a duties clause including the following duties:¹¹
 - i. the regulation of the identified extant and emerging risks in the Bergin Inquiry and PCRC;
 - ii. the ongoing identification of strategic risks;
 - iii. ensuring that the licensee is identifying and mitigating the extant and emerging risks of casino gaming;
 - iv. ensuring that the licensee is mitigating gambling-related harm;
 - v. the investigation of suspected breaches and enforcement of breaches of the regulatory framework;
 - vi. ensuring the integrity of casino gaming operations;
 - vii. ensuring the probity and suitability of those engaged in casino gaming operations;
 - viii. prevention of criminal infiltration including money laundering;
 - ix. impose a duty on the casino licensee to take reasonable steps to mitigate gambling-related harm; and
 - x. collaboration with State and Territory authorities to mitigate the risk of criminal infiltration and criminal activity associated with casino operations.
- c. contain a list of the regulator's powers including the capacity for the regulator to identify and regulate emerging risks which may arise in future, as it sees fit;
- d. retain the Minister's powers in the Casino Control Act including to approve foreign ownership, grant a casino licence, revoke a casino licence or impose conditions on a casino licence;
- e. retain the investigative and enforcement powers of the regulator in the Gaming and Wagering Act;
- f. retain the requirement that the regulator is financially resourced from levies, such as the casino tax and licence fee, supplemented by direct funding from government appropriations if necessary;
- g. contain a requirement for periodic reviews of a casino licence by the regulator at least every five years, with the review to be tabled in Parliament;
- h. contain the matters which the regulator must take into account in reviewing the casino licence should be included in amending legislation;
- i. contain a definition of or guidance as to what it means to be a suitable licensee and a suitable close associate of the licensee;
- j. contain a requirement on the regulator to submit its independent report to the

- Minister on any occasion that a decision to grant a casino licence, revoke a casino licence or impose a new condition on a casino licence is to be made by the Minister,
- k. contain a requirement that a report submitted by the regulator to the Minister as required by the previous recommendation is to be tabled in Parliament;
 - l. contain a requirement that the Minister table in Parliament an explanation for not accepting a recommendation of the regulator contained in its report;
 - m. prohibit junkets, unless authorised and individually licensed by the regulator;
 - n. contain a requirement that the regulator consider the obligation to minimise gambling-related harm when determining:
 - i. whether to declare a game as authorised;
 - ii. whether to approve rules; and
 - iii. whether to amend those rules;
 - o. require the casino licensee to devise a responsible service of gaming code;
 - p. require that the responsible service of gaming code be submitted to the regulator for review;
 - q. empower the regulator to issue directions that prescribe requirements or objectives for the casino licensee's responsible service of gaming code;
 - r. empower the regulator to issue fines in respect of contraventions of the responsible service of gaming code;
 - s. require the regulator to have regard to the casino licensee's compliance with the responsible service of gaming code in its review of the suitability of the licensee;
 - t. require that the responsible service of gaming code be periodically reviewed by the casino licensee at an interval determined by Parliament;
 - u. require the casino licensee to provide written notice to the regulator if the licensee or an associate breaches or is likely to breach, in a material way, the regulatory framework, the responsible gaming code of conduct, the casino licensee's system of internal controls and administrative and accounting procedures, certain agreements to which the casino is a party including the State Agreement and any direction given to or recommendation made to the casino by the regulator;
 - v. contain an expanded directions power that includes the power to make directions as to:
 - i. all operations of the Perth Casino, not just gaming operations;
 - ii. any reasonable regulatory measure or requirement;
 - iii. the Perth Casino's controls and procedures; and
 - iv. the regulator's power to engage at the casino licensee's cost, on the terms and conditions approved by the regulator, a person approved by the regulator to inquire into and report to the regulator on any matter relevant to the performance of the regulator's functions in relation to the casino licensee, its associates or the conduct and organisation of casino operations;
 - w. provide that any direction given by the regulator binds the licensee and any person or entity concerned in the organisation and conduct of casino gaming operations;
 - x. provide that the licensee be strictly liable as a party to a breach of a direction by any person subject to that direction;

Recommendations

- y. provide that an independent gambling research and advisory body (**Independent Advisory Body**) be established to replace the Problem Gambling Support Services Committee;
 - z. provide that the Independent Advisory Body be funded by a levy imposed upon the gambling industry;
 - aa. provide that the Independent Advisory Body receive administrative support from an established government agency or department, in a model similar to the support provided to Drug Aware by the Mental Health Commission; and
 - ab. provide that the appropriate functions of the Independent Advisory Body include, as a minimum, responsibility for undertaking research into gambling prevalence and the effectiveness of harm reduction measures in Western Australia.
- 16** Consideration be given to whether or not the statutory prohibition of poker machines should be maintained.
- 17** If it is determined that the prohibition should be maintained, or that it should be replaced with a prohibition of some other type(s) of games or gaming machines, consideration be given to defining poker machine or providing statutory guidance on its meaning so that what is prohibited can be readily ascertained.
- 18** In defining a poker machine or providing guidance on its meaning, regard be had to likely future technological advancements in games and gaming machines.
- 19** If it is determined that the prohibition should be changed, such that New Style electronic gaming machines (or spinning reel machines) are to be permitted at Perth Casino, consideration be given to the imposition of controls to minimise the risk of gambling-related harm that New Style EGMs pose.¹²
- 20** There be a review of the penalties for regulatory offences, and that in most cases, those penalties should be increased. In respect of the penalties for offences relating to the conduct of casino gaming and casino operations by the casino licensee, those penalties be increased very substantially.
- 21** The regulator be given the power to recover its reasonable costs and expenses of investigation and enforcement action taken against the licensee.
- 22** The regulator has, as a minimum, the following employees:
- a. a full time Chief Executive Officer who is also the Chief Casino Officer, who shall attend and report to the regulator at each monthly meeting on all matters within the Gaming and Wagering Commission's remit;
 - b. a Chief Financial Officer solely dedicated to the work of the regulator;
 - c. an administrative/executive assistant with regulatory experience (such as a policy officer) to support the Chief Executive Officer, Chief Financial Officer, and regulator members, lessening any requirement for assistance from a government department;
 - d. any other necessary employees such as inspectors or experts for the provision of advice or training retained on a contract basis.
- 23** The casino regulator be the employing authority pursuant to Part 3 of the *Public Sector Management Act 1994* (WA) for the Chief Casino Officer, Chief Financial Officer and other dedicated casino regulation staff or if another person or body appoints the Chief Casino Officer, Chief Financial Officer or other dedicated casino regulation staff, that the appointment be made only with the approval of the casino regulator.
- 24** The regulator's Chief Casino Officer, the Chief Financial Officer and other dedicated casino regulation staff be accountable to the casino regulator for casino regulation activities.

- 25** Only the casino regulator be able to direct the Chief Casino Officer, the Chief Financial Officer and other dedicated casino regulation staff to perform their casino regulation activities.
- 26** The chair of the regulator:
- be independent of the Department;
 - be appointed by the Minister;
 - have sound governance and (or) regulatory skills and experience; and
 - have a fixed term of no more than five years.
- 27** The deputy chair of the regulator be elected by the board members from among their number.
- 28** There be criteria for the appointment of regulator board members to ensure that the appointments are appropriately skilled for regulating gambling and casino gaming in Western Australia.
- 29** The regulator be required to provide advice to the Minister about particular skills or experience, not referred to in the criteria, that the Commission requires and may be provided by future members.
- 30** The definition of close associate or associate be amended so that it means:
- the holding company and each intermediate holding company of the casino licensee (holding company to be defined as in the *Corporations Act 2001* (Cth));
 - any person who has a relevant interest (as defined in the *Corporations Act*) in at least 10% of the issued capital of the casino licensee, or any of its intermediate holding companies or its ultimate holding company;
 - any director or officer (as defined in the *Corporations Act*) of the casino licensee, any of its intermediate holding companies or its ultimate holding company; and
 - any individual or company certified by the regulator to be an associate.¹³
- 31** The casino regulator's delegation powers be reviewed to determine if they are too broad.
- 32** There be a requirement for a register of delegations and decisions made under delegation to be kept.
- 33** There be a requirement that the regulator maintain a schedule of the instruments of delegation.
- 34** There be a cross-jurisdictional exclusion regime.
- 35** Pending the enactment of the new act and revised legislation:
- the Director General of the Department be replaced as *ex officio* chair of the Gaming and Wagering Commission by a person who is independent of the Department;
 - a new deputy chair be elected from among the Gaming and Wagering Commission's members to replace the existing deputy chair;
 - the funds of the Gaming and Wagering Commission be administered separately to those of the Department;
 - there be a general review of the scope and operation of s 21A and s 21B of the *Casino Control Act*;
 - consideration be given to removing the exception for advertising to existing patrons from the advertising prohibition in reg 43 of the *Gaming and Wagering Commission Regulations 1988* (WA);

Recommendations

- f. the *Casino Control Act 1984 (WA)* be reviewed for references to casino licensee, manager and similar terms and amendments be made to clarify whether and to what extent provisions apply exclusively to the licensee or, more broadly, to associates of the licensee involved in the licensee's conduct and organisation of casino operations;
- g. provisions of the *Casino Control Act* be reviewed for terms which could be construed as containing a geographical or location requirement which is inappropriate;
- h. the definition of 'casino key employee' in s 3 of the *Casino Control Act* be reviewed and expanded, if necessary to include employees of entities associated with the licensee who provide centralised services to Perth Casino regardless of their physical location;
- i. any reference to 'Genting WA' in the regulatory framework be removed;
- j. references to 'operator' be removed from the regulatory instruments unless the position has some meaning and purpose;
- k. the definition of 'gaming' and 'gambling' be clarified so as to include casino gaming in all relevant definitions;
- l. the *Casino (Burswood Island) Agreement Act 1985 (WA)* be amended so that the meaning of the term 'relevant interest' is consistent throughout the legislation;
- m. the exclusion provisions in the *Casino Control Act* be reviewed, including whether penalties for patrons in contravention of an NRL or other exclusion order made by the casino licensee should be increased;
- n. the penalty for a breach of reg 15(3) of the *Casino (Burswood Island) (Licensing of Employees) Regulations 1985 (WA)* is the same as the penalty for breach of reg 16A of those regulations; and
- o. that reg 7(3) of the *Casino (Burswood Island) (Licensing of Employees) Regulations 1985 (WA)* be amended to confer upon the Chief Casino Officer a discretion to request an investigation by Western Australian Police (WAPOL) into the character and (or) suitability of an applicant for the renewal of a licence and to empower WAPOL to so investigate.

The PCRC makes recommendations, related to enhancements of the capability and effectiveness of the casino regulator and the Department, that:¹⁴

- 36** The Gaming and Wagering Commission¹⁵ pursues an information sharing arrangement with AUSTRAC.
- 37** The Gaming and Wagering Commission consider obtaining expert assistance from an external adviser in relation to AML/CTF in order to better equip itself with the skills and experience to discharge its obligations to regulate the management of the ML/TF risk of a licensed casino.
- 38** The remuneration of members of the board of the Gaming and Wagering Commission be increased.
- 39** The Gaming and Wagering Commission Code of Conduct be expanded including by providing additional guidance on how conflicts can arise for a Gaming and Wagering Commission member in respect of casino operations and interactions with the staff of a casino licensee.
- 40** The Gaming and Wagering Commission Code of Conduct be amended so that the procedure it prescribes for the declaration and management of conflicts of interest in respect of pecuniary interests is consistent with s 17 of the Gaming and Wagering Commission Act and it provides for its biannual review.

- 41 There be a Gaming and Wagering Commission policy regarding the regulatory posture that the Commission will adopt and how the Gaming and Wagering Commission Act will address the risk of regulatory capture.
- 42 As a priority, the Gaming and Wagering Commission investigate the currently available research and information about appropriate play period limits for EGM play to inform the content of the EGM Scheme.
- 43 In the event there is insufficient research and information available about appropriate play period limits for EGM play to inform the content of the EGM Scheme, or Crown does not conduct the research it has indicated it will conduct on that topic, the Gaming and Wagering Commission commission the necessary research.¹⁶
- 44 The imposition of appropriate and meaningful sanctions if Perth Casino breaches a requirement of the EGM Scheme.
- 45 The Gaming and Wagering Commission direct Perth Casino to collect, to the extent practicable, player data relating to:
 - a. player buy-in (time, amount);
 - b. player buy-out (time, amount);
 - c. play periods (date, start time, end time);
 - d. player turnover;
 - e. player losses and wins;
 - f. gambling product; and
 - g. such further information as the Gaming and Wagering Commission reasonably requires for anti-money laundering and responsible service of gaming purposes.
- 46 The Gaming and Wagering Commission devise and introduce a board charter and that the charter be reviewed and updated as necessary at regular intervals.
- 47 The Gaming and Wagering Commission develop a member skills matrix that is regularly reviewed and forms a nominations committee.
- 48 The regulator:
 - a. develop a strategic plan and review it regularly to ensure it adequately articulates the regulator's goals and the strategies by which the goals will be achieved and funded; and
 - b. review and amend the current key performance indicators to ensure they measure the substantive effectiveness of the regulator across its broad range of activities.
- 49 The adoption of a streamlined induction process for board members of the regulator including casino regulation training consistent with the Public Sector Commission's governance guidance and the inclusion in member induction packs of:
 - a. the Gaming and Wagering Commission's strategic plan;
 - b. the Gaming and Wagering Commission's key performance indicators;
 - c. processes for exercising powers under delegations; and
 - d. the Gaming and Wagering Commission's regulatory philosophy.
- 50 Where the Gaming and Wagering Commission does not consider it has the requisite expertise to discharge its responsibilities, the regulator engage an external expert (for example, forensic accountant; responsible gaming expert or consultant) to fulfil that responsibility.

Recommendations

- 51 A continuing education program in casino regulation, governance and risk management be established for board members.
- 52 The Gaming and Wagering Commission prepares a job description for the Chief Casino Officer.
- 53 The Gaming and Wagering Commission implements a specialised induction and training programme for the Chief Casino Officer.
- 54 If junkets are approved to operate at a licensed casino, directions be given so as to regulate the risks posed by junket operations.
- 55 The departmental Code of Conduct be expanded to require the disclosure of attendance at social events at Crown Perth Resort by departmental officers who perform duties under the Casino Control Act.

The PCRC makes recommendations, related to the activities of the Independent Advisory Body that:

- 56 The Independent Advisory Body, in consultation with the Gaming and Wagering Commission and Perth Casino, be responsible for the establishment and maintenance of a repository containing data collected by Perth Casino.
- 57 The Independent Advisory Body be required to:
 - a. identify the data to be included in the repository; and
 - b. ensure the data is up-to-date and comprehensive.
- 58 The Independent Advisory Body, in consultation with the Gaming and Wagering Commission and Perth Casino, be required to carry out the following tasks:
 - a. oversee the design and structure of the repository and its user interface;
 - b. identify the data that is to be publicly available and the data that will have restricted access;
 - c. ensure processes and procedures are put in place for the efficient maintenance and updating of the repository;
 - d. establish protocols to anonymise data to respect the privacy of gamblers;
 - e. establish a register of recognised researchers; and
 - f. establish a simple process by which a request for data is to be made.
- 59 To the extent possible, anonymised data that is suitable to be made publicly available be made available for general public inspection via an information website.

Endnotes

- 1 The recommendations have been divided into topics. Some recommendations, however, relate to more than one topic.
- 2 Chapter Four: Corporate Governance.
- 3 Chapter Four: Corporate Governance.
- 4 References to Burswood Limited should be read as referring to the governing board of the entity that governs Perth Casino.
- 5 Chapter Four: Corporate Governance.
- 6 Chapter Four: Corporate Governance.
- 7 Chapter Four: Corporate Governance.
- 8 Recommendations that relate to this topic but require legislative change are listed under Recommendations related to regulatory framework.
- 9 Recommendations which refer to requirements on Perth Casino, where context allows, apply to any licensed casino.
- 10 Unless otherwise stated the following recommendations can be found in Chapter Fifteen: Enhancements to the Regulatory Framework.
- 11 Chapter Fifteen: Enhancements to the Regulatory Framework.
- 12 Chapter Twelve: Harm Minimisation, lists a number of possible amendments to the structural features of EGMs and EGM games which might be enforced through the requirements of the WA Appendix and EGM Policy.
- 13 RCCOL Report vol 1 [PUB.0030.0001.0001] 93; Bergin Report vol 2 [BGN.0001.0001.0334] 635.
- 14 Some recommendations that require action by the regulator are listed under the heading of Recommendations related to the operation of Perth Casino if they will directly affect the gaming operations at Perth Casino.
- 15 These recommendations apply to any replacement or renamed casino regulator.
- 16 Chapter Twelve: Harm Minimisation.

About this Final Report

- 1 This Final Report sets out the results of the PCRC's inquiry into the matters in the Commission. On 30 June 2021, the PCRC provided the Interim Report on the Regulatory Framework (**Interim Report**) to the Governor and the Premier of Western Australia. The Interim Report did not contain findings or recommendations; it provided a description of the evidence that the PCRC had gathered to that point in its inquiry. The relevant parts of the Interim Report have been incorporated into this Final Report, which is a stand-alone record of the results of the PCRC's inquiries.
- 2 In Chapter One: Subject Matter of Inquiry and Terms of Reference there is a detailed analysis of the terms of reference. Where there is a need to do so, terms have been construed and the nature and scope of the inquiry required by the terms of reference has been described.
- 3 The way in which PCRC has approached the task of this inquiry is contained in Appendix D: Methodology. This appendix contains a description of the process of evidence gathering, the conduct of hearings, the use that has been made of the evidence that has been gathered, and the way that the PCRC provided procedural fairness to those parties affected by the findings in this Final Report.
- 4 The first two chapters provide the context for the inquiry. Chapter Two: History of Perth Casino traces the history of Crown Casino Perth (**Perth Casino**), starting with some early inquiries about gambling, the initial proposals for the establishment of a casino in Western Australia, the political, corporate and legislative process that led to the grant of the casino licence in 1985, and changes over time. The evolution of the trust and corporate structures associated with the casino operations are also covered. Chapter Three: Overview of Regulatory Framework for Casino Gaming describes the legislation and subsidiary legislation enacted to regulate the casino.
- 5 Chapter Four: Corporate Governance describes the corporate and operational structure of Perth Casino and its approach to risk management. There is discussion of the culture at Perth Casino and how that culture has been measured and described by experts.
- 6 Chapter Five: Regulation of Perth Casino describes the structure of the regulatory framework in Western Australia and how regulation is carried out, including the way in which the Gaming and Wagering Commission (**GWC**) exercises its functions and discharges its responsibilities and obligations. It also includes a description of the way that the GWC is supported in its functions by the Department of Local Government Sport and Cultural Industries. In its inquiry the PCRC identified eight topics for detailed analysis. The following chapters report on those topics in respect of both Part A and Part B of the Commission. Chapter Six: Junkets, Chapter Seven: China Arrests, Chapter Eight: Money Laundering, Chapter Nine: Other Criminal Activity, Chapter Ten: Tax, Chapter Eleven: Conflicts of Interest, and Chapter Twelve: Harm Minimisation.
- 7 The next three chapters contain the PCRC's report on Part B of the Commission: Chapter Thirteen: Electronic Gaming Machines, Chapter Fourteen: Evaluation of Regulation of Perth Casino and Chapter Fifteen: Enhancements to the Regulatory Framework.
- 8 In the next chapter the PCRC reports on a topic that is relevant only to Part A of the Commission: Chapter Sixteen: Financial Capacity. The PCRC then reports on the questions posed in the terms of reference in Chapter Seventeen: Suitability.

References to documents, people and organisations

- 9 References to page numbers of exhibits are to the PDF page. References to transcript, the Bergin Report, the RCCOL Report, journal articles and Hansard are to the actual page number on the document.
- 10 Where a defined term or acronym has been adopted for use in this Final Report the first use of the defined term or acronym is in bold.
- 11 The spelling of some words used in documents provided to the PCRC has been changed to Australian English in this Final Report.
- 12 References to people are to their full name the first time they are mentioned and for second and subsequent mentions they are referred to by their family name only. No disrespect is intended by this abbreviated use.
- 13 Appendix I is a list of key people who have been referred to in this Final Report.
- 14 A reference to 'Crown' is a reference to Crown Resorts Limited (**CRL**) and some or all of its subsidiaries in content.
- 15 The expression Crown entities has been defined to mean the entities who have been granted leave to appear at the PCRC: CRL, Burswood Limited (**BL**), Burswood Nominees Pty Ltd (**BNL**), Burswood Resort (Management) Ltd (**BRML**), Crown Sydney Gaming Ltd, Southbank Investments Pty Ltd (**Southbank**), Riverbank Investments Pty Ltd (**Riverbank**) and Crown Melbourne Limited (**CML**).
- 16 The expression Burswood entities has been defined to mean BL, BNL and BRML.
- 17 Although the expression 'Crown Perth' is in common use within Crown to mean the operations of the complex including the casino, hotel, theatre and food and beverage outlets, the expression 'Crown Perth' has not been used in this Final Report in the same way because the expression has been defined in the PCRC's Commission to mean BNL as the trustee of the Burswood Property Trust and holder of the casino gaming licence. Instead, the PCRC has used the expression **Perth Casino** when referring to the casino operations generally and **Perth Casino licensee** to mean the holder of the casino license for the Perth site (in circumstances where it is not appropriate to refer to BNL) and also when making a generic reference to the statutory grant of a licence to operate a casino in Perth. The phrase **Crown Perth Resort** has been used when it is necessary to refer to the casino, hotel, theatre, food and beverage outlets together.
- 18 The **Gaming and Wagering Commission** is defined in the PCRC's Commission. The PCRC has used that expression (abbreviated to **GWC**) to mean the Gaming and Wagering Commission of Western Australia established under the *Gaming and Wagering Commission Act 1987* (WA), which includes any current or former delegates, officers, employees, persons engaged under contracts for services by, or agents of, the GWC.
- 19 The **Department** is a term defined in the PCRC's Commission. The PCRC has used the expression to mean the Department of Local Government, Sport and Cultural Industries (sometimes abbreviated to DLGSCI) or its predecessors in context and includes any current or former officers, employees, persons engaged under contracts for services by, or agents of, the Department or its predecessors.

Defined Terms

1974 Royal Commission	The 1974 Royal Commission into Gambling in Western Australia.
1974 Royal Commission Report	The 1974 Report of the Royal Commission into Gambling in Western Australia.
1983 Advisory Committee Report	The 1983 Report of the Advisory Committee.
1996 Report	The Minister for Racing and Gaming’s 1996 Review of the GC Act.
1999 Inquiry	The 1999 Inquiry of the Productivity Commission into Australia’s Gambling Industries.
2008 CRL Risk Policy	The two-tiered ‘CRL Risk Management Policy’ dated February 2008 which was in force up to the time of the China Arrests.
2009 Junket Submission	The proposal submitted to the acting CCO by the Burswood entities on 4 December 2009 requesting the removal of the requirement in Part 3 of the CC Regs for junket operators and junket representatives to be approved by the GWC.
2010 Inquiry	The 2010 Inquiry of the Productivity Commission into Gambling.
2014 Four Corners Episode	The Four Corners episode broadcast in September 2014 entitled ‘High Rollers – High Risk? Australian casinos and the threat posed by organised crime’.
2017 AUSTRAC Report	The eight-page information report entitled ‘Casino junkets campaign’ issued by AUSTRAC on 14 July 2017.
2017 Four Corners Episode	The Four Corners episode broadcast on 6 March 2017 entitled ‘Crown Confidential: Packer’s Losing Hand’.
2019 Junket Media Allegations	The allegations published in an article entitled ‘Crown Unmasked – Gangsters, gamblers and Crown casino: How it all went wrong’ by The Sydney Morning Herald and The Age newspapers on 27 July 2019, and aired in the 60 Minutes episode ‘Crown Unmasked’ on 28 July 2019.
2020 Joint AML/CTF Program	The AML/CTF program adopted for Perth Casino, Melbourne Casino and Barangaroo Casino in November 2020, and which comprises a Part A and Part B.
2020 WPI	The PPP introduced at Perth Casino in December 2020, and operative from 1 January 2021, under which patrons could spend a maximum of 18 hours on-site.
2021 Board Improvements	Improvements to the board processes of BL during the second half of 2021.
2021 WPI	The PPP introduced at Perth Casino in October 2021, and operative from 4 October 2021, under which patrons can spend a maximum of 12 hours on-site.

ACIC	Australian Criminal Intelligence Commission.
ACMA	Australian Communications and Media Authority.
ACMS	Approved Casino Management System.
Advantage System	IGT Advantage System used by Perth Casino for recording and tracking patrons' gambling activities.
Advisory Committee	The Government Casino Advisory Committee appointed by the Western Australian Cabinet on 28 March 1983.
AEDM	Accountable and Ethical Decision Making.
AEDM training	Training in AEDM.
AFP	Australian Federal Police.
AG Act	<i>Auditor General Act 2006 (WA)</i> .
AML	Anti-money laundering.
AML/CTF	Anti-money laundering and counter-terrorism financing.
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)</i> .
AML/CTF Laws	Collectively, the AML/CTF Act and the AML/CTF Rules.
AML/CTF Rules	<i>Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth)</i> .
AML responsibilities	The GWC's responsibility to exercise its statutory and regulatory powers to: mitigate the risk of money laundering being facilitated through the organisation and conduct of gaming operations at Perth Casino; regulate and oversee the effectiveness of Perth Casino's systems and processes to mitigate the risk of money laundering being facilitated through the organisation and conduct of gaming operations of Perth Casino; and cooperate with and assist relevant State and Federal regulatory and law enforcement agencies to detect money laundering offences and enforce State and Federal laws with respect to money laundering.
ANU	Australian National University.
ANZ	Australia and New Zealand Banking Group Limited (ABN 11 005 357 522).
Application procedure	The procedure manual entitled 'Licensing Procedures, Application for Casino and Casino Key Employees' which guides the use of the technology system Navigate and its use by departmental officers.
April 2020 delegation	The GWC's delegation of all its powers under, relevantly, the GWC Act and the CC Act, save for the power of delegation itself, to the DDG on 28 April 2020.
ASB	ASB Bank Limited, a subsidiary of the CBA.
ASIC	Australian Securities and Investments Commission.
Aspinalls	Aspinalls Club Limited which conducts Crown London Aspinalls.

Defined Terms

ASX	Australian Securities Exchange, or its predecessors depending on context.
ATM	Automated teller machine, and ATMs has a corresponding meaning.
ATM/EFTPOS Policy	The GWC's 'EFTPOS/Contactless Payments and ATMs at Crown Perth' Policy.
August 2017 Presentation	The presentation given to the GWC on 22 August 2017 by Joshua Preston in respect of the China Arrests.
August 2019 Presentation	The presentation given to the GWC on 27 August 2019 by Joshua Preston and Claude Marais in response to the 2019 Junket Media Allegations.
AUSTRAC reporting SOP	The SOP entitled 'Cage – Standard Operating Procedure – AUSTRAC reporting'.
AUSTRAC	Australian Transaction Reports and Analysis Centre.
Australian Resorts	The centralised governance and management function that included Perth Casino, Melbourne Casino and Aspinalls, and was intended to include the Barangaroo Casino.
Barangaroo Casino	The restricted gaming facility at premises located in Barangaroo, Sydney in respect of which the Barangaroo Licensee has held a restricted gaming licence since 8 July 2014.
Barangaroo Licensee	Crown Sydney Gaming Pty Ltd (ACN 166 326 843).
BAU	Business as usual.
Bergin Inquiry	The inquiry by the Honourable PA Bergin SC under s 143 of the NSW CCA established on 14 August 2019.
Bergin Inquiry Period	The period from 27 July 2019 to 1 February 2021.
Bergin Report	The report of the Bergin Inquiry by the Honourable PA Bergin SC, published on 1 February 2021.
Bergin Risks	The three broad strategic risks identified in the Bergin Report relating to casinos and casino gaming (being money laundering, criminal infiltration and junkets).
BL	Burswood Limited (ACN 075 071 537).
Blackstone	Blackstone Inc and some or all of its subsidiaries or related entities depending on context.
BML	Burswood Management Limited, being the initial Manager of the BPT.
BNL	Burswood Nominees Ltd (ACN 078 250 307).
Border Force	Australian Border Force.
BPT	Burswood Property Trust constituted by the Trust Deed (as defined).
BRML	Burswood Resort (Management) Limited (ACN 009 396 945).
Burswood entities	BL, BNL and BRML.

Burswood subgroup	BL, BNL, BRML, Burswood Catering and Entertainment Pty Ltd (ACN 098 223 977), Burswood Hotel Pty Ltd (ACN 078 805 017), Burswood Property Holdings Pty Ltd (ACN 082 730 005), Riverbank, the BPT and the BML Trust.
Cabinet Committee	The Cabinet Casino Sub-committee appointed by the Western Australian Cabinet on 28 March 1983.
casino departmental inspectors	Departmental inspectors dedicated to Perth Casino.
Casino Manual	Collectively, the CM(Games) and CM(Ops).
Causal Factors	Traits or factors which directly cause risk management failures.
CBA	Commonwealth Bank of Australia (ABN 48 123 123 124).
CBIA Act	<i>Casino (Burswood Island) Agreement Act 1985 (WA)</i> .
CC Act	<i>Casino Control Act 1984 (WA)</i> .
CCBILE Regs	<i>Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA)</i> .
CCFCO	Chief Compliance and Financial Crime Officer.
CCO	Chief Casino Officer appointed under the CC Act.
CC Regs	<i>Casino Control Regulations 1999 (WA)</i> .
CC Strategy	The Casino Compliance Strategy for 2015/2016 prepared by the Department and adopted by the GWC.
CCTV Programme	The programme broadcast on Chinese national television channel CCTV in October 2015 which addressed the subject of foreign casinos and their networks within China and highlighted South Korean casino operations.
CEO	Chief Executive Officer.
CFO	Chief Financial Officer.
China Arrests	The arrest of 19 Crown staff residing in China on 13 and 14 October 2016.
CIT	Corporate Investigations Team.
CLO	Chief Legal Officer.
CM(Games)	Casino Manual (Games Procedures).
CM(Ops)	Casino Manual (Operations).
CML	Crown Melbourne Limited (ACN 006 973 262).
Codes of Conduct	Collectively, the GWC Code of Conduct and the Departmental Code of Conduct.
Conflicts Guidelines	The 'Conflicts of Interest: Guidelines for the Western Australian Public Sector' published by the Integrity Coordinating Group in June 2011.

Defined Terms

Control Committee	Casino Control Committee established on 9 July 1984 pursuant to the CC Act.
COO	Chief Operating Officer.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Corrective Factors	Traits or factors which make self-correction less likely.
COSO	The Committee of Sponsoring Organisations of the Treadway Commission.
CPH	Consolidated Press Holdings Pty Limited (ACN 008 394 509) and some or all of its subsidiaries depending on context.
CPH parties	James Packer, Consolidated Press Holdings Pty Limited (ACN 008 394 509) and CPH Crown Holdings Pty Limited (ACN 603 296 804).
CPI	Consumer Price Index.
CPV	Chip Purchase Voucher.
Crackdown on Foreign Casinos Announcement	The announcement on 6 February 2015 by the Chinese Ministry of Public Security that China was cracking down on foreign casinos seeking to attract and recruit Chinese citizens to travel abroad for gambling.
Criminal Code	<i>Criminal Code Act Compilation Act 1913</i> (WA).
Criminal Code (Cth)	<i>Criminal Code Act 1995</i> (Cth).
CRL	Crown Resorts Limited (ACN 125 709 953).
CRL RMC	CRL Risk Management Committee.
CRO	Chief Risk Officer.
Crown	CRL (as defined) and some or all of its subsidiaries depending on context.
Crown DBG	The designated business group (as defined) comprising BNL, CML and the Barangaroo Licensee.
Crown entities	CRL, the Burswood entities, the Barangaroo Licensee, CML, Southbank and Riverbank.
Crown Entities ML/TF Risk Register	The August and September 2019 risk assessment of the ML/TF risk registers for Melbourne Casino and Perth Casino.
Crown Melbourne Resort	The resort complex including Melbourne Casino, hotels, food and beverage outlets and entertainment venues.
Crown Perth Associates	Any person concerned in or associated with the organisation and conduct of the gaming operations of Perth Casino, as defined in the Commission Terms of Reference gazetted on 12 March 2021.
Crown Perth Resort	The conglomerate resort complex including Perth Casino, hotels, food and beverage outlets and the theatre.
Crown POI Committee	The cross-property, cross-disciplinary group created in about late 2020 or early 2021 that facilitates a common process for dealing with POIs across Crown.

Crown Rewards	Perth Casino's loyalty program.
Crown Singapore	Crown Resort Pte Ltd, a subsidiary of CRL (through CML) incorporated in Singapore.
Crown Survey Demographics	The 'Culture at Crown Survey – Survey Results – Demographic Detail' published by Deloitte in September 2021.
Culture Change Program	A significant cultural change project developed by Crown.
DAB	Deposit Account Balance.
DBG	A designated business group consisting of reporting entities who are related within the meaning of s 50 of the Corporations Act.
DDG	Deputy Director General.
Deans Recommendations	The 22 recommendations that Peter Deans considered could be made to the existing risk management frameworks and systems of CRL.
December 2012 delegations	The GWC's delegations of all its powers under, relevantly, the GWC Act and the CC Act, save for the power of delegation itself, to the GWC chair and deputy chair respectively on 18 December 2012.
December 2021 AML/CTF Program	The revised joint AML/CTF Compliance Program adopted by Crown, BNL, CML and the Barangaroo Licensee.
Deloitte Final Report	The 'Crown Culture Review – Current State Culture – Final Report' published by Deloitte in July 2021.
Department	The Department of Local Government, Sport and Cultural Industries or its predecessors depending on context.
Departmental Code of Conduct	The Department's 'Code of Conduct Policy', first implemented on 27 November 2017, as amended from time to time.
DG	Director General.
DIBP	Commonwealth Department of Immigration and Border Protection (being a predecessor to the Commonwealth Department of Home Affairs).
Direction or Directions	Directions made under s 24 of the CC Act and consolidated as the Burswood Casino – Directions.
DNPL	Dempster Nominees Pty Ltd (ACN 008 855 865).
DPC	Department of the Premier and Cabinet.
EBIT	Earnings before interest and tax.
ECDD	Enhanced Customer Due Diligence.
EDD	Employee Due Diligence.
EDM	Electronic direct mail.
EGM	Electronic Gaming Machine, and 'EGMs' has a corresponding meaning.
EGM Policy	The GWC's policy on EGMs.

Defined Terms

EGM Scheme	A full, mandatory, binding loss pre-commitment and play period limits scheme for EGM play at Perth Casino.
EWRA	Enterprise wide risk assessment.
EY	Ernst & Young Australia, trading as EY Australia.
FAA Act	<i>Financial Administration and Audit Act 1985 (WA)</i> .
FATF	Financial Action Task Force.
FATG	Fully Automated Table Game, and FATGs has a corresponding meaning.
FCC	Financial Crime and Compliance.
FCCCP	Financial Crime and Compliance Change Program.
FCOC	Financial Crime Oversight Committee.
FCWG	Financial Crime Working Group.
February 2021 delegation	The GWC's delegation of all of its powers under, relevantly, the GWC Act and the CC Act, save for the power of delegation itself, to the Director Strategic Regulation of the Department on 16 February 2021.
First EGM Proposal	Crown's written proposal in June 2010 requesting approval from the GWC for an increase of 250 machines (from 1750 to 2000) as part of a redevelopment plan.
Final Report	Report of the PCRC to be submitted by 4 March 2022.
FM Act	<i>Financial Management Act 2006 (WA)</i> .
Foundation Agreement	The agreement entered into on 20 February 1985 between WA Trustees as trustee of the BPT, BML as Manager of the BPT, GWAPL, DNPL and Tileska.
FY	Financial Year.
Gaming Inquiry Committee	Government Gaming Inquiry Committee of the 1984 Report of the Committee appointed to inquire into and report upon gaming in Western Australia established on 20 August 1984.
GC	Gaming Commission of Western Australia (being the predecessor to the GWC).
GC Act	<i>Gaming Commission Act 1987 (WA)</i> (being the predecessor to the GWC Act).
GEGM RG	Group Executive General Manager, Responsible Gaming.
Genting Berhad	Owner and operator of a casino resort in Malaysia.
GGR	Gross Gaming Revenue.
GLI Australia	Gaming Laboratories Australia trading as GLI Australia.
GMRG	General Manager Responsible Gaming.
GRA	Gambling Research Australia.
GRA Governance Committee	The governance committee established by the GRA MOU, comprising departmental officers representing each party.

GRA MOU	The GRA memoranda of understanding entered into by the Commonwealth and all Australian States and Territories.
Group GMRG	Group General Manager Responsible Gaming.
GWAPL	Genting (Western Australia) Pty Ltd, a wholly owned subsidiary of Genting Berhad and a foundation entity for the original development of a casino in Perth and an executor of the Foundation Agreement.
GWC	Gaming and Wagering Commission of Western Australia.
GWC Act	<i>Gaming and Wagering Commission Act 1987 (WA)</i> .
GWC Code of Conduct	The GWC's 'Code of Conduct', first implemented on 1 January 2015, as amended from time to time.
GWC Conflicts of Interest Policy	The GWC's 'Conflicts of Interest Policy' dated 31 October 2021.
GWC Regs	<i>Gaming and Wagering Commission Regulations 1988 (WA)</i> .
head office requirement	The requirement for BL (as the Approved Company) to have its place of business where central management and control are exercised in Western Australia, as appears in Schedule E art 3.12 of the State Agreement.
IBU	International Business Unit, also known as the VIP International team.
ICB	International Commission Business.
IFTI	International Funds Transfer Instruction, and IFTIs has a corresponding meaning.
IG Act	<i>Interactive Gambling Act 2001 (Cth)</i> .
IIA Standards	The Institute of Internal Auditors' 'International Standards for the Professional Practice of Internal Auditing'.
ILGA	Independent Liquor & Gaming Authority of New South Wales.
ILGA Inquiry	The inquiry undertaken by ILGA addressing the matters raised in the Bergin Report.
Implementation Deed	The scheme implementation deed entered into between CRL and SS Silver II Pty Ltd, a company associated with Blackstone, announced on 14 February 2022.
Inspector	A Department or Government Inspector as defined in s 3 of the CC Act.
Instruction 8	The Public Sector Commissioner's 'Codes of conduct and integrity training: Commissioner's Instruction 8', first implemented on 3 July 2012, as amended from time to time.
Interim Report	The report of the PCRC submitted on 30 June 2021.
International Commission Business	As defined in the State Agreement.
IT	Information Technology.
iTrak	Perth Casino's incident management system.

Defined Terms

Junket Activity	As defined in the State Agreement.
Junket Direction	Direction 20.1 inserted into the Directions with effect from 1 December 1992.
KPI	Key Performance Indicator, and KPIs has a corresponding meaning.
Kroll	Duff & Phelps Australia Pty Limited trading as Kroll.
KYC	Know Your Customer.
LEA	Law enforcement agency, and LEAs has a corresponding meaning.
Mallesons Advice	The advice from Mallesons Stephens Jaques obtained by the Burswood entities at the time of the introduction of the Advantage System, dated 14 April 2009.
Management Agreement	A management agreement made between CML and the State of Victoria dated 20 September 1993.
Manager	As defined in the State Agreement.
March 2019 Presentation	The presentation given to the GWC by Barry Felstead, James Sullivan and Joshua Preston on 26 March 2019 in respect of the March 2019 Submission.
March 2019 Submission	The letter from Barry Felstead to the GWC dated 7 March 2019 proposing (among other things) to amend the minimum speed of EGM play in Western Australia from five seconds to three seconds.
Melbourne Casino	The casino in respect of which a casino licence has been granted under Part 2 of the Victorian CCA.
Melbourne Casino Agreement	The Casino Agreement between the VCGLR (and any predecessor or successor) and CML establishing Melbourne Casino, entered into pursuant to s 142 of the Victorian CCA on 21 September 1993 (as varied).
Minister	The Minister responsible for the Department (as defined), including predecessors.
ML/TF	Money laundering and terrorism financing.
MOU	Memorandum of Understanding.
NAB	National Australia Bank Limited (ACN 004 044 937).
National Standard	The Australian/New Zealand Gaming Machine National Standard 2016.
NRL	Notice of revocation of licence, also known as a notice to revoke licence.
NSW CCA	<i>Casino Control Act 1992</i> (NSW).
NTP	Notice issued pursuant to s 8B of the <i>Royal Commissions Act 1968</i> (WA).
Oaktree	Oaktree Capital Management.
Observable signs	Behaviour that may indicate problem gambling.

OECD	Organisation for Economic Co-operation and Development.
Operations Division	The operations division of the Department, variously described as the 'DRGL Operations Division' or the 'DLGSCI Operations Division' depending on point in time.
PAS	Player Activity Statements.
PBL	Publishing and Broadcasting Limited (ABN 52 009 071 167).
PCRC	Perth Casino Royal Commission.
PCRC AML experts	The two AML/CTF experts engaged by the PCRC, being McGrathNicol Advisory (led by Robyn McKern) and Murray Waldren Consulting (led by Rachel Waldren).
PCRC AML experts reports	The report produced by the PCRC AML experts in three volumes, comprising Volume A (Joint Report containing the common background information and an executive summary of each of the McGrathNicol and Murray Waldren reports); Volume B (the Murray Waldren report addressing the Murray Waldren scope); and Volume C (the McGrathNicol report addressing the McGrathNicol scope).
PDA tool	POI Decision Assessment Form.
PDC	Protected Disclosure Committee.
Pearl Room	Perth Casino's high-roller room.
PEP	Politically Exposed Person.
Perpetual	Perpetual Trustees WA Ltd.
Perth Casino	The casino in respect of which a casino gaming licence has been granted under s 21 of the <i>Casino Control Act 1984 (WA)</i> , described in the State Agreement as 'Burswood Casino', and defined in the Commission Terms of Reference gazetted on 12 March 2021 as 'Crown Casino Perth'.
Perth Casino's AML/CTF Program	The AML/CTF program that applied to Perth Casino between November 2007 and November 2020, and which comprised a Part A and Part B.
Perth Casino's RG framework	The responsible gaming framework implemented by Perth Casino.
Perth ERCC	Perth Executive Risk and Compliance Committee.
Perth POI Committee	The Perth Persons of Interest Committee established in mid-2013 to support the Perth ERCC.
Perth POI Sub-committee	The sub-committee at Perth Casino comprising representatives of Perth Casino's security, surveillance and AML teams, which was formed in September 2020 and replaced the Perth POI Committee.
PGSAC	Problem Gambling Services Advisory Committee.
PGSI	Problem Gambling Severity Index.
PGSSC	Problem Gambling Support Services Committee.

POI	Persons of Interest.
Police Act	<i>Police Act WA 1892 (WA).</i>
PPP	Perth Casino’s Play Period Policy.
Premium Player Activity	As defined in the State Agreement.
Privileged Player Activity	As defined in the State Agreement.
PSL	Play safe limits.
PSM Act	<i>Public Sector Management Act 1994 (WA).</i>
PUP	Policy Uplift Program.
Questioning of Crown Staff	The questioning of two members of the VIP International team by Chinese police in July 2015 in relation to their involvement in gambling activities.
RCCOL	The Royal Commission established in Victoria on 22 February 2021, described as the Royal Commission into the Casino Operator and Licence.
RCCOL AML expert report	McGrathNicol Forensic Review commissioned by the RCCOL on 5 July 2021.
RCCOL Report	The report of the RCCOL by the Honourable Ray Finkelstein AO QC, published on 15 October 2021.
Remediation Plan	The document prepared by Crown from time to time and provided to regulators detailing changes to governance, structure and policy.
Renewal procedure	The procedure manual entitled ‘Licensing Procedures, Application for the Renewal of Casino and Casino Key Employee Licences’ which guides the use of the technology system Navigate and its use by departmental officers.
reporting entities	Entities that are subject to the AML/CTF Act.
RFI	Notice issued pursuant to s 8A of the <i>Royal Commissions Act 1968 (WA)</i> .
RG	Responsible gambling, also known as responsible gaming.
RGA	RG Advisor, and RGAs has a corresponding meaning.
RGAP	CRL’s independent Responsible Gaming Advisory Panel.
RGAP Report	The August 2020 Report of the RGAP entitled ‘Review of Crown Resort’s Responsible Gaming Programs and Services’.
RGC	CRL’s Responsible Gaming Committee.
RG Change Program	Crown’s enterprise-wide RG program that is intended to surpass state-based regulatory requirements.
RG Code	Perth Casino’s Responsible Gaming Code of Conduct.
RG Enhancements	Various changes to enhance Crown’s RG framework announced by the CRL board in May 2021.
RGMC	Perth Casino’s Responsible Gaming Management Committee.

Risk Uplift Plan	Crown's plan to improve its risk management capabilities and framework.
Riverbank	Riverbank Investments Pty Ltd (ACN 103 254 619).
Riverbank account	An account or accounts in the name of Riverbank.
Rockloff Report	An expert report on the prevalence of gambling-related harm in Western Australia and related matters, commissioned by the PCRC and co-authored by Professor Matthew Rockloff and colleagues at the Experimental Gambling Research Laboratory of CQ University Australia.
RSG	Responsible service of gambling, also known as responsible service of gaming.
RTP	Return to player.
Scheme	The scheme of arrangement pursuant to which SS Silver II Pty Ltd will acquire all of the shares in CRL by way of a scheme of arrangement under s 411 of the Corporations Act.
Second Australian Gambling Study	The Second National Study of Interactive Gambling in Australia (2019 – 2020) Report.
Second EGM Proposal	Crown's written request on 2 August 2012 seeking approval for an additional 500 EGMs at Perth Casino (from 2000 to 2500) to accompany the development of a new hotel.
Sentinel	The automated dashboard function of Crown's transaction monitoring program which alerts the FCC team when there is a response to AML/CTF data analytics rules relevant to the automated monitoring of transactions for relevant ML/TF typologies.
SES	Senior executive service.
Singapore CCA	<i>Casino Control Act 2006</i> (Singapore).
Sixth Review	The VCGLR's Sixth Review of the Casino Operator and Licence 2018.
SLA	Service Level Agreement, and SLAs has a corresponding meaning.
SMR	Suspicious Matter Report, and SMRs has a corresponding meaning.
SOF Policy	Significant Cash Transactions (Source of Funds) Policy.
SOP	Standard Operating Procedure, and SOPs has a corresponding meaning.
Source Data	The Deloitte Final Report, Crown Survey Data and the raw survey data, interview transcriptions and focus group summaries collected by Deloitte which formed the basis for the report prepared for the PCRC by Elizabeth Arzadon.
Southbank	Southbank Investments Pty Ltd (ACN 075 088 327).
Southbank account	An account or accounts in the name of Southbank.

Defined Terms

South Korean Arrests	The arrest and detention of employees of two South Korean casino operators by Chinese authorities in June 2015.
SPR	Significant Player Review.
SPR Policy	Significant Player Due Diligence Review Policy.
Star	Star Entertainment Group Limited (ACN 149 629 023).
Star Casino	The Star Event Centre (Sydney).
State Agreement	The Casino (Burswood Island) Agreement the subject of the CBIA Act entered into on 20 February 1985 between the State of Western Australia, West Australian Trustees Limited and Burswood Management Limited for the establishment of the Perth Casino (and depending on context, point in time versions).
SYCO	Crown's approved casino management system.
TAB	Totalisator Agency Board.
Termination procedure	The procedure manual entitled 'Licensing Procedures, Terminating a Casino Employee Licence' which guides the use of the technology system Navigate and its use by departmental officers.
Tileska	Tileska Pty Ltd (ACN 001 758 943), a Sydney-based company which controlled Genting Berhad.
TITO	Ticket In Ticket Out.
TM	Transaction monitoring.
TMP	Transaction Monitoring Program.
ToR	The individual numbered paragraphs of the operative part of the Commission Terms of Reference gazetted on 12 March 2021.
Treasury	Western Australia's Department of Treasury.
Trust Deed	The trust deed establishing the BPT dated 20 February 1985 and replaced on 18 April 1985 (as varied by the First to Thirteenth Supplemental Deeds).
Trustee	As defined in the State Agreement.
TT	Telegraphic Transfer, and TTs has a corresponding meaning.
TT form	Telegraphic Transfer Release Forms, also known as a 'Requisition To: Release Deposited Funds at Cage'.
TTR	Threshold Transaction Report, and TTRs has a corresponding meaning.
TT SOP	Telegraphic Transfer Standard Operating Procedure.
UAR	Unusual Activity Report, and UARs has a corresponding meaning.
Unit Holder	BL as the sole unitholder of the BPT.
VCGLR	Victorian Commission for Gambling and Liquor Regulation.

VCGLR China Arrests Investigation	The investigation conducted pursuant to s 24(1) – (2) of the Victorian CCA into the conviction and sentencing of Crown employees for gambling related offences in the People’s Republic of China, in June 2017.
VCGLR China Arrests Report	The report prepared pursuant to s 24(3) of the Victorian CCA in respect of the VCGLR China Arrests Investigation, published on 19 February 2021.
VCGLR Junket Inquiry	The inquiry by the VCGLR into whether there were grounds to take disciplinary action against CML under s 20 of the Victorian CCA for contravention of s 121(4) of the Victorian CCA.
VCGLR Junket Report	The reasons for decision published on 27 April 2021 in respect of the VCGLR Junket Inquiry.
VGCCC	Victorian Gambling and Casino Control Commission, established on 1 January 2022 and which replaced the VCGLR.
Victoria Co	Victoria Co Limited.
Victorian CCA	<i>Casino Control Act 1991 (Vic)</i> .
Victorian Regulatory Review	The review commissioned by the Victorian Minister for Consumer Affairs, Gaming and Liquor Regulation to investigate the structural and governance issues relevant to casino regulation in the state of Victoria and the role of the VCGLR.
VIP	Very Important Person.
VIP Committee	The committee formed following the China Arrests with the purpose of reviewing existing junket operators and assessing new applications by prospective junket operators.
VRGF	Victorian Responsible Gambling Foundation.
VVIP	‘Very, Very Important Persons’, also known as VIP patrons, high rollers, rolling chip players, rebate players or whales.
WA Appendix	The Western Australian appendix to the Australian/New Zealand Gaming Machine National Standard 2016.
WAPOL	Western Australia Police Force.
WA Trustees or Trustee	West Australian Trustees Ltd.
WOE	World of Entertainment.
WPI	Work Place Instruction.

CHAPTER 1

**Subject Matter
of Inquiry
and Terms of
Reference**

CHAPTER ONE

Subject Matter of Inquiry and Terms of Reference

Purpose of Chapter

- 1 The purpose of this chapter is to explain the subject matter of this inquiry and the reasons for the inquiry into that subject matter.

The Commission

- 2 By a Commission dated 5 March 2021 and published in the Government Gazette on 12 March 2021 the Hon Neville Owen AO, the Hon Lindy Jenkins and Colin Murphy PSM were constituted as a Royal Commission to inquire into and report on the affairs of Crown Casino Perth and related matters. The inquiry has been called the Perth Casino Royal Commission (**PCRC**).
- 3 The Commission is comprised of recitals and an operative part. In this Final Report, paragraph (a) of the operative part, which sets out in numbered paragraphs the matters that the PCRC is required to inquire into and report upon, has been referred to as the PCRC's terms of reference.¹ The terms of reference are divided into two parts; Part A is directed to an assessment of the suitability of the licensee of Perth Casino, and Part B is directed to an inquiry into the regulatory framework in Western Australia that is relevant to the affairs of Perth Casino and related matters.

Background

- 4 On 14 August 2019, an inquiry by the Hon PA Bergin SC under s 143 of the *Casino Control Act 1992* (NSW) was established (**Bergin Inquiry**). On 1 February 2021, the report resulting from the Bergin Inquiry was published (**Bergin Report**).²
- 5 The Bergin Inquiry considered whether Crown Sydney Gaming Pty Ltd (**Barangaroo Licensee**) was a suitable person to give effect to the Barangaroo restricted gaming licence granted to the Barangaroo Licensee under s 18 of the *Casino Control Act 1992* (NSW). The Barangaroo Licensee is a subsidiary of Crown Resorts Limited (**CRL**). The Bergin Inquiry also considered whether CRL was a suitable person to be a close associate of the Barangaroo Licensee. The Bergin Inquiry concluded that neither the Barangaroo Licensee nor CRL was such a suitable person. As required by its Amended Terms of Reference, the Bergin Inquiry reported on what changes would have to occur in order for the Barangaroo Licensee to become a suitable person to hold the Barangaroo restricted gaming licence and for CRL to become a suitable person to be a close associate of the Barangaroo Licensee. At the time of writing the Barangaroo casino is not operating.
- 6 The Bergin Inquiry found, among other things, that CRL:
 - a. facilitated money laundering through accounts of Southbank Investments Pty Ltd ACN 075 088 327 (**Southbank**) and Riverbank Investments Pty Ltd ACN 103 254 619 (**Riverbank**) unchecked and unchanged in the face of warnings from its bankers;
 - b. disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and

- c. entered into and (or) continued commercial relationships with junket operators who had links to triads and other organised crime groups.
- 7 Some of the conduct considered by the Bergin Inquiry related to the casino in respect of which a casino gaming licence has been granted under s 21 of the *Casino Control Act 1984* (WA) (**CC Act**) to Burswood Nominees Ltd (**BNL**) (**Perth Casino**). Other conduct related to the casino in respect of which a casino licence has been granted under Part 2 of the *Casino Control Act 1992* (Vic) to Crown Melbourne Limited (**CML**)³ (**Melbourne Casino**). BNL (through Burswood Limited (**BL**)) and CML are subsidiaries of CRL.
- 8 On 22 February 2021, the Governor of the State of Victoria appointed the Hon Ray Finkelstein AO QC to establish a Royal Commission to inquire into and report on whether CML is a suitable person to continue to hold the Melbourne Casino licence, whether CRL is a suitable associate of CML and related matters (**RCCOL**). The RCCOL and the PCRC were established in the wake of the Bergin Report and the findings of the Bergin Inquiry that related to Melbourne Casino and Perth Casino.
- 9 On 15 October 2021, the report of the RCCOL was published (**RCCOL Report**).⁴ The RCCOL concluded that CML was not a suitable person to hold the Melbourne Casino licence and CRL was not a suitable associate of CML. Amongst other things, the RCCOL recommended that a position of Special Manager be created by statute to oversee and exercise control over the affairs of CML for two years. It recommended that at the end of that period, the Victorian casino regulator should determine whether it is clearly satisfied that CML has become a suitable person to hold the Melbourne Casino licence and that it is in the public interest for it to do so.
- 10 The Bergin Report and the RCCOL Report do not address the suitability of CRL to be concerned in or associated with the organisation and conduct of gaming operations at Perth Casino. The reports also do not consider the suitability of BNL to be the Perth Casino licensee, or the suitability of other related companies to be concerned in or associated with the organisation and conduct of gaming operations at Perth Casino. Neither report addresses the adequacy of the existing framework in Western Australia for the regulation of Perth Casino, the exercise of the powers of the Western Australian casino regulator, the Gaming and Wagering Commission (**GWC**), or the discharge of GWC's responsibilities within that framework. In accordance with the terms of reference, these are matters that are the subject of the PCRC's inquiry.

Terms of reference 1 to 4

- 11 Terms of reference (**ToR**) 1 to 4 focus attention on the suitability of BNL as Perth Casino licensee and the suitability of CRL, BL and Burswood Resort (Management) Limited (**BRML**) as associates of the licence holder. In this report, BNL, BRML and BL are together referred to as '**the Burswood entities**'.

The companies the subject of ToR 1 to 4

- 12 BNL holds the legal ownership of the Perth Casino licence in its capacity as trustee of a unit trust called the Burswood Property Trust (**BPT**) under a trust deed dated 20 February 1985 and restated on 18 April 1985 (**Trust Deed**).⁵
- 13 BL holds all of the units in the BPT. BL also holds all of the shares in BNL.
- 14 BNL holds all of the shares in BRML. BRML is the employer of the majority of the staff at Perth Casino.
- 15 CRL holds all of the shares in BL and is the ultimate holding company of each of BL, BNL and BRML. CRL is an Australian Securities Exchange listed company.

- 16 BL, BNL and BRML, in a practical sense and as a composite group, operate Perth Casino under the trading name 'Crown Perth' which is a registered business name held by BNL.

The suitability inquiry

- 17 By ToR 1, the PCRC is required to inquire into and report on whether BNL is a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino and to continue to hold the casino gaming licence for the Perth Casino.
- 18 ToR 2 to 4 require the PCRC to inquire into and report on whether CRL, BL and BRML are each a suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

Casino gaming licence', 'gaming operations' and 'licensed casino'

- 19 The 'gaming operations' of a licensed casino are:
- (a) the conduct of playing of games in the casino; or
 - (b) the management, supervision or surveillance of the conduct of playing games in the casino; or
 - (c) money counting, accounting or advertising in relation to the conduct and playing of games in the casino; or
 - (d) the use of storage areas in relation to the conduct and playing of games in the casino; or
 - (e) any other activities incidental to or connected with –
 - (f) the conduct and playing of games; or
 - (i) the provision of facilities or services in relation to the conduct and playing of games,
 - (ii) in the casino.⁶
- 20 The terms 'casino gaming licence' and 'licensed casino' are respectively defined in the CC Act as a 'casino gaming licence granted under s 21 of the CC Act'⁷ and a 'casino in respect of which a casino gaming licence is, or is deemed to be, in force'.⁸
- 21 It is appropriate for the PCRC to adopt those definitions for the purposes of ToR 1 to 4.

'A suitable person'

- 22 Paragraph (h) of the operative part of the Commission defines the phrase 'suitable person' to mean:
- ... suitable person to engage in, or be concerned in or associated with, the relevant activity and, without limiting the generality of the foregoing, the matters to which the Commission may have regard to include -
- (a) the reputation, character, honesty and integrity of the person;
 - (b) the competence and adequacy of the knowledge, qualifications, experience and ability of the person to engage in, or be concerned in or associated with, the relevant activity;
 - (c) the financial status and financial background of the person;
 - (d) governance processes and arrangements;

- (e) the creation and maintenance of public confidence and trust in the credibility and integrity of licensed casino operations; and
- (f) such other matters as the commission sees fit.

23 The definition in the Commission is expressed to be non-exhaustive. The PCRC has sought to ascertain the potential breadth of meaning of a 'suitable person' in ToR 1 to 4 by also having regard to use of that phrase and elements of the Commission definition in relevant statutes, the purposes and objects of those statutes and the special nature of a casino licence.

Casino Control Act and Casino (Burswood Island) Agreement Act

- 24 The definition of a 'suitable person' in the Commission in part reflects the language of particular provisions of the CC Act and the *Casino (Burswood Island) Agreement Act 1985* (WA) (**CBIA Act**).
- 25 Under the CC Act, the GWC must satisfy itself that an applicant for a casino gaming licence and each close associate of the applicant is a 'suitable person to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino'.⁹ The CC Act does not expressly define 'a suitable person', but does provide that the GWC must, for the purposes of satisfying itself as to a person's suitability, inquire into:
- a. the reputation and financial status of the applicant and each close associate;
 - b. the financial status and structure of any trust or proposed trust of which the applicant or a close associate is or may become the promoter, founder or trustee; and
 - c. the reputation, financial status and capacity of each natural person intended by the applicant or believed by the GWC to be concerned in or associated with the organisation and conduct of the gaming operations of the licensed casino.¹⁰
- 26 Section 19B(1) of the CC Act also provides that the Minister may compel a close associate of a casino licensee to sell down a financial interest in the licensee if the close associate is not, or is no longer, a suitable person to be concerned in or associated with the gaming operations of a licensed casino.
- 27 Under s 14 of the CBIA Act, a person who is or intends to become the holder of a relevant interest in more than 10% of the voting shares of an 'approved company' may apply for a probity approval notice.¹¹ The GWC may issue the applicant with a probity approval notice if it is satisfied that the applicant is a suitable person to hold such an interest.⁵ A 'suitable person' is not defined in the CBIA Act.
- 28 The GWC may make any investigations it considers necessary or desirable for the purposes of dealing with the application for a probity approval notice. The investigations may encompass the reputation and financial status of the applicant.¹²
- 29 Thus, elements of paragraphs (a) and (c) of the Commission definition, being the reputation and financial status of a person, are relevant factors in determining whether a person is a suitable person under the CC Act.
- 30 Section 3 of the CC Act defines the public interest as:
- public interest means public interest having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of licensed casino gaming operations.
- 31 Under the CC Act, the 'public interest' is relevant to the holder of a casino gaming licence in five areas:
- a. whether it appears to the Minister that it is in the public interest to undertake an inquiry into the affairs of the casino;

- b. whether such an inquiry should include an inquiry into whether or not it is the public interest that a casino licence, or a casino complex agreement, remain in force;
 - c. whether following the receipt of the report of an inquiry, the Minister decides that it is the public interest to impose a sanction on a casino licensee including suspension or revocation of a casino gaming licence and termination of any agreement relating to the management or operation of the casino complex;
 - d. whether the GWC ought to grant an application by the casino to surrender its licence if the continued operation of the casino is not in the public interest; and
 - e. the GWC's determination as to who ought to be designated as a casino key employee.
- 32** The 'public interest' is not expressly relevant under the CC Act to a determination of whether a person is 'a suitable person'. However, the language of the statutory definition is reflected in paragraph (e) of the definition of a 'suitable person' in the Commission.

Public interest considerations

- 33** The PCRC's consideration of the public interest in its suitability inquiry is related to the public interest in a broad sense, rather than to the narrow definition in the CC Act.
- 34** A consideration of the provisions of the CC Act and the CBIA Act, as a whole, reflect that there are three broad objectives of casino regulation in Western Australia:
- a. ensuring the socially responsible, lawful and efficient operation of Perth Casino and casino gaming undertaken there;
 - b. maintaining the confidence and trust of the public of Western Australia in the credibility, integrity and stability of gaming operations at Perth Casino; and
 - c. ensuring the proper assessment and due payment of monies lawfully owing to the State and its statutory authorities by reason of casino operations.
- 35** The first objective and, to some extent, the second objective, point to the need for Perth Casino to be operated in accordance with the law but also in accordance with the special nature of a casino gaming licence, a concept which is explained below.
- 36** One important point in respect of the third objective is that maximising casino revenue or profit is not and should not be understood to be an objective of the regulator. Perth Casino is a commercial enterprise; it can be assumed that it will seek to maximise its revenues and profit through the operation of the casino. The regulator should permit the licensee to operate the casino in such a way as to maximise its revenues and profits, provided that the three broad objectives of casino regulation are being realised and will continue to be realised.
- 37** It is also in the public interest for Perth Casino to be financially stable and efficiently run such that it can pay its taxes when and as they become payable. However, the potential risk that Perth Casino is not maximising its revenues or profits is not a risk that the regulator is responsible for managing, mitigating or eliminating.
- 38** The PCRC has identified strategic risks to the attainment of the three objectives from the organisation and conduct of the gaming operations at a licensed casino as follows:
- a. the risks associated with junkets (including money laundering and criminal infiltration);
 - b. the risk of money laundering independent of junkets;
 - c. the risk of other criminal infiltration, being the risk that organised crime (and other criminal elements) will infiltrate and use the operations of Perth Casino for socially undesirable or illegitimate purposes;

- d. the risk of criminal infiltration of casino operations by employees, including by organised crime;
- e. the risk of other criminal activity on the casino premises, including the use of proceeds of crime for casino gaming;
- f. the risk of a lack of integrity in casino gaming;
- g. the risk of harm from casino gaming;
- h. the risk that the casino licensee is no longer a suitable person to hold the casino licence and that its associates are no longer suitable to be associated with the operation of the casino in respect of their:
 - i. character, reputation and (or) integrity;
 - ii. competence and capacity, including financial capacity and financial stability; or
 - iii. organisational structure, governance and management system;
- i. the risk that there is not proper assessment and due payment of casino tax owing to the State;
- j. the risk that there is not proper assessment and due payment of the casino gaming licence fee owing to the GWC; and
- k. the risk that there is not due and proper payment of the amount determined under the Casino (Burswood Island) Agreement (**State Agreement**) to the Burswood Park Board.

39 Against this background, assessing the suitability of a person to be involved in gaming operations of a licensed casino, requires an assessment of the conduct and attributes of the person that provide an indication of the likelihood that the person will perform the activities permitted under a casino gaming licence, in a manner that will facilitate the attainment of the legislative purposes and objects and will reasonably mitigate the identified risks to their attainment.

Licence conditions

40 The standard of conduct required of a licensee and the attributes of a licensee could also be gleaned from any applicable licence conditions. Currently, there are no licence conditions on the face of the Perth Casino licence. However, the State Agreement contains the following statutory licence conditions which arise from the requirement that approval of the application for a casino gaming licence in respect of Perth Casino could only be granted subject to:

- (d) the condition that none of the Trustee, the Manager, the Operator or any other Person concerned with the operation of the Burswood Casino shall, directly in connection with Gaming in the Burswood Casino, without the prior consent of the Committee:
 - (iii) accept a credit wager from any Person;
 - (iv) make a loan to any Person;
 - (v) provide cash or chips to any Person in respect of a credit card transaction;
 - (vi) extend credit in any form to any Person

but so that such condition shall not preclude the acceptance or cashing of cheques or travellers cheques;

- (e) the condition that the Trustee shall at all times comply with directions given by the Committee pursuant to section 24 of the Control Act; and

- (f) such other conditions (if any) as may be agreed between the Minister and the Trustee.¹³

41 The State Agreement also requires the licensee to pay casino tax, the casino licence fee and payments to the Burswood Park Board.¹⁴

Special nature of the casino gaming licence

42 The definition of a suitable person in the Commission and the use of that phrase and related in language in the relevant legislative framework provide guidance as to the subject matters relevant to an inquiry into the suitability of a casino licensee and its close associates. However, they do not indicate the standard of conduct or attributes expected of a suitable person. Those matters are discernible from a broader consideration of the special nature of a casino gaming licence.

43 In *Australian Broadcasting Commission v Bond*, in respect of the privilege of a licence granted under the *Broadcasting Act 1942* (Cth), Mason CJ said:¹⁵

... a commercial broadcasting licence is a valuable privilege which confers on the licensee the capacity to influence public opinion and public values. For this reason, if no other, a licensee has a responsibility to exercise the power conferred by the licence with due regard to proper standards of conduct and a responsibility not to abuse the privilege which it enjoys ...

A licensee which is a fit and proper person in the context of s. 88(2)(b)(i) must have an appreciation of those responsibilities and must discharge them. Conversely, a licensee which lacks a proper appreciation of those responsibilities or does not discharge them is not, or may be adjudged not to be, a fit and proper person.

44 Similar considerations apply to the holder of a casino gaming licence granted under s 21 of the CC Act.

45 In general, gaming activities customarily carried on at a casino are illegal in Western Australia.¹⁶ The CC Act creates an exception if the premises are a licensed casino.

46 Therefore, a casino gaming licence is a valuable privilege.¹⁷ In the case of BNL, the privilege is arguably emphasised by the degree of exclusivity it enjoys:

- a. BNL presently has the sole right in Western Australia to organise and conduct gaming operations at a casino;
- b. Perth Casino is generally the only place in Western Australia at which games commonly played at casinos can be played and it is the only place at which authorised electronic gaming machine (**EGM**) games can be played in Western Australia; and
- c. Perth Casino gaming operations are still protected by exclusivity arrangements recognised in undertakings by the State Government not to approve the playing, in any other casino of similar size and scale to Perth Casino within a radius of 100 km from Perth Casino, of games commonly played in casinos.

47 However, the licence confers on the licensee, not only the privilege to conduct gaming operations, but also the capacity to control the inherent risks associated with those operations, including the risk of gambling related harm to patrons, risks to the integrity of gaming and the risk that the gaming operations will be used to facilitate criminal activity. Thus, a casino licensee's responsibilities will include the responsibility to exercise its control over the conduct of gaming operations to do what is reasonable to mitigate those inherent risks. A suitable person will have a proper appreciation of their responsibilities in that regard. The standard of conduct expected of a suitable person will reflect and be commensurate with those responsibilities.

- 48** The standard of conduct expected of a casino licensee to do what is reasonable to mitigate the inherent risks of gaming operations will be explicated with respect to specific risks examined in individual chapters of this report but, generally speaking, it will be informed by:
- a. the regulatory framework (including the State Agreement);
 - b. the public interest;¹⁸
 - c. the fact that the licensed activity carries a material risk of harm;
 - d. the extent of control the licensee has over that risk; and
 - e. the restrictions inherent in the regulatory framework that confer an element of exclusivity in respect of the licence.

Attributes of a suitable person

- 49** Drawing on the above the PCRC concludes that a 'suitable person' to be engaged in, concerned in or associated with gaming operations of a licensed casino is a person who:
- a. is of good character and reputation, is honest, has integrity, is competent, has appropriate governance processes and arrangements and is of sound financial standing, so as to have the capacity or ability to ensure compliance with all obligations of the casino gaming licensee;
 - b. does what is reasonable to guard against the risk of gaming operations causing harm to patrons or the public, so as to create and maintain public confidence and trust in the credibility and integrity of licensed casino operations;
 - c. does what is reasonable to guard against the risk of criminal infiltration of gaming operations of a licensed casino and to guard against criminal activity otherwise occurring at the casino so as to create and maintain public confidence and trust in the credibility and integrity of licensed casino operations;
 - d. does what is reasonable to guard against risks to the integrity of gaming conducted pursuant to the licence, so as to create and maintain public confidence and trust in the credibility and integrity of licensed casino operations; and
 - e. is honest, open, competent and accountable in its dealings with the regulator.
- 50** As to the attributes in paragraph (e) above, interactions with the GWC and Department have relevance to most, if not all, of ToR 1 to 6. The reasons for PCRC concluding that a 'suitable person' is to be honest, open, competent and accountable in its dealings (and communications) with the regulator are explained later in this chapter.

Present suitability

- 51** Each of ToR 1 to 4 pose the question whether the relevant corporate entity 'is', that is, is presently, a suitable person to be involved in the relevant activity.
- 52** The PCRC has determined the suitability question as of the date of this report. It has done so on the basis of the evidence the PCRC received up to the end of the evidence gathering phase of the inquiry which concluded on 19 November 2021, and limited further evidence received since that date.
- 53** Past conduct can be relevant to an assessment of present suitability. It may expose deficiencies in systems and processes which, if not addressed, point to present, continuing unsuitability. Past conduct may also reflect on questions of character or reputation.

- 54 An assessment of present suitability also calls for a consideration of likely future conduct. A person will only be presently suitable if they have the capacity and will to continue to discharge the responsibilities of their licence going forward.
- 55 Remedial work is relevant to the issue of present suitability and is important in at least three respects. First, it goes to the question whether identified impediments to suitability have been or are being rectified. Secondly, it may go to competence, in the sense of demonstrating an appreciation of what has miscarried in the past and the ability to identify all or most of issues that need to be addressed. Thirdly, it may say something about the resolve and capacity of those who govern and manage the organisation to bring about the changes that are needed in a timely and effective way.
- 56 The extent to which the evidence demonstrates conformance or non-conformance with the attributes of a suitable person over time is a relevant consideration for assessing the likelihood that a person will meet the expected standard of conduct in the future. However, isolated examples of misconduct may also provide evidence from which an assessment of likely future conduct may be made.

The conduct of corporations

- 57 The four entities whose suitability is to be assessed pursuant to ToR 1 to 4 are all corporations.
- 58 The traditional approach to attributing responsibility for acts and omissions to a corporation is 'to recognise that a corporation can only act through its directors, officers and employees. Its moral responsibility (that is, its integrity, good character and the like), and its corporate culpability, are usually measured by the conduct of those who lead the organisation'.¹⁹ The corporation is marked with the state of mind of the director, officers and employees who are authorised to act on its behalf.
- 59 *R v Knightsbridge Crown Court, ex parte International Sporting Club (London) Ltd*²⁰ is authority for the proposition that past conduct; the character and reputation of the shareholders and director at the date of the hearing; and any evidence that a re-structured licence holder has the capacity and intention to run the casino on different lines or has already started to do so are relevant considerations for the question of whether or not a company is a fit and proper person to hold a casino licence.
- 60 The RCCOL Report identified and adopted an alternative and broader approach that drew on the work of Dr Elise Bant (**Bant**) on a theory called systems intentionality.²¹ That theory, as articulated by Bant, is a mechanism for attributing the state of mind element of wrongs to a corporation where it is not possible to identify an individual human whose state of mind is to be attributed to the corporation under the traditional approach.
- 61 In substance, the theory attributes to a corporation state of mind based on objective criteria independent from any subjective state of mind of individual human agents of the corporation. Amongst other things, where a corporation adopts a system that is of a nature or patently likely to produce certain conduct, or to produce conduct that is recurrent, and no positive steps are taken to avoid that result, the system may be said to manifest a corporate intention to produce that result.
- 62 The RCCOL Report builds on Bant's theory in that it acknowledges that many organisational decisions are more than the combination of individual choices and actions. The RCCOL Report concentrates on the systems, strategy, structure and culture of the corporation that can either cause or inhibit corporate misconduct and has regard to defective organisational structures, information and decision-making procedures that may result in irrationalities, group thinking, flawed risk perceptions or secrecy with regard to misconduct.²²

- 63** Where past conduct is indicative of a failure to maintain the standards to be expected of the holder of a casino licence, whether by failings of individuals or systems, the issue of suitability may be distilled down to the question of whether, having regard to the seriousness of the failing and any steps the licensee has taken to rehabilitate itself, the PCRC is satisfied it is unlikely that there will be any lapse in the future of the standards which are required of the licensee.²³ The answer to that question depends upon an inquiry of the following nature:
- a. identify past failings or deficiencies in systems, practices and behaviours that might render the entity unsuitable;
 - b. identify individuals (if any) who may materially have caused, taken part in or contributed to those past failings and deficiencies;
 - c. decide whether, and to what extent, the past failings or deficiencies have been addressed or are still occurring and whether individuals (if any) who contributed to them are still part of the organisation; and
 - d. inquire into present suitability by investigating the subject matters relevant to suitability at the present moment on the basis of the people who are in the corporation and the remediation of behaviours now and going forward into the future.
- 64** It follows that the traditional and broader approach are not mutually exclusive and can each be accommodated depending upon the nature of the evidence and the conduct in question.

Culture

- 65** Culture may be described as:²⁴
- ... the sustained pattern of behaviours resulting from the underlying values, shared mindsets and beliefs and systematically reinforced behavioural norms across the organisation. It is shaped by the actions and decisions of leaders and reinforced by organisational systems and ways of working. These values, norms and mindsets help or hinder various business outcomes.
- 66** Culture is relevant to an assessment of suitability in at least two respects. First, it may explain past conduct. Secondly, it may assist in determining whether planned or required changes in systems, strategies and structures are likely to be accepted and embedded within an organisation.

Insight

- 67** Human experience is that a person who demonstrates genuine acceptance of responsibility for and insight into past failings is less likely to repeat those failings in the future, when compared to a person who does not demonstrate such genuine acceptance and insight.
- 68** In the case of a corporation, insight may be demonstrated through statements made by the director, officers or senior managers responsible for past failings. It may also be demonstrated through conduct that reflects an understanding or appreciation that past conduct failed to meet the required standard. A prompt and proactive response to remediate past failings is an example of such conduct. A continued denial of past failings until denial becomes untenable and (or) a response that is slow, reactive or inadequate may suggest the opposite.

Summary of the PCRC's approach to assessing whether a person is a suitable person

- 69 Against the background of the foregoing discussion as to the meaning and import of 'a suitable person' for the purpose of ToR 1 to 4, the PCRC has taken the following approach to its assessment of suitability.
- 70 With respect to each of BNL, CRL, BL and BRML, the PCRC has examined the reputation and character of the relevant entity; its financial status; its governance processes and arrangements; the people, systems and processes it has to manage the material risks of casino gaming operations; any past and existing deficiencies in those people, systems and processes; the relevant entity's insight into those deficiencies and remediation of them; the organisational culture; and other matters germane to their maintenance of public confidence and trust for the purpose of ascertaining whether each has the attributes of suitability identified earlier.
- 71 The PCRC's inquiry into those matters has been undertaken by reference to, and in the context of, a number of specific topics or issues: structural and operational corporate governance issues; risk management generally; junket operations; the use of casino operations to facilitate money laundering and other criminal activity; gambling related harm minimisation; the arrests of 19 Crown staff residing in China on 13 and 14 October 2016 (the **China Arrests**); the assessment and payment of casino tax and the casino licence fee; financial capacity; communications with the GWC and the Department; and remediation.
- 72 In inquiring into those topics, regard has been had to: evidence of past conduct; work done leading up to and since the handing down of the Bergin Report; and work foreshadowed in the future.
- 73 In the end, suitability has been determined by the PCRC as a value judgment, giving appropriate weight to all of the relevant factors to determine whether, on balance, each entity is, or is not, presently a suitable person.

Term of reference 5

- 74 If the PCRC decides that any entity is not a suitable person, ToR 5 requires the PCRC to report on what, if any, changes would be required to render that entity suitable. For efficiency of language, the PCRC refers to this as the pathway to suitability.
- 75 A consideration of what, if any, changes would be required to render each entity suitable will necessarily focus attention on the competence, resolve and ability of the relevant entity to implement changes to address the particular matters that were relevant to the PCRC's assessment that the relevant entity was not presently a suitable person. In terms of resolve and ability, the organisational culture of the relevant entity is important to identify enablers and disruptors on the pathway to suitability.
- 76 Another relevant consideration is what, if any, external supervision facilities or mechanisms ought to be imposed on the relevant entity to monitor and oversee remedial activities on the pathway to suitability.
- 77 Following delivery of the Bergin Report and in consultation with the Independent Liquor & Gaming Authority of New South Wales (**ILGA**), Crown entered into an independent monitorship arrangement with Duff & Phelps Australia Pty Limited trading as Kroll (**Kroll**).²⁵ This has resulted in periodic status updates by Kroll to ILGA.²⁶
- 78 Following the recommendations in the RCCOL Report, the Victorian Government appointed a Special Manager, Stephen O'Bryan QC (**O'Bryan**), to oversee the Melbourne Casino licensee, CML, for a period of two years. The Special Manager's role includes monitoring

CML's reform agenda over the two years and providing a report to the regulator at the end of the two-year period. The regulator will then decide whether CML has returned to suitability.

- 79** The appointments of Kroll and O'Bryan are unlikely to directly involve or affect any pathway to suitability specific to the Burswood entities in respect of the gaming operations of Perth Casino. However, there may be some flow-on effect in relation to, for example, services arranged at group level. The situation of CRL, as the holding company of the licensees of the Barangaroo Casino, the Melbourne Casino and Perth Casino, is different. The actions taken by Kroll and O'Bryan may well have a more direct effect on its suitability to be concerned in the organisation and conduct of gaming operations at a licensed casino. These matters will be considered in detail in Chapter Seventeen: Suitability.

Term of reference 6

- 80** ToR 6 requires the PCRC 'to inquire into and report upon the adequacy of communications by Crown Perth and (or) any Crown Perth Associates with the [GWC], including responses and disclosures to the [GWC], prior to and during the Bergin Inquiry in relation to matters related to or connected with the Bergin Report and any matters referred to therein.

Meaning of 'Crown Perth and (or) any Crown Perth Associates'

- 81** 'Crown Perth' is defined in the terms of reference to mean BNL.
- 82** 'Crown Perth Associates' is defined in the terms of reference to mean any person concerned in or associated with the organisation and conduct of the gaming operation of Perth Casino. The definition captures the communications of the entities named in ToR 1 to 4 and any other 'person' (individual or corporate body) that is concerned in or associated with the organisation and conduct of the gaming operations of Perth Casino. BL, BRML and CRL are the 'Crown Perth Associates' whose communications with the GWC have been inquired into by the PCRC. None of the communications examined were expressed to have been from or to BL or BRML.
- 83** Crown's position is that, because Perth Casino was and is operated by the Burswood entities acting in a composite manner, for the purposes of ToR 6, communications made by 'Crown Perth' should not be construed as being communications from BNL alone. Rather, references to 'Crown Perth' in communications should be read as including all the Burswood entities.²⁷ This is despite the fact that most written correspondence about the gaming operations at Perth Casino was sent on Crown Perth letterhead and, in the footer, referred to BNL alone.
- 84** As referred to in further detail in Chapter 8 Corporate Governance, there are issues about which entity organises and conducts gaming operations at Perth Casino and this has an impact on the contention that the Burswood entities act together to do so. However, for the purposes of the inquiry the subject ToR 6, the PCRC accepts that, if a communication with the GWC concerned the organisation and conduct of the gaming operation of Perth Casino and was made:
- a. by an employee of BRML; or
 - b. by an officer of one or more of the Burswood entities; or
 - c. using the name BNL, BL, Crown Perth²⁸ or another of BNL's trading names,
 - d. the communication was made by and on behalf of each of the Burswood entities.

- 85 The same approach cannot be adopted for CRL. The PCRC has taken the approach that, if a communication with the GWC concerned the organisation and conduct of the gaming operation of Perth Casino and was made:
- a. by an employee of CRL; or
 - b. an officer of CRL (who was not also an officer of one of the Burswood entities); or
 - c. was made using the name CRL, Crown Resort or Crown Resorts (the trading names of CRL),²⁹
- the communication was made by or behalf of CRL.
- 86 If a communication concerned the organisation and conduct of the gaming operations at Perth Casino and was made by an officer of CRL who was at the relevant time also an officer of one of the Burswood entities, depending on the circumstances, the PCRC has taken the approach that the communication may have been made by or on behalf of CRL and the Burswood entities.

Communications with the Gaming and Wagering Commission

- 87 ToR 6 expressly refers to communications by Crown Perth and (or) Crown Perth Associates with the GWC, as opposed to the Department.
- 88 A view has been expressed to the PCRC to the effect that it is artificial to draw a distinction between the provision of information to the Department on the one hand and the GWC on the other. However, the PCRC is of the view that it is necessary to draw a distinction between the GWC and the Department for the purposes of ToR 6, given its explicit language.
- 89 In circumstances where communications have been with an officer of the Department, who is also a member of the GWC, the Chief Casino Officer (**CCO**) or who is exercising the delegated authority of the GWC, and unless otherwise specified, the PCRC has treated this as a communication with the GWC as a whole.

Meaning of 'adequacy of communications'

- 90 'Adequacy' for the purposes of ToR 6 is not expressly defined and therefore bears its ordinary meaning as being the state or quality of being adequate; that is, satisfactory or suitable or appropriate to the circumstances.³⁰ Adequacy is not necessarily a high standard. However, as explained later in this section, in context, for communications to be adequate they may need to be of a particular quality.
- 91 'Communications' also bears its ordinary meaning. The PCRC has interpreted it widely to include any form of communication.
- 92 A consideration of the 'adequacy' of communications with the GWC may be judged by reference to the standard of communications a suitable person to continue to hold the casino gaming licence for Perth Casino would have with the casino regulator and the standard of communications a suitable person to be associated with the organisation and conduct of the gaming operations of a licensed casino would have with the casino regulator.
- 93 ToR 6's position in Part A of the terms of reference dealing with 'suitability' matters, requires the 'adequacy of communications' to be considered in the context of whether BNL is a suitable person to continue to hold the casino gaming licence for Perth Casino and whether CRL, BRML and BL are suitable persons to be associated with the organisation and conduct of the gaming operations of a licensed casino.

- 94 The determination of the standard by which to judge the adequacy of BNL's and its associates' communications with the GWC generally is informed by:
- the legislative framework;
 - the conditions attached to the casino licence;
 - the special nature of a casino gaming licence; and
 - the requirements of the GWC which were communicated to BNL and its associates.

Legislative framework

- 95 The GWC has a number of statutory powers that are relevant to the provision of information to it. These powers include to:
- require the production for inspection of gaming equipment, instruments of gaming or books;³¹
 - require a person connected with the operation of a licensed casino to attend before the GWC to answer any questions, or provide information, with respect to any gaming equipment or instruments of gaming, any books related to the operation of a casino complex or any entries therein, or operations in or in relation to the casino complex or gaming;³²
 - require reports, and institute and carry out such investigations and inquiries as the GWC considers to be necessary or expedient for administering and enforcing the law relating to gambling;³³
 - seize and detain, or take extracts or copies of, books or other material evidence found in the course of the exercise of a power conferred by the GWC Act;³⁴
 - require a person, in certain circumstances, to answer questions or produce books or other material evidence for inspection;³⁵ and
 - require a person to provide information, books or other evidence that the GWC believes is likely to be relevant to the investigation of any suspected offence under the GWC Act or any other written law related to gambling.³⁶
- 96 Section 29(1)(b) is an important provision in establishing the standard of communications required by BNL and its associates. It provides that a person commits an offence if, among other things, they knowingly or recklessly:³⁷
- for the purpose of obtaining a benefit for himself or any other person, ... in respect of any licence or other matter under any other written law relating to gambling, ...; or
 - in relation to any report, books or other thing furnished or required to be furnished; or
 - in purported compliance with a requirement made under this Act or such a written law,
 - makes any statement, that is false or misleading or which makes any material omission, or furnishes or causes to be furnished any report, book or other thing that is false or is misleading in a material particular, or which makes any material omission ...
- 97 The adequacy of communications must also be adjudged by the nature of lawful obligations BNL and its associates have to provide information to the GWC. The CC Act and the directions given under s 24 of it, impose obligations on BNL (and through BNL, to other Burswood entities and agents of BNL) to provide information in specific circumstances, including:

- a. to cause reports relating to gaming or other operations at Perth Casino to be provided to the GWC, as the GWC may require in writing, and containing the matters stated to be required by the GWC;³⁸
 - b. to permit the CCO, any other GWC officer, or a person authorised by the GWC to inspect and take copies of records or accounts relating to casino operations;³⁹
 - c. to provide information in relation to casino operations upon the request of a government inspector or other GWC officer;⁴⁰
 - d. to provide monthly statements of 'Casino Gross Revenue,' certified copies of chip and cash account sheets, and bank reconciliation statements in respect of accounts to be used for banking transactions arising from casino wagering operations;⁴¹
 - e. to make available to the GWC any information obtained in relation to patron complaints against casino personnel;⁴²
 - f. when requested by the GWC, to provide a floor plan of the casino, a diagram of the closed-circuit television system and a plan of the catwalk surveillance system, and details of any proposed variations;⁴³
 - g. to supply information relating to unclaimed winnings in accordance with the Casino Manual (Operations) (**CM(Ops)**);⁴⁴
 - h. where the Credit and Cheque Review Committee authorises the write-off of a patron's debt, to ensure that a summary of reasons for the write-off and details of the amount are supplied to the GWC;⁴⁵ and
 - i. to prepare and forward to the GWC a monthly 'Proposed Legal Action and Write Off Report,' and monthly reports with details of all draw down markers, cheques held awaiting banking and details of any dishonest cheques.⁴⁶
- 98** In relation to the obligation on BNL to cause reports to be provided to the GWC, dir 4.3 contemplates the provision of further information to the GWC if the CCO considers the licensee's initial report to be deficient.⁴⁷ This indicates that the licensee is expected to be fulsome in its reporting and provide sufficient information to enable the GWC to be informed fully as to Perth Casino's operations.
- 99** Further, the State Agreement imposes obligations in relation to the provision of information by BL as an 'Approved Company', including:
- a. to make available for inspection by the Minister, the GWC or the GWC's nominated representative all information held in respect of the ownership, holdings of shares and other company securities, director or the corporate structure of BL and all minutes of meetings of shareholders and director and other records relating thereto;⁴⁸
 - b. to deliver to the GWC a copy of all notices that are forwarded to shareholders or director of such meetings in the same manner and at the same time as such notices are forwarded to shareholders or director;⁴⁹ and
 - c. to notify the GWC in writing within 30 days after becoming aware that a person has become the holder of a relevant interest in more than 10% of its voting shares.⁵⁰
- 100** The obligations described in (a) and (b) above, also apply to BNL and BRML.⁵¹
- 101** The State Agreement also obliges BRML, in its capacity as the 'Manager', to deliver to the GWC, upon the request of the Minister, particulars of security surveillance and alarm systems, and make available drawings of such systems for perusal by the GWC's nominated representative.⁵²
- 102** It is a condition of the Perth Casino licence that the licensee comply with the directions given by the licensee pursuant to s 24 of the CC Act (**Directions**),⁵³ and it is an offence

for the licensee to contravene the Directions.⁵⁴ As such, where a specific obligation on the licensee to provide information to the regulator arises from a direction, or an obligation within the CM(Ops) that is subject to the Directions, failure to do so will amount to an offence and a breach of the Perth Casino licence.

- 103** However, a number of the obligations on the casino licensee to provide information to the GWC will follow from a request by or on behalf of the GWC, rather than at the initiative of the licensee in discharge of an existing obligation.

Obligations as a consequence of the special nature of a casino gaming licence

- 104** It has been explained earlier in this chapter that there is a particular standard of conduct expected of the casino licensee that is derived from the special nature of the licence.
- 105** Considered together, the legislative framework and the special nature of the licence require the licensee (and, therefore, in this context, the Burswood entities) to communicate with the GWC about matters concerning the conduct and organisation of the gaming operations at Perth Casino in an honest, open, competent and accountable manner.
- 106** The current regulatory framework and the standard of adequacy of communications derived from it does not require that BNL communicate with the regulator or volunteer information to the regulator on every topic material to the regulation of the casino. This is particularly so, as explained further below, if the GWC has instructed BNL that it does not wish to receive information on a topic. However, as a casino licensee should communicate in an honest, open, competent and accountable manner, communications between a casino licensee and a casino regulator may require the voluntary disclosure of information that has not been specifically requested where a person of good character, honesty and integrity would have made the disclosure. This is particularly so where the casino operator has previously provided information in a less than open manner on a topic which it knows is relevant to the regulation of the casino.
- 107** If a communication from the casino licensee and its associates is not honest, open, competent and accountable, the relevance of the deficiency to the suitability inquiry, will depend on numerous matters including the importance of the topic of the communication, whether the deficiency was so significant as to cause the GWC to act inappropriately, whether the deficiency occurred once or was part of a pattern of behaviour, whether the entity who made the communication has shown a preparedness to ensure that such deficiency does not occur in the future and whether the deficiency occurred intentionally, negligently or inadvertently.

Honest

- 108** Public confidence and trust in the credibility, integrity and stability of casino gaming is a fundamental regulatory objective of the CC Act.⁵⁵ A suitable person to hold a casino licence or to be an associate of casino licensee is a person of honesty and integrity. Relevantly, in order to maintain that public confidence and trust in gaming operations at Perth Casino, BNL and its associates are required to demonstrate honesty, transparency and candour in communications with the GWC about those operations.

Open

- 109** Open in this context means not concealing, frank and communicative.⁵⁶ It encompasses other descriptors such as lawful, accurate, fulsome, credible and objective. The PCRC favours using open as a broad term which includes these other descriptors.

- 110** A casino licensee is not obliged to do the work of the regulator and present and argue both sides of its submissions to the regulator. However, the casino licensee and its associates have a duty not to mislead the casino regulator. In practical terms this means that a licensee and its associates must not present arguments in favour of a submission in such a way as to suggest that there are no arguments to the contrary, when the licensee is aware of information that is contrary to or qualifies the position taken or submission made to the regulator.
- 111** A casino licensee and its associates must ensure that the information they provide to the casino regulator is accurate. The provision of accurate information is an aspect of a casino licensee's openness and its competence (see below) to be engaged in, or be concerned in or associated with, the organisation and conduct of the gaming operation of a licensed casino. The provision of accurate information relevant to the performance of the functions of the GWC is a means by which to create and maintain public confidence and trust in the credibility and integrity of Perth Casino's gaming operations.

Competent

- 112** Competent means having the necessary ability, knowledge, and skill to operate a licensed casino and the gaming operations within it in a socially responsible manner.⁵⁷ As a standard of adequacy of communications by a casino operator with the regulator, it means that communications should be of the standard expected from a competent casino operator.
- 113** The provision of inaccurate information inadvertently, but without a system in place to verify the accuracy or completeness of information, may reflect poorly on the relevant entity's competence and its ability to maintain public confidence and trust in the credibility and integrity of licensed casino operations. The provision of inaccurate or misleading information in such circumstances may properly be described as inadequate and may reflect adversely on the relevant entity's suitability to hold a casino licence or to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino.

Accountable

- 114** Accountable means answerable.⁵⁸ As a standard of adequacy of communications by a casino operator with the regulator, it means that a casino operator is responsible for what it does in the exercise of the privilege of being a licensed casino operator and must be able to give satisfactory reasons for its actions to the regulator.

Applicable standard

- 115** Having regard to the above matters, the adequacy of communications by the Burswood entities and (or) CRL are to be considered against the following standard:
- a. a casino licensee and its associates must not knowingly or recklessly provide false or misleading information to the casino regulator;
 - b. a casino licensee and its associates must not knowingly or recklessly provide information to the casino regulator which makes a material omission;
 - c. communications by a casino licensee and its associates with the casino regulator must be honest, open, competent and accountable; and
 - d. an aspect of the above standard is that an author of the communication should have taken reasonable steps to verify the accuracy of the information before communicating it.

- 116 However, if a regulator has itself communicated to a casino licensee and (or) its associates that it does not require the licensee and its associates to provide it with information on a topic or to be updated with information on a topic, or if the communications are consistent with course of dealings that have been accepted by the GWC over time, the BNL's and (or) its associates' communications or lack of them on that topic or consistent with that course of dealings cannot be found to be inadequate.

Subject matter of communications

- 117 ToR 6 requires the PCRC to examine the adequacy of communications by BNL and its associates in relation to 'matters related to or connected with the Bergin Report and any matters referred to therein'. The following topics relate to or are connected with the Bergin Report and have been considered for the purposes of PCRC's examination of the adequacy of communications by the BNL and its associates:
- a. the China Arrests and convictions of Crown staff resident in China;⁵⁹
 - b. junket operations with links to organised crime groups⁶⁰ and junket regulation; and
 - c. the opening of bank accounts by Riverbank, transactions through the accounts (including alleged money laundering) and the closure of the accounts.⁶¹
- 118 The communications relating to these topics are addressed in the chapters related to these topics more broadly.

Term of Reference 8

- 119 ToR 8 requires the PCRC to inquire into and report upon the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address extant and emerging strategic risks identified in the Bergin Report, or otherwise by this inquiry, including in relation to junket operations, money laundering, cash and electronic transactions and the risk of infiltration by criminal elements into casino operations.

'Existing regulatory framework'

- 120 The PCRC has interpreted the 'existing regulatory framework' to be the collection of Acts and Regulations that together regulate casinos and casino gaming in Western Australia.⁶² These are principally the CC Act, The GWC Act, the CBIA Act and the regulations made under them. Offences in the *Criminal Code Act Compilation Act 1913* (WA) that may apply to conduct within and related to Perth Casino and casino gaming play a peripheral role in the regulation of casinos and casino gaming and are not examined in detail.
- 121 The broader regulatory framework also includes the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) and Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No. 1) (Cth) (**AML/CTF Rules**). The AML/CTF Act and AML/CTF Rules form an important part of the regulatory framework as these instruments regulate certain financial transactions which are conducted within and for casinos and casino gaming.
- 122 The provisions of those statutes create other parts of the regulatory framework, for example casino gaming licenses and the body that regulates licensed casino gaming operations, the GWC. The inquiry into the adequacy of the regulatory framework encompasses the regulatory framework in that broader sense and processes which the laws create.
- 123 In particular, as explained in Chapter Nine: Regulation of Perth Casino, pursuant to s 24 of the CC Act, the GWC has the power to give directions to a casino licensee with respect

to the system of internal controls and administrative and accounting procedures that apply to the gaming operations of the casino licensee. The GWC has given directions to the Perth Casino licensee and these have been consolidated as the Burswood Casino Directions (**Directions**).⁶³ The PCRC has taken the approach that Directions (either their existence or absence) form part of the existing regulatory framework for the purposes of ToR 8.

'Casinos' and 'casino gaming'

- 124** Having regard to the relevant definitions in the regulatory framework to 'casinos' and the common usage of the term,⁶⁴ the PCRC has interpreted ToR 8 to require an inquiry into the adequacy of the existing regulatory framework in relation to physical areas or spaces (typically buildings) within which games such as roulette, blackjack and other games of chance are played for money, and activities ancillary to the playing of such games are carried out, under a licence granted pursuant to s 21 of the CC Act.
- 125** Neither the relevant statutes nor the terms of reference define the phrase 'casino gaming'. Gaming is defined in the GWC Act to mean:
- subject to section 39(2)(d) and (e), ... the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or money's worth or not.
- 126** Thus, casino gaming is the playing of such games of chance in a casino. The PCRC considers that the appropriate scope for inquiry into the adequacy of the regulatory framework in relation to 'casino gaming' includes:
- a. the process by which the GWC, pursuant to s 22 of the CC Act, authorises or revokes authorisation for a game to be played at a licensed casino;
 - b. the process of regulating and overseeing the conduct of games that have been authorised; and
 - c. to the extent that ToR 8 requires consideration of the regulatory framework to prevent unauthorised gaming, the conduct of (unauthorised) casino gaming of the type that has been authorised or otherwise described in the State Agreement. As per s 22 of the CC Act and the State Agreement, this would include EGMs, automated table games and State Agreement sch D table games.

Strategic risks

- 127** ToR 8 specifically identifies from the Bergin Report two risks, being the risk of money laundering and the risk of infiltration by criminal elements into casino operations.⁶⁵ Otherwise, ToR 8 describes 'strategic risks' non-exhaustively and without specific identification, as those 'strategic risks':
- a. identified in the Bergin Report in relation to certain junket operations and cash and electronic transactions; and
 - b. otherwise identified by the PCRC's inquiry.
- 128** Apart from these descriptions in ToR 8, the scope and content of the phrase 'strategic risks' is not defined in the terms of reference or in any relevant legislation.
- 129** By reference to common usage of 'strategic'⁶⁶ and 'risk',⁶⁷ it is the PCRC's view that a 'strategic risk' (whether extant or emerging) for the purposes of ToR 8 includes any situation, or action or omission related to the operation of Perth Casino or gaming within the casino that harms or diminishes the achievement of the broad objectives of casino regulation

- in Western Australia. Those broad objectives and the risks to their attainment have been explained earlier in this chapter in the context of the discussion of Part A of the terms of reference.
- 130** One of the risks identified in the Bergin Report that is expressly mentioned in ToR 8 is the risk of infiltration by criminal elements into casino operations. The view has been put to the PCRC that its inquiry in this regard is limited to the infiltration of casino operations by criminal organisations and does not extend to criminal activity more generally. While that may be accepted, for the reasons already explained, the PCRC has in any event itself identified as strategic risks the risk of criminal infiltration of casino operations by employees and the risk of criminal activity on the casino premises, including the use of proceeds of crime for casino gaming.
- 131** The PCRC has identified harm caused by gambling as a strategic risk. Whilst ToR 8 requires the PCRC to inquire into the adequacy of the regulatory framework to address this risk, there are some limits to the PCRC's inquiry. This is because the terms of reference assume the existence of the casino at which games of chance are played for money. The PCRC has not been tasked to inquire into whether there should be a casino as a means of mitigating (entirely) the risk of harm from casino gaming operations.
- 132** Crown also submitted that it is not within the PCRC's terms of reference to inquire into the 'policy question of whether certain types of casino gaming, such as EGMs, provide a net benefit to society and should continue to be part of the mix of games operated at the Perth casino and, if so, on what basis'.⁶⁸
- 133** There are traditional games of chance that are commonly played in casinos. It is not open for the PCRC to inquire into whether these games ought to be prohibited at Perth Casino as to do so would question whether there should be a licensed casino in Western Australia. The PCRC may inquire into whether games played at Perth Casino have been authorised according to law. Games played on poker machines are a permitted area of investigation by the PCRC because they are prohibited at Perth Casino
- 134** There are three specific matters that the PCRC has not inquired into relevant, or potentially relevant, to the strategic risks that have been identified.
- 135** The emerging use and availability of cryptocurrency around the world has raised questions about the potential for cryptocurrency to be exploited by criminals for financial crimes and to launder money.⁶⁹ However, cryptocurrency is not presently used for financial transactions at Perth Casino, nor has the licensee signalled an intention to use cryptocurrency in the future. Should that position change, it would appear to be open to the GWC to issue a direction pursuant to s 24(2) of the CC Act requiring the licensee to cease or refrain from dealing in cryptocurrency.
- 136** Given the complexity of the subject matter, the fact that cryptocurrency is not used or planned to be used for gaming operations at Perth Casino and the finite time and resources available to this inquiry, the PCRC has not inquired into this topic.
- 137** Interactive or online gambling has grown exponentially in recent years, at least in part because of the COVID-19 global pandemic.⁷⁰ The movement away from 'bricks and mortar' casinos to online gambling poses at the least a theoretical risk to the ongoing financial stability of Perth Casino and therefore government revenue streams from casino operations. The risk of gambling related harm is arguably heightened in interactive gambling due to ease of access through technology.⁷¹
- 138** In Australia, the *Interactive Gambling Act 2001* (Cth) (IG Act)⁷² regulates interactive gambling across all Australian States and Territories. The IG Act prohibits interactive gambling services being provided or advertised to Australians.⁷³ The IG Act makes it an offence for a person to provide traditional interactive gambling services to customers in Australia if the provision of

services is intentional and the service has an Australian-customer link.⁷⁴ The IG Act permits State licensing of interactive gambling.

- 139** Interactive gambling is not permitted in Western Australia.⁷⁵
- 140** This is also a subject matter of some complexity and, as with other competitors or competitive markets, concerns and affects, or has the potential to concern or affect, casino operations, particularly Perth Casino's operations, only in an indirect or ancillary way. Again, having regard to the finite time and resources available to this inquiry, the PCRC has not inquired into this topic.
- 141** In its Interim Report the PCRC also noted that competitive markets may be identified as a strategic risk to the casino licensee's financial capacity and financial stability. The PCRC has come to the view that this risk is not substantial in the current circumstances, especially as Perth Casino is the only casino licensee in Western Australia. The PCRC has not inquired further into this topic.

Terms of Reference 9 and 10

- 142** ToR 9 and ToR 10 require the PCRC to inquire into and report upon:
- the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged by the Gaming and Wagering Commission under State and Commonwealth laws; and
 - the capability and effectiveness of the Gaming and Wagering Commission in discharging its regulatory functions and responsibilities, and the Department in supporting the Gaming and Wagering Commission, including in relation to identifying and addressing any actual or perceived conflicts of interest by officers involved in casino regulation.

Appropriateness, capability and effectiveness

- 143** The language of 'appropriateness' has been used in ToR 9 in apparent contradistinction to the language of 'capability and effectiveness' in ToR 10.
- 144** The PCRC has had regard to the common usage of the terms 'appropriate',⁷⁶ 'capability',⁷⁷ and 'effectiveness' when considering ToR 9 and 10.⁷⁸
- 145** Appropriateness in ToR 9 is concerned with whether the manner in which the powers were exercised and responsibilities and obligations discharged by GWC under State and Commonwealth laws was suitable to achieve the objectives or purposes for which the powers were conferred and the responsibilities and obligations devolved.
- 146** The context (past and present) within which the GWC and Department have been operating is relevant to this part of the PCRC's inquiry.⁷⁹ It is also necessary to consider the competing demands of the regulatory framework to discharge duties and functions that may be in tension with each other or which require a judgment to be made as to how to distribute limited resources to meet those demands.⁸⁰ Duties and functions that fall outside the scope of the terms of reference remain relevant to an understanding of the appropriateness of the manner of regulating as well as to capability, in the context of competing duties.⁸¹
- 147** An appropriate manner of exercise of responsibilities, and capable and effective discharge of regulatory functions, also requires a consideration of the objects of the regulatory framework and the model which is best likely to meet those objects.
- 148** Relevant to ToR 9 the PCRC, has not identified any responsibilities which the GWC has under Commonwealth laws.

- 149 As to the scope of inquiry relating to 'capability' and 'effectiveness' of the GWC in ToR 10, the PCRC considers that ToR 10 directs inquiry into:
- a. the GWC's 'power and ability'⁸² to discharge its statutory responsibilities, including as to the GWC's expertise, training and resourcing; and
 - b. whether the GWC's discharge of its regulatory functions and responsibilities was, or is, successful (that is, effective) in achieving the objectives or purposes for which the powers were conferred.
- 150 Generally, the scope and content of the PCRC's inquiry the subject of ToR 9 and ToR 10, as to the GWC, has focused upon an examination of the composition, governance, systems, procedures and policies of GWC as a whole rather than the conduct of individual officers. However, examples of conduct by individuals are relevant to illustrate and inform, in particular, the issues of 'appropriateness', 'capability' and 'effectiveness' as they relate to the GWC.
- 151 ToR 10 also requires an inquiry into the capability and effectiveness (as distinct from appropriateness) of the Department 'in supporting the GWC' to capably and effectively to discharge its (the GWC's) regulatory functions and responsibilities.
- 152 The scope of that inquiry has encompassed, amongst other things, an examination of the expertise, experience and training of relevant Department officers, the adequacy of resources made available to the GWC as well as inquiring into other relevant qualitative aspects of that support in relation to such matters as corporate governance, regulatory approach, and (expressly) management of conflicts of interest. A consideration of these matters also requires consideration of other functions of the Department, culture, human resources, funding, and competing legislative priorities.⁸³

Conflicts of interest

- 153 The inquiry in ToR 10 into the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities expressly includes an inquiry in relation to identifying and addressing any actual or perceived conflicts of interest by officers involved in casino regulation.
- 154 Although not expressly mentioned, the identification and management of conflicts of interest are also relevant to the PCRC's inquiry pursuant to ToR 9 into the 'appropriateness' of GWC's conduct.
- 155 The phrase 'conflict of interest' is not defined in the terms of reference, the GWC Act or the CC Act.
- 156 The GWC and the Department each has a Code of Conduct prepared pursuant to Public Sector Commissioner's Instruction No. 8.⁸⁴ Both codes seek to define a conflict of interest in terms consistent with the definition contained in the Conflicts of Interests Guidelines for the Western Australian Public Sector (June 2011) (**Conflicts Guidelines**), being 'a situation arising from conflict between the performance of public duty and private or personal interests' whether the conflict 'may be actual, or be perceived to exist, or potentially exist at some time in the future'.⁸⁵
- 157 The PCRC has determined for the purposes of its inquiry that, consistently with the Conflicts Guidelines, a conflict of interest exists where there is a conflict between:
- a. a person's obligation to discharge the duties and responsibilities as a public sector employee objectively and in the public interest; and
 - b. that person's private or personal interests.

- 158** A conflict of interest may exist even though the conflicted person does not act with the intention of favouring their personal interest.
- 159** However, a conflict of interest does not exist because it is possible to imagine a situation arising which might, in some event not contemplated as a real sensible possibility by any reasonable person, result in a conflict. Rather a reasonable person looking at the relevant facts and circumstances of the particular case must think that there was 'a real sensible possibility of conflict.'⁸⁶
- 160** A determination that a person has a conflict of interest is a determination that they have a real and substantial possibility of a conflict. In respect to a conflict between interest and duty, McLure JA in *Settlement Agent's Supervisory Board v Property Settlement Services Pty Ltd* said:⁸⁷
- 74 ... A conflict of interest and duty will exist if the interest in question is in opposition to, or in tension with, the duty of loyalty. That will be the case if there is a real and sensible possibility that the interest might sway or influence an agent away from the proper exercise of its duties (which includes powers) to the principal.
- 75 The test as to the existence of a conflict or a real and substantial possibility of a conflict is objective. It is to be determined from the standpoint of the objective observer with knowledge of all relevant facts and circumstances: *Boardman v Phipps* (citation omitted).
- 161** The breadth of the above description includes an actual or perceived conflict of interest, which language is reflected in both the Conflict Guidelines and ToR 10.
- 162** Consistent with the above principles and the Conflicts Guidelines, for the purposes of its inquiry, the PCRC takes the approach that a conflict of interest refers to a situation where a reasonable person looking at the relevant facts and circumstances of the particular case would think that there was a real and sensible possibility of a conflict of interest between public duty and personal interest, whether or not there is evidence that the conflicted person acted at work in order to favour their personal interest over their public duty. It will use terms such as actual and perceived as descriptors of different types of situations only where it is necessary to do so.
- 163** Conflicts of interest can emerge in various ways and to different degrees. It is not necessarily wrong or unethical to have a conflict of interest. It is, however, important to properly manage a conflict of interest. This is because it is vital to maintain public confidence in the integrity of public sector organisations. The importance of managing conflicts of interest is highlighted where the public sector organisation is one which regulates a lucrative industry that has the potential to cause social harm, such as the gambling industry.

Term of Reference 11

- 164** ToR 11 is self-explanatory and requires the PCRC to recommend ways to enhance the regulatory framework referred to or relevant to ToR 8 to 11.
- 165** As the Commissioners said in their statement at the commencement of the evidentiary hearings on 10 May 2021:⁸⁸

This will be one of the most significant and long-lasting contributions that this Royal Commission can offer the public of Western Australia. We want to make sure that we have a complete understanding of myriad issues, including the way the regulator and the casino licensee see the current regime, what the evidence and material tendered ... suggests are deficiencies in its formulation or application and what experts in the field can tell us about best practice, nationally and internationally in casino regulation.

Governance

166 Corporate governance is of relevance to the terms of reference both with respect to governance of a private sector company or group of companies and with respect to governance of a statutory body such as the GWC. The PCRC has inquired into the governance of CRL, BNL, BRML and BL as well as the governance of the GWC as the regulator.

Influence of a major shareholder

167 In both the Bergin Report and the RCCOL Report attention is given to the influence of interests associated with James Packer (**Packer**) on the affairs of CRL and CML. Those interests hold approximately 38% of the shares in CRL.

168 After delivery of the Bergin Report, the Packer interests proffered undertakings to ILGA limiting their involvement in the affairs of the company. Similar undertakings have been given to the GWC. In addition, the RCCOL recommended that the Packer interests' shareholding in CRL be sold down to not more than 5% over a period. The evidence to the PCRC indicates that this recommendation is not challenged, although the timing of the sell down period may be adjusted.

169 Having regard to the undertakings given to the GWC, the PCRC has not considered it necessary to inquire into the extent to which the influence of the Packer interests may affect the suitability of BNL, BRML, BL and CRL. A more detailed explanation is provided in Chapter Four: Corporate Governance.

170 Separately, on 14 February 2022, CRL disclosed in an ASX/Media Announcement that it had entered into an implementation deed with a company associated with Blackstone Inc for the associated company to acquire all of the shares in CRL by way of a scheme of arrangement. The impact of this development on the PCRC's assessment of suitability of CRL and the Burswood entities for the purposes of ToR 1 to 5 is considered in Chapter Seventeen: Suitability.

Endnotes

- 1 Western Australia, Government Gazette, 'Commission Terms of Reference,' No 45 (12 March 2021) 1080 [PCRC.0026.0001.0001].
- 2 Bergin Report vol 1 [BGN.0001.0001.0001].
- 3 Crown Melbourne Limited is the current name of the Melbourne Casino licence holder. For a history of the names of the licensee of the Melbourne Casino see RCCOL Report (October 2021) [PUB.0030.0001.0001] Ch 2 and Appendix E.
- 4 RCCOL Report (October 2021) [PUB.0030.0001.0001].
- 5 Trust Deed, 20 February 1985 [CRW.700.007.0059_R]; Trust Deed, 18 April 1985 [CRW.351.019.0438_R].
- 6 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 3.
- 7 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 3.
- 8 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 3.
- 9 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 19(1a).
- 10 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 19(1a), s 19(2).
- 11 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 14(1).
- 12 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 14(4), 14(5).
- 13 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 21.
- 14 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 23.
- 15 *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321; [1990] HCA 33 [PUB.0033.0033.0018] [65] – [66] (Mason CJ).
- 16 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] pt IV.
- 17 See for example, *Western Australia v Manado* [2020] HCA 9 [PUB.0033.0033.0166] 19 – 20, [54] – [55], 29 – 30 [83] – [84] (Edelman J).
- 18 The broad public interest; not the narrower defined 'public interest' in the *Casino Control Act 1984* (WA) s 3.
- 19 RCCOL Report vol 3 [PUB.0030.0001.0001] 58 [18], citing *In the Matter of Wynn MA, LLC*, Massachusetts Gaming Commission, (30 April 2019).
- 20 *R v Knightsbridge Crown Court, ex parte International Sporting Club (London) Ltd* [1982] 1 QB 304 [PUB.0033.0033.0001] 317 – 319 (Griffiths J).
- 21 Bant, Submission to PCRC (14 May 2021) [PCRC.0023.0001.0001].
- 22 RCCOL Report vol 3 [PUB.0030.0001.0001] 58 [21] – [22].
- 23 See for example, *Stasos v Tax Agents Board* (1990) 21 ATR 974 [PUB.0033.0033.0104] [57] (Hill J).
- 24 This working definition is a combination of the definitions expressed in Deloitte, 'Crown Culture Review, Current State Culture – Final Report' [CRW.701.004.9441_R] 12; Elizabeth Arzadon, Observations in relation to Deloitte Culture Review of Crown, Expert Opinion (October 2021) [PCRC.0021.0001.0001_R] [5].
- 25 Letter of Engagement, Duff & Phelps Australia Pty Limited to Crown Sydney Gaming Pty Ltd (7 June 2021) [CRW.709.162.0833].
- 26 See, for example, Kroll, 'Crown Monitorship – Status Update' (22 September 2021) [CRW.709.162.4600_R].
- 27 Crown Perth and CRL, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 445 [14].
- 28 Crown Perth, current and historical business name extract [PUB.0015.0009.0001].
- 29 CRL, current and historical business name extract [PUB.0015.0008.0203] 2.
- 30 Oxford English Dictionary (6th ed, 2007) 'adequacy' and 'adequate' (definition 2); Macquarie Dictionary (3rd ed, 2001) 'adequacy' and 'adequate' (definition 1).
- 31 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 21A(2)(a)(i).
- 32 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 21A(2)(a)(ii).
- 33 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 8(3).
- 34 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 26(1)(a).
- 35 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 26(1)(b).
- 36 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 27.

- 37 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 29(1)(b)(iii).
- 38 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 4.2 – 4.3.
- 39 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 5.2.
- 40 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 11.3.
- 41 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 4.1, 5.1.
- 42 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 12.5.
- 43 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 6.1, 6.3.
- 44 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 15; *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 3.2(b); *Casino Manual (Operations) s 22 Unclaimed Winnings* (27 September 2016) [GWC.0001.0013.0048].
- 45 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 3D.
- 46 *Casino Manual (Operations) Section 20 Cheque Cashing and Funds Advance Facilities* (23 February 2021) [GWC.0001.0013.0046] 13 [3.6].
- 47 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 4.3.
- 48 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9, sch E art 3.18.
- 49 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9, sch E art 3.20.
- 50 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 17(1)(ec), sch 9 cl 5(a).
- 51 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 19 and 20.
- 52 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 7(8).
- 53 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 24(5).
- 54 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 33.
- 55 PCRC Interim Report [CRW.701.009.4553] [126].
- 56 Oxford English Dictionary (6th ed, 2007) ‘open’ (definitions 17, 19, 20); Macquarie Dictionary (3rd ed, 2001) ‘open’ (definitions 20, 21).
- 57 Oxford English Dictionary (6th ed, 2007) ‘competent’ (definitions 1, 2, 5); Macquarie Dictionary (3rd ed, 2001) ‘competent’ (definitions 1, 2).
- 58 Oxford English Dictionary (6th ed, 2007) ‘accountable’ (definitions 1, 3); Macquarie Dictionary (3rd ed, 2001) ‘accountable’ (definitions 1, 2).
- 59 Western Australia, Government Gazette, ‘Commission Terms of Reference’ No 45 (12 March 2021) 1080 [PCRC.0026.0001.0001] recital 4(b).
- 60 Western Australia, Government Gazette, ‘Commission Terms of Reference’ No 45 (12 March 2021) 1080 [PCRC.0026.0001.0001] recital 4(c).
- 61 Western Australia, Government Gazette, ‘Commission Terms of Reference’ No 45 (12 March 2021) 1080 [PCRC.0026.0001.0001] recital 4(a).
- 62 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001]; *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107]; *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0460]; *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) [PUB.0033.0015.0006]; *Gaming and Wagering Commission Regulations 1988* (WA) [PUB.0016.0022.0001].
- 63 *Burswood Casino Directions* [GWC.0001.0006.0020_R] consolidated as at 23 February 2021.
- 64 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 3(1); *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 3(1); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283]; Shorter Oxford English Dictionary (6th ed, 2007) ‘casinos’ means a building for gambling, often with other amenities.
- 65 Bergin Report vol 2 [BGN.0001.0001.0334] 628, 632.
- 66 Oxford English Dictionary (2nd ed, 1989) ‘strategic’.
- 67 Oxford English Dictionary (2nd ed, 1989) ‘risk’; Shorter Oxford English Dictionary (6th ed, 2007) ‘risk’; Collins English Dictionary (13th ed, 2018) ‘risk’; Lexico Dictionary (online at 11 June 2021) ‘risk’ [PUB.0033.0039.0005]; Merriam-Webster’s Collegiate Dictionary (11th ed, 2003) ‘risk’; Cambridge Advanced Learner’s Dictionary (4th ed, 2013) ‘risk’.
- 68 Crown Perth and CRL, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 22 – 23 [11].
- 69 Global Legal Insights, ‘Blockchain & Cryptocurrency Regulation’ report (2021) [PUB.0011.0002.0377] 10.

- 70 N Hing, A Russell, M Browne, M Rockloff, N Greer, V Rawat, M Stevens, N Dowling, S Merkouris, D King, H Breen, A Salonen, L Woo, 'The Second National Study of Interactive Gambling in Australia (2019 – 2020)' report (2021) [PUB.0007.0035.0001] 10.
- 71 The Hon Barry O'Farrell, Report to the Minister for Social Services and the Minister for Communication and the Arts, *Review of Illegal Offshore Wagering*, (2015) 90 [PUB.0007.0004.0320] 34.
- 72 In 2019, the Australian Senate undertook an inquiry into micro-transactions in gaming for chance-based items, which includes for example, the loot boxes in social interactive gambling. The inquiry produced one recommendation to the Australian Government that it undertake a comprehensive review of loot boxes in video games considering gambling-related harms and regulatory gaps. See, Environment and Communications References Committee, Parliament of Australia, *Gaming micro-transactions for chance-based items*, 2018 [PUB.0007.0006.0020] 74. On 6 March 2020, the Federal Government responded to the recommendation of the Senate Committee Report and communicated that research in relation to gambling-related harms caused by video games was only in its infancy, it would be a challenge to develop a regulatory approach to the issue and accordingly, a review of loot boxes was not warranted. See Environment and Communications References Committee, Parliament of Australia, *Gaming micro-transactions for chance-based items*, 2018 [PUB.0007.0006.0020] 49.
- 73 *Interactive Gambling Act 2001* (Cth) s 15, 61DA [PUB.0011.0001.0377].
- 74 *Interactive Gambling Act 2001* (Cth) s 15 [PUB.0011.0001.0377].
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- 88 The PCRC determined that best practice in casino regulation can be discerned from publicly available information about national and international models of casino regulation and academic writings on regulatory theory.

CHAPTER 2

History of Perth Casino

CHAPTER TWO

History of Perth Casino

Purpose of Chapter

- 1 This chapter contains a summary of the background to the establishment of the licensed casino in Western Australia and the corporate structures utilised by the Burswood entities and the Crown group and their predecessors from the establishment of Perth Casino to the present time.
- 2 Detail about the legislative history and the regulatory framework are contained in Chapter Three: Overview of Regulatory Framework for Casino Gaming.

Background to Casino Establishment, Corporate History and Historical Structure

A casino in Western Australia – early history

- 3 Wagering and gaming has long been a controversial subject in Western Australia. It has attracted strong feelings, both for and against, and differing attitudes to economic benefit and social impact.
- 4 Some view gambling as inherently immoral, harmful to character and the cause of social ruin, crime, poverty and broken homes. An alternative view is that gambling is a form of amusement enjoyed to varying degrees by many in the community and regarded as a legitimate pastime and recreational activity.
- 5 It is not the task of the PCRC to comment on the morality of gambling. Save to the extent that it might impact on issues of harm minimisation, which are relevant to the organisation and conduct of the gaming operations of a licensed casino, the inherent morality of gambling is not the subject of this inquiry.
- 6 There was a Royal Commission in 1948 into the betting industry. It observed that the then laws were inadequate and ineffective. Presumably as a result, legislation was enacted in 1954 requiring all bookmakers to be licensed. Problems continued and there was a further Royal Commission in 1959. The 1948 and 1959 inquiries dealt only with wagering, not with gaming of the type associated with casinos.
- 7 It is a notorious fact that in the decades leading up to the 1980s, illegal gaming was, if not rife, at least common in Western Australia. As one report described it:¹

... illegal forms of gaming flourished over the years. In more recent times the notable examples were the so called “ethnic club coffee lounge” mini-casinos of Northbridge and the country based two-up schools. These activities were subject to occasional raids as part of the police policy of containment, toleration and control.
- 8 The first substantive inquiry into gaming, as well as wagering, was the 1974 Royal Commission into Gambling (**1974 Royal Commission**).²

The 1974 Royal Commission

Genesis of the 1974 Royal Commission

- 9 In 1970 and 1972, Parliamentary debate in respect of the Tourist Act Amendment Bill³ and the Greyhound Racing Control Bill⁴ saw members discussing the establishment of a casino in general terms. A question was raised whether a casino should be established in Western Australia. It was described as a controversial issue and that the time had not yet come for Western Australia to introduce a casino.
- 10 On 31 October 1973, again in the context of the Greyhound Racing Control Bill, reference was made to a newspaper article entitled 'First step towards casinos?'. The article referred to the formation of a State cabinet sub-committee that would make preliminary inquiries into possible changes in the State's gambling laws and opined that 'the move is seen as a first step in deciding whether casinos will be allowed.' One of the tasks of the sub-committee was to decide whether a commission should be established to inquire into the state's gambling laws.
- 11 On 8 November 1973, in the context of discussions about the Totalisator Agency Board Betting Act Amendment Bill,⁵ the increase in gambling facilities in Australia was noted by members, with the casino in Tasmania being mentioned.
- 12 On 11 December 1973, a commission was issued establishing the 1974 Royal Commission with instructions 'to inquire into and ascertain what forms of lawful gambling activities are presently being carried on within the State of Western Australia and the incidence of such activities and to make recommendations concerning all aspects of such gambling'.
- 13 The terms of reference directed the Commission to report on:
 - a. the effect on the social and economic wellbeing of the people of the State generally in the forms of gambling now licensed or permitted under the laws of the State;
 - b. the probable result on (a) above of permitting further licensed gambling:
 - i. by means of gambling in a casino or casinos;
 - ii. by any other form of gambling not now licensed; and
 - c. any other probable disadvantages or advantages of permitting further licensed gambling as referred to in (b) above.

The report of the 1974 Royal Commission

- 14 The Commission commenced hearings in March 1974 and delivered its report to Government in September 1974.⁶
- 15 The Commissioners found, relevantly, that 'it would be advantageous to the best interests of the people of the State to permit further licensed gambling',⁷ including by way of a licensed casino. In addition, the Commissioners made the following observations:
 - a. the provision of gambling services by the State should be through a public statutory authority, which would be in the best interests of the people;⁸
 - b. compulsive gambling was an inherent problem that would need to be addressed and some of the proceeds of gambling should be used to support research into problems of compulsive gambling and to disseminate information about compulsive gambling to welfare organisations;⁹
 - c. the establishment of a casino would result in a substantial increase in tourism, which would directly benefit all those associated with the tourist trade, particularly hotels and shops, and indirect benefits would flow to the community;¹⁰

- d. the establishment of a casino outside of the metropolitan area would be of most benefit to the State because many of the objections to a casino would be overcome if its facilities were not available as a regular gambling outlet to a large permanent population and that Exmouth would be an appropriate location;¹¹
 - e. organised crime and criminality are more likely to be associated with gambling when it is prohibited rather than when it is permitted;¹² and
 - f. if casino gambling were to be permitted then a properly established and effectively controlled casino would not bring any significant increase in social harms (such as crime, drugs or prostitution) in its wake.¹³
- 16** The Commissioners recommended that the casino project be the subject of an agreement between the State and the developer along the lines of the arrangements for the Wrest Point Casino in Tasmania. Further:
- a. the licence be granted for an initial period of 21 years;
 - b. it be beneficially owned by persons domiciled in Australia;
 - c. the developer, or if a corporation its directors and shareholders, be of good repute and able to demonstrate financial capability to complete the project and carry out necessary tourist promotion; and
 - d. the State should have the power to cancel or suspend the licence for breach.¹⁴
- 17** The Commissioners recommended against the legalisation of poker machines.¹⁵
- 18** The observation that the casino be situated in Exmouth arose from a finding that it ought to be part of a tourist accommodation and holiday complex away from large population centres. The Commissioners also noted that there was little support from industry bodies, such as retail traders and Chambers of Commerce, for the siting of a casino in Perth and that opposition to the idea was so widely and strongly held that it would not have been acceptable to a majority of the public.¹⁶
- 19** The Commissioners commented that they would have liked to recommend that the casino be owned and operated by a public statutory authority rather than by private enterprise but this was impractical due to the large capital outlay for the construction of the project and tourist promotion.¹⁷
- 20** While some of the recommendations made by the 1974 Royal Commission in relation to gambling may have been acted on, those concerning the establishment of a casino were not.

Events in the early 1980s

A Backbench committee

- 21** Late in 1981, the Government appointed three members of its backbench to gather information from the public in relation to the recommendations contained in the 1974 Royal Commission Report. A report of the Backbench Committee (which was a compilation of information gathered and not an advisory opinion) was presented in 1983. The Committee reported that a majority of correspondents were of the view that:
- a. gambling should be controlled by a statutory authority;
 - b. a Betting Control Board should be established to administer new forms of gambling; and
 - c. a casino should be established in Perth.

February to November 1983

- 22 In February 1983, a new government came to power and began to explore the question of a casino in Western Australia. On 28 March 1983, the Cabinet appointed two Committees,¹⁸ the Cabinet Casino Sub-committee (**Cabinet Committee**) and the Government Casino Advisory Committee (**Advisory Committee**).¹⁹
- 23 The task of the Advisory Committee was to establish guidelines and formulate legislative procedures for the establishment and control of casino operations in Western Australia.
- 24 The Advisory Committee presented a report in November 1983²⁰ but as two of the four members recommended against the establishment of a casino it was unable to fulfil the terms of reference. The report separately expressed the views of each of the four members.
- 25 The chair of the Advisory Committee supported the establishment of a casino and recommended that an 'open type' casino incorporated into a large tourist or convention type hotel complex be established in the Perth metropolitan area.²¹ The Director of the Department of Tourism was similarly supportive, while the Commissioner of Police and Crown Solicitor representative were opposed to the introduction of a casino in Western Australia.²²
- 26 While the members of the Advisory Committee were divided as to the merit of establishing a casino in Western Australia, they unanimously advocated, in the event a casino were to be established, that it should be under 'strict control by Government'²³ and regulated by legislation and by a statutory authority.²⁴ The Advisory Committee agreed that if a casino were established, 'poker machines and video games should be prohibited' but Keno should be permitted.²⁵
- 27 The Advisory Committee was alive to criminal and undesirable activities associated with casinos, such as organised crime, money laundering, drug abuse, problem gambling and prostitution. However, the chair's view was that the risk of such activities could be mitigated by strict rules and regulations.²⁶
- 28 During its deliberations, the Advisory Committee received a number of proposals and submissions from interested parties, including those who wished to be considered as project developers. They were listed in an appendix to the report.

1984 and the Casino decision

- 29 The report of the Advisory Committee was reviewed by a Ministerial officer who looked at, among other things, the form of the casino legislation and a comparison of the various expressions of interest from developers. This resulted in the preparation of a draft cabinet minute which was adopted by the Cabinet Committee and then by Cabinet on 2 April 1984. The draft cabinet minute indicated that interests associated with Dallas Dempster (a Western Australian business person) and Genting Berhad (a Malaysian domiciled company which owned and operated a casino resort in Malaysia) were the preferred developers. Their expression of interest had nominated Burswood Island as the appropriate site for the casino.
- 30 On 11 April 1984, those who had lodged expressions of interest with the Advisory Committee for the development of a casino were invited to make submissions on the establishment of the facility on Burswood Island, and to do so by 31 May 1984. Twelve of the submitters responded and the Cabinet Committee narrowed it down to two: the Dempster and Genting interests and another.
- 31 On 9 July 1984, the relevant Minister announced the two finalists and the establishment of the Casino Control Committee (**Control Committee**) pursuant to the *Casino Control Act 1984* (WA) (**CC Act**), which was, by then, in force.

- 32 The CC Act established a Control Committee to regulate the operations of a casino, with power to appoint (and delegate powers and duties to) a Chief Casino Officer (**CCO**) and casino inspectors. The Control Committee's first task was to examine all aspects of the submissions of the two finalists and to make a recommendation to the Government. In November 1984, the Control Committee recommended that the Government enter into an agreement with the Dempster and Genting interests for development of a casino and related complex on Burswood Island.
- 33 In November 1984, Cabinet adopted the recommendation subject to further considerations about the nature of the landholdings and authorised the Minister to enter into an agreement on behalf of the Government for construction and establishment of casino premises.²⁷
- 34 The process leading to the decision selecting the preferred developer and the site was not without controversy. It was examined by the Royal Commission into Commercial Activities of Government and Other Matters 1990 – 1992. That Commission was established to investigate and report on whether there had been corruption, illegal conduct or improper conduct, by any person or corporation in the affairs, investment decisions and business dealings of the Government of Western Australia or its agencies, instrumentalities and corporations in relation to a range of matters. One of the matters considered by the Royal Commission was the Burswood Island Casino.
- 35 The Royal Commission expressed concerns about aspects of the process but found that no impropriety had been established by the evidence about the grant of the casino gaming licence.²⁸

Legislative developments and a further Committee report

- 36 As indicated, by early April 1984 the Government had decided to establish a casino. The foundation agreements and the State Agreement for the development of the casino complex were executed in February and March 1985. However, there were other relevant events in 1984 and following.
- 37 While the Advisory Committee had not completed its full brief, its November 1983 report had recommended that the Government legislate to establish a Board or Commission with the authority to license and control the establishment and operations of a casino or casinos in Western Australia. The recommendation contained a list of basic control measures that should be adopted.²⁹ It can be assumed that these recommendations contributed to the creation of the CC Act, which passed through Parliament early in 1984 and came into force on 1 July 1984.
- 38 However, the CC Act was specific to casinos and left unresolved broader issues about the regulation and control of gaming, some aspects of which might affect casino operations.
- 39 On 20 August 1984, the Government established the Government Gaming Inquiry Committee (**Gaming Inquiry Committee**) with a brief to, among other things, 'review the gaming legislation in Western Australia with a view to considering rationalisation of the gaming laws of this State into a composite Gaming Act'. The Committee delivered a report to Government on 18 December 1984.³⁰ It is evident from the report that the Committee was aware that a decision had been taken, at least in principle, to establish a casino on the Burswood site.³¹
- 40 In summary, the report recommended a Gaming Act be enacted and an independent, autonomous regulator be established with the capacity to handle all newly liberalised areas of gaming. The Gaming Inquiry Committee recognised that special skills and knowledge were required to control and run gaming properly. It recommended that the regulator be empowered to delegate some of its functions where it considered it necessary.³²

- 41 The Gaming Inquiry Committee also recommended that poker machines remain unlawful.³³ The regulatory history of poker machines in Western Australia is discussed in detail in other parts of this report.
- 42 While many of the Gaming Inquiry Committee's recommendations were ultimately implemented in the *Gaming Commission Act 1987 (WA)* (**GC Act**), some recommendations were not implemented in full. An example is that, while the GC Act established the Gaming Commission of Western Australia (**GC**) (the predecessor to the GWC) as a regulator, it was not an independent, autonomous body with specialised skills as had been recommended.³⁴ The Committee also proposed that casino gaming be excluded from the proposed Gaming Act and Gaming Authority.³⁵ However, when the GC Act was enacted the GC took over the functions previously carried out by the Control Committee.
- 43 On 25 March 1985, the Casino (Burswood Island) Agreement Act 1985 (**CBIA Act**) came into effect. This statute ratified and authorised the implementation of the State Agreement relating to the construction and establishment of the Burswood Island casino by the Dempster and Genting consortium.
- 44 Later and other changes to the legislative regime are discussed separately in Chapter Three: Overview of Regulatory Framework for Casino Gaming.

Implementation of the casino licence

The Burswood applicants

- 45 As previously indicated, in November 1984, Cabinet had authorised the Minister to enter into an agreement on behalf of the Government with the successful consortium for construction and establishment of the casino and resort complex
- 46 The successful consortium comprised Dempster Nominees Pty Ltd (**DNPL**) (a company associated with Dallas Dempster) and Tileska Pty Ltd (**Tileska**). Tileska was a Sydney based company owned by the Lim family, who controlled Genting Berhad.
- 47 To give effect to the development, on 4 December 1984 the successful consortium incorporated a company in Western Australia, Burswood Management Limited (**BML**). The major shareholders of BML were interests associated with DNPL and Tileska. BML was to be the manager of a publicly listed unit trust, known as the Burswood Property Trust (**BPT or the Trust**). The BPT was to own the assets of the Burswood Casino Resort complex. The proposal that the assets be beneficially owned by a trust, rather than a company, appears to have been made by the consortium.³⁶
- 48 It was envisaged the initial allocation of units in the BPT would be to the consortium and a later issue of units to public investors. A priority of allocations of units was available to Western Australian applicants. The units were to be traded on the Australian Stock Exchange.

The foundation entities

- 49 The development of the casino resort complex and the grant of a casino license to the consortium was effected through a combination of legislation and written agreements. The most prominent parties to the initial arrangements were:
- a. The State Government, acting through the relevant Minister;
 - b. West Australian Trustees Ltd (**WA Trustees or Trustee**), a professional trustee and executor agency company, as trustee of the BPT, later to become known as Perpetual Trustees WA Limited;

- c. BML, as manager of the BPT; and
- d. Genting (Western Australia) Pty Ltd (**GWAPL**), a wholly owned subsidiary of Genting Berhad, through which the experience of the Genting group could be harnessed in the development and operational phases of the resort complex, including the casino.

The foundation documents

50 On 20 February 1985, several significant legal documents were executed to facilitate the development of the casino and resort complex.

The State Agreement

51 The State Agreement was entered into by the Minister on behalf of the State with WA Trustees and BML as, respectively, trustee and manager of the BPT. The State Agreement was entered into pursuant to s 19(1) of the CC Act which empowers the Minister acting for and on behalf of the State to enter into an agreement with a public company with respect to the construction and establishment of a casino complex.

52 The State Agreement dealt with, among other matters:

- a. the corporate structure of the BPT and BML;
- b. the issue of units in the Trust to the public with stipulations that no person was able to hold more than 5% of the total number of units on issue at any time except with the approval of the Minister and that foreign ownership was limited to 40% of the units on issue, again except with the approval of the Minister;
- c. the creation of the other foundation agreements and the development of the entire resort complex in stages, with the development programme to be supervised by a board comprising nominees of the Minister, the local government authority and BML;
- d. payment by the Trustee to the State of \$30,000,000 for the site and certain assurances;
- e. the grant of a casino gaming licence with certain conditions attaching to the licence;
- f. payment by the Trustee to the State of a casino tax calculated at 15% of casino gross revenue; and
- g. payment by the Trustee to the regulator of an annual licence fee commencing at \$400,000 and subject to annual CPI reviews.

53 On 25 March 1985, the CBIA Act was enacted to ratify and authorise the implementation of the State Agreement. The enactment of the legislation, and the entry into of the State Agreement, enabled the Minister to grant the casino gaming licence to WA Trustees as trustee for the BPT.

54 Since 1985, the State Agreement has been amended on 15 occasions, the most recent being on 7 May 2019. The changes have been ratified by way of Supplementary Agreements to the CBIA Act. Relevant changes are dealt with later in this chapter.

Trust Deed for the Burswood Property Trust

55 A trust deed establishing the BPT was entered into between WA Trustees, as trustee, and BML as manager.³⁷ The Trust Deed was restated on 18 April 1985. The Trust Deed included provisions relating to (among other things):

- a. the powers and obligations of the manager and trustee in relation to the operation of the unit trust;

- b. trust assets and authorised investments;
- c. the creation, issue, sale and disposition of units in the Trust to be offered to the public and listed on the Australian Stock Exchange;
- d. accounting and audit requirements; and
- e. the relationship between the trustee and manager.

56 The Trust Deed has been amended from time to time by supplemental deeds. The most recent change is the Thirteenth Supplemental Deed dated 30 April 2007.³⁸ Some relevant amendments are dealt with later in this chapter.

The Foundation Agreement

57 The Foundation Agreement was executed by WA Trustees, as trustee of BPT, BML as manager of the BPT, GWAPL, DNPL and Tileska.³⁹

58 The Foundation Agreement set out the terms and conditions of the issue of units and options in the BPT to the initial developers. Provision was made for the public issue of units and options by BML as manager.

The Operation Management Agreement

59 The Operation Management Agreement was entered into between WA Trustees, BML and GWAPL.⁴⁰ Under this agreement GWAPL was engaged to provide services as operator and manager of the casino and resort.

60 The Operations Management Agreement was to terminate 15 years after the opening of the Resort but could be renewed.

61 By the Operations Management Agreement, BML engaged GWAPL to provide certain preopening services as an adviser, including technical advisory and consulting services and advices concerning design, planning, construction, organisation and operation of the resort complex, the preparation of budgets and the recruitment and training of initial staff.⁴¹

62 The Agreement also conferred on GWAPL certain rights for the operation of the resort complex, once completed. For example, during operations GWAPL was granted the sole and exclusive right to supervise and direct the management and operation of the resort complex comparable to an international first class hotel and casino complex, including determining operating policy, and standards of operation.⁴² It was also obliged to establish internal controls and administrative and accounting procedures and ensure that the casino was operated in accordance with the requirements and standards of all legal requirements.⁴³

63 The performance by GWAPL of its obligations under the Operation Management Agreement was to be supported by a performance guarantee from Genting Berhad, its parent company.

The Project Management Agreement

64 A Project Management Agreement between WA Trustees and BML was entered into for the engagement of BML as Project Manager to coordinate and provide project management for the development and construction of the resort complex.⁴⁴

65 BML was the trustee of a separate trust called the BML Trust, the beneficiaries of which were DNPL and Tileska. BML entered into the Project Management Agreement in its capacity as trustee of the BML Trust.

66 The Project Management Agreement covered the development and construction of the resort complex, being hotel, convention centre/theatre restaurant, exhibition centre,

recreation facilities and the casino. It also extended to 'Stage 2', which is referred to in the State Agreement and includes the construction of a second hotel and other development facilities and amenities referred to in development proposals.

Grant of the licence and commencement

- 67 On 24 December 1985, the Casino Gaming Licence for Burswood Casino was granted to WA Trustees as trustee of BPT.⁴⁵ The licence was issued subject to the conditions set out in cl 21(d) and (e) of the State Agreement. The conditions related to a prohibition on extending credit to patrons without the prior written consent of the regulator, and the obligation to comply with directions given by the regulator under s 24 of the CC Act.
- 68 The official opening of the then Burswood Casino took place on 30 December 1985. This was followed by the opening of the first hotel in October 1987 and the Convention Centre in November of that year.

Developments before 1990

- 69 The Trust Deed was amended from time to time, but the changes are not relevant for present purposes.
- 70 In July 1987, the hotel was sold to a Japanese investment company called Brisney, with the transfer being completed on 29 December 1987. On 17 December 1987, the Operation Management Agreement was amended to remove the hotel from its operation. Following the sale of the hotel, the business of the BPT was confined to the operation of the casino and restaurants, the Burswood Superdome, the Convention Centre and the golf course.

Developments from 1990

- 71 On 31 January 1990, WA Trustees became known as Perpetual Trustees WA Ltd (**Perpetual or the Trustee**) following a merger.
- 72 In 1990, a planning process began for the construction of a 'six star' luxury hotel to include twin towers of serviced apartments. It also saw the extension of the gaming floor and approval for an additional 690 video gaming machines taking the total number of machines to 1120.
- 73 In August 1990, the Genting group sold its interests in the Operation Management Agreement to Victoria Co Limited (**Victoria Co**), a Japanese resorts operator. At the same time, BML retired as manager of the Trust and was replaced by Burswood Resort (Management) Limited (**BRML**). Victoria Co took a shareholding interest in BRML.
- 74 The State Agreement (cl 15) specifies that the Manager is to have an issued share capital of 2 million shares in two classes, A and B. BRML still has that share capital and the provision in the State Agreement has not been amended.⁴⁶
- 75 From August 1990, both the Genting group and BML were no longer involved in the corporate and trust structure of the Burswood Casino and resort. Victoria Co became the operator under the Operations Management Agreement. It also acquired the Burswood Hotel, an interest in the BPT and an interest in the BML Trust.
- 76 In February 1993, in the fourth amending deed to the Operation Management Agreement, changes were made to the rights and obligations of the operator but they deal mainly with the liquor sales aspects of the business. The right to provide various services to BRML, including the right to supervise and direct the management and operation of the resort and casino, was preserved.

- 77 In November 1993, Crown Melbourne Limited (**CML**), a listed public company, was granted the licence for the Melbourne Casino. In 1998, Publishing and Broadcasting Limited (**PBL**), a listed public company domiciled in Melbourne associated with James Packer (**Packer**), proposed a merger with CML. The proposal was for the shareholders in CML to transfer their shares to PBL in return for shares in PBL. The merger was agreed to and by May 1999, PBL had acquired all the shares in CML.⁴⁷
- 78 In 1994, Victoria Co reduced its holding in the BPT to 5%.
- 79 During this period, amendments were made to the Trust Deed and to the State Agreement. In the Third Supplementary Agreement to the State Agreement (13 November 1991), the change of manager from BML to BRML was recognised. Otherwise, the amendments are not relevant for present purposes.

Changes to the structure

Corporatisation

- 80 During 1994 and 1995, the board of BRML had investigated a proposal to 'corporatise' the trust structure. In summary, the object of corporatisation was to replace the listed trust structure with a corporate investment vehicle. The proposal contemplated the creation of a company the shares in which would be listed on the Australian Stock Exchange with the unitholders to exchange their units for shares in the listed company. In 1995, BRML established a Corporatisation Committee to assist the directors in developing proposals for consideration of unitholders and the Government, whose support was necessary due to the legislative and other changes that would be required.
- 81 Representations were made to Government and changes were sanctioned by the Seventh Supplementary Agreement to the State Agreement (effective 4 September 1997), which was ratified under the CBIA Act. In summary, the changes were:
- a. the introduction of the concept of an 'Approved Company' which, with ministerial approval, could acquire some or all of the units in the BPT;
 - b. Burswood Limited (**BL**) was created and given status as an 'Approved Company' and became, the sole unit holder of units in the BPT;
 - c. the unit holders exchanged their units for shares in BL and those shares were quoted on, and could be traded on, the Australian Stock Exchange; and
 - d. Burswood Nominees Ltd (**BNL**), a subsidiary of BL, became the Trustee of the BPT and BRML continued to occupy the role of manager of the BPT.
- 82 As part of the corporatisation of the trust structure, the Operations Management Agreement was cancelled and Victoria Co ceased to hold shares in the BML Trust and BRML. No entity occupied the role of operator.
- 83 It was a requirement that the constitution of an Approved Company must have articles containing provisions set out in Schedule B to the State Agreement. One of those provisions was that the 'head office' of the Approved Company must be in Western Australia. Another was that, without ministerial approval, an individual could not have a relevant interest in more than 10% of the voting shares of an Approved Company.

Changes in 2003

- 84 Further changes were made in 2003 when the Eighth Supplementary Agreement to the State Agreement was ratified under the CBIA Act (18 June 2003). It appears that these changes

were made at a time when it was known that PBL, in which interests associated with Packer, controlled about 38% of the shares, was contemplating acquiring a stake in BL.

- 85 The changes included the introduction of a 'probity approval process', by which GWC (rather than the Minister) could effectively sanction the acquisition by an individual of more than 10% of the voting shares in an Approved Company.
- 86 Although Schedule B was retained, the Eighth Supplementary Agreement introduced Schedule E, which contained a new article (art 3) that was required for BL to maintain its status as an Approved Company. The BL constitution was amended to include the new art 3 and it includes the same 'head office' requirement.
- 87 At the time of the 1997 and 2003 changes, two themes emerged from the parliamentary debates. First, the desirability of opening up the Trust structure to market forces. Secondly, retaining the Burswood casino and resort complex as a Western Australian entity and restricting foreign ownership and control. In discussions about the 2003 changes, the point was made that most of the then principal shareholders were companies with offices outside Western Australia, implying that 'the Western Australian status' was not tied to the domicile of the owners of the shares but rather to other considerations.

PBL takeover and restructure

- 88 In April 2004, PBL announced a takeover offer for all of the voting shares in BL. The GWC granted probity approval and by September 2004, PBL had acquired all of the shares in BL. As a result of the takeover, PBL acquired ultimate ownership control of the casino licence held by BNL.
- 89 BL continued to hold all of the units in the BPT but it was removed from the Australian Stock Exchange lists.
- 90 In 2007, the businesses and holdings of PBL were restructured and the gaming assets (including the Perth Casino and Crown Perth Resort) were acquired by Crown Ltd, later to become Crown Resorts Limited (**CRL**), a public listed company domiciled in Melbourne. BL became a wholly owned subsidiary of CRL, the structure that exists at present. Interests associated with Packer held approximately 38% of the shares in CRL.
- 91 On 3 December 2007, CRL was admitted to the official lists of the Australian Securities Exchange.
- 92 As well as Perth Casino and Melbourne Casino, CRL had gaming interests in London and Asia, particularly Macau.

Inquiries into the casino licences

The Bergin Inquiry

- 93 During 2016, issues arose in the operations of CRL in China and some Crown staff were arrested and detained. In August 2017, CRL announced that the last of the employees in China had been released from custody.
- 94 CRL was developing a major hotel, apartment and office complex in Barangaroo, Sydney and had applied for a restricted gaming licence for a casino in the complex. The Independent Liquor and Gaming Authority (**ILGA**), the casino regulator in New South Wales, was considering the application.
- 95 In July 2019, there were media reports making serious allegations about some of CRL's business dealings, including the China Arrests, facilitation of money laundering and

associations with organised crime groups, particularly in Asia, through junket operations at its casinos. Crown denied the allegations. However, ILGA initiated a formal inquiry and appointed the Hon Patricia Bergin SC to conduct the inquiry (the **Bergin Inquiry**).

- 96 During the course of the Bergin Inquiry there were changes in governance and management personnel, with a number of CRL's directors and the Chief Executive Officer stepping down.
- 97 After the delivery of the Bergin Report there were further significant changes within the governance and management personnel of CRL.

Inquiries in Victoria

- 98 Largely as a result of revelations during the Bergin Inquiry and contained in the Bergin Report, the Victorian Government established two inquiries into the affairs of Melbourne Casino. The first was a Royal Commission into the Casino Operator and Licence, to be conducted by the Hon Ray Finkelstein QC under Letters Patent dated 22 February 2021 (**RCCOL**). The second was a regulatory review of Victoria's casino regulatory framework to run concurrently with the RCCOL.
- 99 The core terms of reference of the RCCOL were to inquire into and report on whether CML was a suitable company to hold the casino licence and whether CRL was a suitable person to be an associate of CML.
- 100 The RCCOL delivered its final report on 15 October 2021.⁴⁸

Perth Casino and Crown Perth Resort

The facilities and scale

- 101 In the CRL Annual Report for the financial year ending 30 June 2021, the Crown Perth Resort facilities are described in these terms:⁴⁹

[Crown Perth Resort] is one of Western Australia's largest tourist destinations, with an exceptional range of entertainment and tourism experiences.

[The Perth Casino] has approval to operate 2,500 gaming machines and 350 gaming tables.

The resort features three hotels:

- Crown Towers Perth (500 guest rooms);
- Crown Metropol Perth (397 guest rooms); and
- Crown Promenade Perth (291 guest rooms).

Large-scale entertainment facilities include the 1,500-seat Crown Ballroom and 2,300-seat Crown Theatre Perth, along with world-class convention facilities.

A premium selection of restaurants and bars are located across the resort in addition to casual dining options.

- 102 On average, there are 130,000 visits per week to Perth Casino. This may not equate to the same number of individuals as people may come and go on multiple occasions while at the venue. There are 8 to 10 million visits to the Crown Perth Resort per year although, again, there may be multiple visits by the same person on a given day.⁵⁰
- 103 Due to its size and facilities, the Crown Theatre Perth attracts shows that might not otherwise come to Western Australia.

- 104** Crown Perth Resort employs approximately 5,500 people and many have been with the organisation for a long period of time. It has 850 to 900 local suppliers of goods and services for whom Crown Perth Resort is a major customer.⁵¹
- 105** The CRL group has casinos, resorts and restaurants in Perth, Melbourne, Sydney and the United Kingdom. It also has digital gaming and wagering businesses. It employs more than 20,500 people.⁵²

Financial snapshot

- 106** In the financial year ending 30 June 2021 (affected by COVID-19), the CRL group reported gross revenues of \$1,422 million and a net loss after tax of \$261 million. As at 30 June 2021, the CRL group reported total assets of \$7,100 million (including property, plant and equipment of \$4,317 million) and net assets of \$4,466 million.⁵³

Tax and Licence Fee

- 107** The Perth Casino contributes to the general revenues of the State through a Casino Tax as a percentage of gross casino gaming revenues calculated in the manner set out in the State Agreement. In the five years ending 30 June 2019, the total Casino Tax paid was \$291.8 million, an average of \$58.4 million per year. In 2020, a year in which there was no trading for some time due to the COVID-19 pandemic, the figure declined to \$39.7 million. The comparable figure in the year ending 30 June 2021 was \$54.6 million.⁵⁴
- 108** The Perth Casino also pays an annual licence fee to the GWC to cover, or as a contribution to, the cost of regulating the casino. The licence fee is calculated in the manner set out in the State Agreement. It is reassessed annually in December each year for the ensuing 12 month period.
- 109** In the six years to December 2021, Perth Casino paid to the GWC licence fees of approximately \$17.3 million, an average of around \$2.9 million per year.⁵⁵

Social outreach

- 110** The CRL Annual Report for the financial year ending 30 June 2021 gives an indication of the social outreach commitment of Crown Perth Resort and the Crown group. Some of these programs are dealt with below.
- 111** Since 2009, Crown has had an Indigenous Employment Program that has provided over 1,000 jobs for First Nations people and which supports education opportunities for those employees.⁵⁶ It is also engaged in a number of Reconciliation Australia initiatives.
- 112** The Crown Resorts Foundation Community Champions program recognises work employees undertake in the community, providing opportunities to engage with Foundation partners.
- 113** Crown Perth Resort makes a significant contribution to local charities and the Crown Resorts Foundation has a commitment of allocating \$100 million to not-for-profit organisations, focussing on Indigenous education, arts, culture, community welfare and medical research programs.
- 114** In 2021, Crown Perth Resort provided support and relief, in cash and in kind, to those who suffered in the bushfires in Perth's north-east and to the communities of Kalbarri and Northampton from Cyclone Seroja.

Endnotes

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- 2 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320].
- 3 Western Australia, Parliamentary Debates, Legislative Assembly, 15 October 1970, 1291 (Mr Brand, Member for Greenough) [PUB.0033.0003.0001] 1313 – 1314; Western Australia, Parliamentary Debates, Legislative Council, 31 May 1972, 1681 (Mr Griffith, Member for North Metropolitan) [PUB.0033.0014.0001] 1717 – 1718.
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- 8 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 125.
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- 11 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 97.
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- 19 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 3.
- 20 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 1.
- 21 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 4 [4], [7].
- 22 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 3 [1].
- 23 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 5 [10(b)].
- 24 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 6 – 9 [13].
- 25 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 6 [12].
- 26 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 41 [80].
- 27 This and the preceding four paragraphs are adapted from Western Australia, Royal Commission into Commercial Activities of Government and Other Matters, report vol 2 (1991) [PUB.0019.0001.0048] 73 – 74 [8.3.1] – [8.3.4], 77 – 78 [8.3.9] – [8.3.12].
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CHAPTER 3

Overview of Regulatory Framework for Casino Gaming

CHAPTER THREE

Overview of Regulatory Framework for Casino Gaming

Purpose of Chapter

- 1 The purpose of this chapter is to provide an overview of the regulatory framework of casino gaming in Western Australia. It includes an account of the relevant legislative history. It is not merely descriptive and seeks to distil from the legislation some elements of legislative objects and construction that are relevant to issues canvassed in the inquiry.

Reports published prior to the introduction of the Casino Control Act

- 2 A significant aspect of the context in which the *Casino Control Act 1984 (WA)* (**CC Act**) was enacted are reports which were published prior to its enactment. The relevant recommendations and observations of the 1974 Report of the Royal Commission into Gambling and the 1983 Report of the Government Casino Advisory Committee are addressed in Chapter Two: History of Perth Casino.
- 3 In particular, the Advisory Committee had identified risks associated with the establishment of a casino in Western Australia, including criminal and undesirable activities associated with casinos, such as organised crime, money laundering, drug abuse, problem gambling and prostitution. Importantly, while the Advisory Committee was divided as to whether a casino ought to be established in Western Australia, they were unanimous in their view that any such casino should be under 'strict control by Government¹ and regulated by legislation and by a statutory authority.²
- 4 The Advisory Committee's identification of these risks and the recommendations it made regarding regulation in 1983 are part of the setting for the enactment of the CC Act in 1984.

The Statutory Regime

- 5 In the four years following the publication of the Advisory Committee's report, the three Acts which currently govern casino gaming in Western Australia were enacted: the CC Act, the *Casino (Burswood Island Agreement) Act 1985 (WA)* (**CBIA Act**) and the *Gaming Commission Act 1987 (WA)* (**GC Act**) (which was later renamed the *Gaming and Wagering Commission Act 1987 (WA)* (**GWC Act**).³
- 6 These Acts do not contain an express statement of the objectives and philosophy of casino regulation in Western Australia. However, the nature of this legislation when enacted, and the manner in which it was subsequently amended, provides some insight into the objectives and philosophy that underpin the legislative regime for casino regulation in Western Australia.

Casino Control Act 1984

- 7 The CC Act commenced on 1 July 1984. It was modelled on Tasmanian, Northern Territory and Queensland casino legislation. The substantive aspects of the CC Act are found in

Parts II to V of the Act, which are each considered in more detail below.⁴

- 8 The CC Act provided the legislative foundation for the State to enter into a 'casino complex agreement', which is a pre-condition for the development of a casino and the grant of a casino licence. It paved the way for enactment of the CBIA Act to ratify that State Agreement under which the then Burswood casino was established.

Part II: Administration

- 9 Part II established the Casino Control Committee (**Control Committee**) as a body corporate,⁵ and provided for its membership and remuneration. Part II also provided the Control Committee with access to the services of 'any officer or employee employed in the Public Service' and 'any facilities of a Department of the Public Service'.⁶
- 10 This part also dealt with the finances available to the Control Committee. The funds made available consisted of 'moneys from time to time appropriated by Parliament', and 'all other moneys lawfully received by, made available to or payable to the Committee'.⁷

Part III: Casino agreement

- 11 Part III provided for the relevant Minister to enter into a 'casino agreement' with a public company to construct and establish casino premises in the State,⁸ and for the grant of a casino gaming licence.⁹
- 12 While the CC Act empowered the Minister to enter into a casino agreement, s 19(3) provided that no agreement was enforceable unless and until it had been ratified by an Act. The requirement for the agreement to be ratified afforded the State Parliament the right to deliberate on the terms of any agreement reached by the Minister and a public company that was granted the right to construct and establish a new casino complex.¹⁰
- 13 Two features of Part III indicate that an objective of the CC Act was to ensure the proper assessment and due payment of monies lawfully owing to the State and its statutory authorities by reason of casino operations.
- 14 First, s 20(1) provided that a public company entering into a casino agreement with the Minister must undertake to pay tax to the State, as well as a casino gaming licence fee. Further, s 20(2) contemplated that the agreement might provide for the review by the Minister of both the rate of tax and the amount of the licence fee. The securing of taxation was one of the few mandatory aspects of any casino agreement.
- 15 Secondly, s 19(2) provided that a casino agreement must contain a provision that no casino gaming licence would be issued unless the premises to which the casino agreement relates were completed and accompanied by, or incorporated, 'substantial hotel development and other amenities to international standards'. References to both economic benefits and employment opportunities were also made in the second reading speech.¹¹
- 16 The fact that s 20(1) separately provided for payment of a casino gaming licence fee to be paid directly to the Control Committee indicates an intention that the licensee be required to contribute to the costs of regulating its licensed activities. While the CC Act as enacted did not expressly stipulate that the casino gaming licence fee should be paid to the Control Committee, it was amended to so provide only a few months later.¹² As amended in 1985, the CC Act provided that the casino gaming licence fee was to be used by the Control Committee for its costs and the costs of administering the CC Act.
- 17 The CC Act did not make express provision for the manner in which casino gaming licence fees and tax rates should be calculated, or the factors of which account should be taken when they were reviewed. This left unresolved a potential tension in the legislation. On the one hand, the State had an interest in the growth and diversification of casino gaming

activities because that would increase the licensee's gaming revenues on which tax would be paid. On the other, the State also had an obligation to ensure that gaming revenues were not the result of money laundering or other criminal activities and were derived in a socially responsible manner. Arguably, increased gaming activity would require increased regulatory effort. The CC Act's structure left open the possibility that any amendments to a casino agreement might result in increases to the overall amount of tax to be earned by the Government without commensurate increases to the licence fee available to the Control Committee so as to properly regulate the casino in accordance with Part V.

Part IV: Casino gaming licence

- 18 When the CC Act was enacted Part IV contained only a single section, namely s 21, which was concerned with the process by which a casino gaming licence was to be granted to a party to a casino agreement.
- 19 Section 21(2) provided for the Control Committee to carry out 'such investigations as it considers necessary or desirable' concerning the financial status of the applicant; and the reputation, financial status, and capacity to organise and conduct casino gaming operations of each 'natural person' that was intended by the applicant to do so. Thereafter, the Control Committee would provide its recommendations to the Minister to allow the latter to make a decision as to whether the licence should be issued.¹³
- 20 The CC Act's concerns with the financial status of a casino licensee (and the reputation, financial status, and capacity of its employees), and provision for close supervision of the conduct of casino gaming, indicates that maintaining public confidence and trust in the credibility, integrity and stability of gaming was another regulatory objective. Common experience suggests that continued patronage of a gaming establishment would be threatened by concerns about observance of playing rules (integrity) and the capacity to pay out on winnings (stability). Both of these threats would in turn threaten the trustworthiness of the gaming operations (credibility). Such threats could have a deleterious effect on government revenues, employment opportunities and economic benefit generally.
- 21 A legislative concern to establish a licensee's financial status is consistent with an intention to ensure that only persons with the financial capacity properly to operate a casino would do so. The concern to investigate the natural persons who would operate the casino on behalf of the licensee suggest a desire to ensure that those persons would act in a socially responsible and lawful manner and would not be corrupted easily by criminal elements.
- 22 The risk of organised crime infiltrating casinos had been identified by the Advisory Committee in 1983.¹⁴ The investigation of natural persons before granting a licence appears to have been one mechanism by which the CC Act addressed that risk.¹⁵

Part V: Control of casino gaming

- 23 Part V of the CC Act provided for the establishment of controls in respect of authorised gaming.¹⁶
- 24 The primary responsibility of the Control Committee under Part V was to declare games to be 'authorised games' for the purposes of the CC Act, after it had first approved the rules for that game.¹⁷ The Control Committee could subsequently alter the approved rules.¹⁸ The fact that a game had been so declared afforded a defence to prosecution for playing that game, so long as it was played on casino premises.¹⁹
- 25 This indicates that Parliament continued to regard gaming as a potentially harmful activity that should be permitted only when subject to close supervision and control. Notwithstanding Parliament's apparent concerns as to the potential harms of gaming,

the CC Act did not contain any mandatory stipulations as to the manner in which gaming operations should be conducted or supervised.

- 26** A core regulatory feature of Part V was to be found in s 24, which conferred a power to give directions to a casino licensee as to the keeping of accounts, the supervision and control of gaming operations by persons appointed by the Minister, and the production of information relevant to that gaming. While this power was reposed in the Minister when the CC Act was enacted, the legislation was amended a few months later to confer the power on the Control Committee.²⁰

General comments

- 27** Some additional features of the CC Act as enacted should be noted.
- 28** The CC Act required the Control Committee to be composed of four persons of 'repute, experience and integrity', however was silent as to what experience was required.²¹ The CC Act was also silent as to the degree of independence the Control Committee was to have from the casino licensee or the Department.
- 29** The CC Act, as enacted, required a member of the Control Committee, who had a direct or indirect pecuniary interest in a matter before the Control Committee, to declare the interest at a meeting of the committee. Such a disclosure had to be recorded in the minutes and, unless determined otherwise by the Minister or the Control Committee, the member was not to be present when the issue was considered by the Control Committee or take part in any relevant decision.²² These requirements were deleted in 1987.²³
- 30** The CC Act, as enacted, also generally adopted recommendations which the 1983 Report of the Advisory Committee had described as 'basic safeguards',²⁴ including:
- a. the establishment of a regulatory authority;²⁵
 - b. the requirement for an applicant for a casino gaming licence to provide, and for the authority to demand, fulsome information from an applicant about company ownership and shareholdings;²⁶
 - c. the capacity for the authority to investigate and make recommendations to the Minister in respect of an application and power for the Minister to approve (conditionally or unconditionally), reject or defer an application;²⁷
 - d. a requirement that an application approved by the Minister should be granted by the authority;²⁸
 - e. the requirement for the Control Committee to inform itself of set criteria, for example, the financial status of the applicant, and the reputation, financial status, and capacity to organise and conduct casino gambling of each natural person as intended by the applicant to be involved in those activities;²⁹
 - f. residing in the authority the power to regulate rules of games, hours of play, licensing of operating personnel, premise facilities, games equipment, wagering limits, handling of cash, audit requirements, casino accounting, financial management, admission of patrons, credit facilities and general operating conditions;³⁰
 - g. the requirement that the Control Committee publish an annual report disclosing, among other things, revenue to the Government from casino gaming;³¹ and
 - h. the specification of police powers in respect of offences and entry to any part of casino premises.³²
- 31** Some recommendations of the Advisory Committee were omitted from the regulatory framework. In particular, the CC Act did not confer on the authority the power to renew casino licences for a specified period.³³

32 Although concerns as to ‘compulsive gambling’ had been outlined in the 1974 Royal Commission Report,³⁴ and as to criminal activities in the 1983 Advisory Committee Report,³⁵ when first enacted the CC Act did not expressly provide that the regulatory objective of the legislation included the minimisation of social harms or criminal activity at the casino. Amendments to the statutory framework over time have indicated that the Gaming and Wagering Commission has the duty and power to formulate and implement policies and otherwise take steps to minimise the harm caused by gambling, including casino gaming.

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

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

- a. construction and development of Burswood Resort;³⁶
- b. corporate and organisation matters relating to the Trustee and Manager;
- c. distribution and limitation on shareholdings;
- d. grant of the casino gaming licence to the Trustee, including a ‘Period of Exclusivity’ licence exclusivity;³⁷
- e. prohibition on extending credit to gamblers without the consent of the regulator and approval of authorised games;
- f. taxation;
- g. security interests and assignments; and
- h. termination of the State Agreement.

34 Aside from affording Parliament the opportunity to scrutinise the terms of the agreement, the text of the State Agreement suggests a further reason a State Agreement mechanism was adopted was to ensure the construction of the casino complex was not subject to certain potentially applicable laws.³⁸

35 The State Agreement has been renegotiated over time, and both it and the CBIA Act have been amended from time to time and remain in force. Provisions that have been amended on multiple occasions include those relating to taxation, individual shareholding and exclusivity clauses.

Gaming Commission Act 1987

36 The GC Act came into operation on 8 October 1987 introducing substantial reforms to the regulatory framework governing gaming in Western Australia. The overall purpose of the legislation was to provide for the rationalisation of gaming laws in Western Australia into a composite Act and to amalgamate under one body the regulation of all gaming, with the exception of lotteries and horse and greyhound racing.³⁹

37 The GC Act generally liberalised the law of gaming.⁴⁰ In particular, the GC Act, as enacted, permitted ‘social gambling.’⁴¹ This represented a significant relaxation of the previous prohibitions against gaming in the State.

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

39 Through the enactment of the GC Act, the Control Committee was absorbed by the Gaming

Commission of Western Australia (**GC**).⁴² When Part II of the GC Act came into force,⁴³ the powers, duties and rights of the Control Committee were conferred upon the GC and the Control Committee members ceased to hold that office.⁴⁴ One member of the original Control Committee was appointed as a member of the inaugural GC.⁴⁵ The members of the Control Committee were deemed to be a committee of the GC until 23 April 1988.⁴⁶

- 40** The replacement of the Control Committee with the GC under the GC Act required a new four person Commission to administer the law relating to nearly all gaming and betting.⁴⁷ Of those four persons, two were to be ex-officio members, namely the Executive Director of the Office of Racing and Gaming (who would be chair) and the chair of the Lotteries Commission (or a member or officer of the Lotteries Commission nominated by the chair).⁴⁸
- 41** Further, the new GC was charged with a panoply of duties that had not previously been imposed on the Control Committee, including, amongst other things, to keep under review the conduct, extent and character of gaming and betting and formulate policies for its scrutiny, control and regulation;⁴⁹ to advise the Minister as to any matter relating to gaming or to betting;⁵⁰ and to enforce, and to prosecute persons contravening, the laws relating to gaming and to betting.⁵¹ In short, the new GC was to be a generalist body, while the Control Committee had been a specialist body.
- 42** While the GC Act did, in effect, convert the Control Committee into a more generalist and less autonomous body, there was nothing to indicate a lessening of the degree of flexibility available to the GC in respect of casino regulation. The CC Act continued to contain the same powers to issue Directions as were discussed earlier in this chapter.
- 43** Additionally, the GC Act afforded the new body significantly wider investigative and enforcement powers than had previously been available to the Control Committee. Under the CC Act provision had been made for an inspector appointed under s 3 of the CC Act to enter any part of a licensed casino.⁵² However, the GC Act provided a detailed range of powers to persons authorised by the GC,⁵³ including the power to seize and detain material in the course of an investigation; require a person to provide information;⁵⁴ and to require information, production of books and accounts where that information is suspected to be relevant to an investigation under the GC Act or any other written law relating to gaming or betting.⁵⁵
- 44** The CC Act was shortly thereafter amended so as to provide those powers to the GC and its members and officers in relation to a wide range of matters connected to a casino complex agreement.⁵⁶ These changes suggest that Parliament continued to regard as essential the continued monitoring and control of licensed casinos. In that respect, it is significant that the amendments to the CC Act were not restricted to permitting the GC's officers only to investigate gaming operations. Instead, they contemplated investigations or inquiries into:
- a. any party to, or any manager or other person, trust, premises or property the subject of, a casino complex agreement;⁵⁷
 - b. any thing that the GC or that officer had reasonable cause to believe relates to, or may be likely to affect, a person or matter referred to in paragraph (a);⁵⁸ and
 - c. the organisation, management, operation and use of a casino complex including the gaming operations and related accounting, audit and security procedures in, and amenities or facilities ancillary to, the casino comprised in the casino complex.⁵⁹
- 45** The breadth of these powers indicated a continuing regulatory objective to ensure that casinos operations were regulated effectively and would not be subject to corruption or criminal infiltration. Further, they appear to signal the view that the powers previously available to the Control Committee to regulate casinos properly were insufficient and should be bolstered.
- 46** In addition to the above significant changes, many features of the CC Act remain in force following the introduction of the GC Act.

- 47 The GC, for example, similarly to the Control Committee, was afforded the power to make use of employees of other State instrumentalities or agencies,⁶⁰ and delegate its powers.⁶¹ While the provisions of the CC Act which had previously enabled the Control Committee to make arrangements for the use of other employees were removed once the analogous provisions in the GC Act were available, the power to appoint the Chief Casino Officer (**CCO**) remained. However, the language of that power was amended from active to passive: instead of providing that the Control Committee may appoint the CCO, after the introduction of the GC Act the relevant section simply provided that a CCO 'shall be appointed'.⁶² This introduced uncertainty as to which entity, the GC or the appointing authority (usually the relevant government department) made the appointment which continues to the present day.
- 48 Further, notwithstanding the broadening of the responsibilities of the GC as compared to the Control Committee, the introduction of the GC Act saw no amendment to s 14(1)(aa) of the CC Act, which continued to provide that the licence fee in respect of the casino was available for the administration of the CC Act.⁶³

Modification of the statutory regime

- 49 In 2003, the GC Act was renamed the GWC Act and the GC became known as the GWC. Since the enactment of the CC Act, CBIA Act and GWC Act, there have been numerous amendments to the legislative framework. Some of the changes have already been referenced in the context of the introduction of the GC Act. The amendments suggest a continued reliance on the regulator to use its discretion to deliver casino regulation as it sees fit.

Expansion of the Gaming and Wagering Commission membership over time

- 50 Over time, the membership of the GC or GWC has increased from four members.⁶⁴ In 1998, membership was increased to five members as a result of the Review of the GC Act.⁶⁵ The purpose of the additional member was to enable 'greater community input'.⁶⁶ The five members were to now include the Executive Director of the Office of Racing, Gaming and Liquor, as chair,⁶⁷ and four members nominated by the Minister 'as being persons of repute, experience and integrity'.⁶⁸
- 51 In 2003, GWC membership was again increased when the GWC's duties were expanded to include duties in respect of the regulation of wagering. The amendments required the GWC to consist of the Chief Executive Officer (**CEO**) of the Department as chair and between five and seven other members appointed by the Minister.⁶⁹
- 52 The GWC's increased membership appears to reflect a legislative acknowledgment of its expanded responsibilities, given a framework in which a single body has broad responsibilities for regulating gaming and wagering in Western Australia. Apart from arguably the addition of a member in 1987, the changes and increases to membership numbers have not reflected an intention that the GWC be a community consultation group or anything other than an independent gaming regulator.

Amendments to the powers, duties, and obligations of the Minister and the Gaming and Wagering Commission

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

- 54** Material amendments occurred in 1985,⁷⁰ 1998,⁷¹ 2003,⁷² and 2006, as indicated below:⁷³
- a. 1998: the Minister was empowered to require a 'close associate' to divest any financial interest in a public company the subject of a casino complex agreement.⁷⁴
 - b. 2003: a specific duty was imposed upon the GWC to formulate and implement policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling.⁷⁵ This duty was complemented by a corresponding general power to take steps to minimise harm to the community, or any part of the community, caused by gambling.⁷⁶
 - c. 2006: a power was granted to the GWC to utilise s 146 to s 150 of the *Criminal Investigation Act 2006* (WA) in respect of seizing things in the course of an investigation under the GWC Act.⁷⁷
- 55** All of these powers or functions of the GC or GWC are consistent with a continuing regulatory objective of a close and robust scrutiny of casino operations to ensure the socially responsible operation of Perth Casino and casino gaming at Perth Casino.

Industry and legislative reviews

- 56** In the latter part of the 1990s there were some industry and legislative reviews that affected casino operations and regulation.
- 57** In 1996, the Minister for Racing and Gaming reviewed and reported to Parliament.⁷⁸ Details of the recommendations in the 1996 report about junket regulation are discussed in Chapter Six: Junkets.
- 58** In 1998, there was a National Competition Policy Legislative Review of the CC Act, the GC Act, the CBIA Act and the regulations.⁷⁹
- 59** The report, prepared by departmental officers, makes the point that gaming legislation needs to be considered as a package rather than in isolation because many of the provisions in the legislation interact with each other. This impacts on the administration of each Act and also on the competition consequences associated with the legislation.
- 60** The report made a number of recommendations for legislative change. It also contains a detailed discussion of the legislative prohibition of games played on poker machines and possible alternative approaches.⁸⁰
- 61** The Productivity Commission conducted inquiries into gambling in 1999 and 2010. On both occasions, there was detailed consideration of the social impact of problem gambling.⁸¹

Aspects of casino regulation in Western Australia

Taxation and the licence fee

- 62** The CC Act, as enacted, deferred the licence fee and rate of taxation to be determined by the State Agreement.⁸² The ability to negotiate amendments to the State Agreement has seen several amendments to the taxation and casino gaming licence fee clauses.⁸³ The Parliamentary debates suggest that amendments to taxation have generally been in response to what was perceived as the changing landscape of casino gaming both in Australia and internationally. Reductions in taxation have been associated with reductions in casino gaming and claimed competition for international business.⁸⁴ Conversely, increases in taxation have been associated with applications by the Perth Casino licensee to expand gaming.⁸⁵

- 63** Amendments to the taxation regime provide some insight into the legislative approach to specific aspects of casino operations. For example, Parliamentary debates indicate government support for junket operations as a source of government revenue. From 2003, International Commission Business (**ICB**) (that is, primarily, junket operations) was taxed at a lower rate than other casino activities.⁸⁶ The debates suggest that this lower rate was to enable the licensee to offer incentives to attract international patrons to Perth Casino as the business was considered a benefit to the local economy.⁸⁷
- 64** While the taxation rate has been amended on several occasions, the casino gaming licence fee has only been amended once.⁸⁸ The Second Supplementary Agreement increased the annual casino gaming licence fee to \$1.4 million plus consumer price index (**CPI**).⁸⁹ During the second reading speech for this amendment, the Minister for Racing and Gaming stated that the costs of regulating the casino by the GC were funded from the existing casino gaming licence fee, as well as contributions from Consolidated Revenue Fund. The Minister stated that the new licence fee would fully cover the costs of regulating the casino and thus result in significant savings to the taxpayers of Western Australia.⁹⁰
- 65** While it appears that Parliament sought to fund the casino regulator fully through the increased casino gaming licence fee, there is no clause enabling any unilateral increase to the casino gaming licence fee by the Minister where increased resourcing of the regulator may be required. This inflexibility in the State Agreement, means that any increase in the casino gaming licence fee must be the subject of further negotiation.
- 66** When the CBIA Act was first passed, the annual licence fee was set at \$400,000 (adjusted for CPI).⁹¹ In 1990, the licence fee was increased to \$1.4 million (adjusted for CPI).⁹² During parliamentary debates, the Minister for Racing and Gaming stated:⁹³

Currently the costs of regulating the casino by the Gaming Commission of Western Australia are funded from the existing casino gaming licence fee, as well as contributions from Consolidated Revenue Fund. The new licence fee will fully cover the costs of regulating the casino and thus result in significant savings to taxpayers of this State.

- 67** The first amendment to the tax rate occurred in 2003 under the Eighth Supplementary Agreement.⁹⁴ Rather than an aggregated tax rate, a distinction was established between electronic gaming machines (**EGMs**), table games and ICB, for the purposes of tax. The effect of the amendment was that EGM tax was increased from 17% to 20% by December 2004 and table game tax was incrementally increased from 16% to 18% by December 2006. Conversely, ICB tax was reduced from 13% to 11% by December 2006.⁹⁵ This change coincided with the introduction of suitability criteria for certain shareholdings⁹⁶ and a requirement for the constitution of the Manager to contain certain clauses.⁹⁷
- 68** The second amendment to the tax rate occurred in 2011.⁹⁸ The EGM tax was increased from 20.125% in July 2011 to 20.625% from July 2015.⁹⁹ Fully Automated Table Games (**FATGs**) were separated and given a tax rate of 22%.¹⁰⁰
- 69** The final tax amendments came in 2014, these reductions came alongside a change to the GST reimbursement scheme with a net-of-GST tax rate scheme. The ICB tax was reduced from 11% to 8%, which under the net-of-GST tax rate scheme resulted in it being 1.75%. The EGM tax was also which under the net-of-GST tax rate scheme resulted in it being reduced from 12.27% on 24 December 2014 to 12.42% from 24 December 2015.¹⁰¹ In explaining the changes to the way GST was dealt with, the Minister for Racing and Gaming stated:¹⁰²

When the GST was introduced, states were required to either reduce tax rates to offset the GST or reimburse GST payments to gambling operators to avoid an increase in taxation on gambling. Western Australia chose the latter. As part of this arrangement, the opportunity has been taken to replace the reimbursement scheme with a net-of-GST tax rate scheme. Presently, Crown pays GST in addition to the

statutory tax rates as set out in the state agreement, and the Department of Racing, Gaming and Liquor administers the reimbursement of GST payments to Crown.

- 70 As part of the agreement to amend the ICB tax rate, the Trustee agreed to pay, for the period 1 July 2014 to 30 June 2019, a minimum of \$45.25 million in ICB tax.¹⁰³ Further, the Minister for Racing and Gaming also explained the rationale for reducing the ICB tax.¹⁰⁴

Competition in the ICB market is intense, with WA's casino competing with not only Singapore and Macau, but also Melbourne, Sydney, Brisbane and the Gold Coast. To sustain and grow the ICB, Crown argues that it needs to be more competitive, and a tax reduction is a key strategy in this regard. Crown's position is that in the absence of a catalyst to be more competitive, it may not be able to maintain or grow ICB turnover in the future, to the detriment of both Crown and government revenue. To enhance its competitive position in the ICB market, Crown sought, and the government has approved, an effective reduction in this tax rate from 11 per cent to eight per cent plus the one per cent Burswood Park levy, giving an effective rate of nine per cent. This reduced rate compares favourably with the ICB tax rates applicable in Victoria, New South Wales, Queensland and Singapore.

Limit on shareholdings

- 71 The CBIA Act has always capped shareholdings for individual and foreign shareholders.¹⁰⁵ When the CBIA Act was enacted, the cap on individual shareholdings in the licensee, without the Minister's approval, was 5% of the aggregate total.¹⁰⁶ In 1997, it was increased from 5% to 10%.¹⁰⁷ The reason for this increase is unclear, however parliamentary debates suggest it may have been in response to submissions and deputations by institutional investors and fund managers.¹⁰⁸
- 72 The State Agreement was also amended at this time to facilitate the corporatisation of the trust structure. A public company could acquire up to all of the units in the Burswood Property Trust (**BPT**) with the approval of the Minister and thereby become an 'Approved Company'.¹⁰⁹ Amongst other things, restrictions were imposed upon foreign ownership of shares in an Approved Company. An individual shareholding in an Approved Company could not exceed 10% without an exemption from the Minister.¹¹⁰
- 73 Further amendments were made in 2003, which inserted s 11 to s 17 into the CBIA Act.¹¹¹ The provisions enabled individuals to hold more than 10% of shares in an Approved Company subject to probity testing and approval from the GWC.

Gaming exclusivity

- 74 For 15 years after the Perth Casino licence was granted, the State was prohibited from entering into another casino complex agreement, granting another casino licence or approving any game commonly played in a casino or any Authorised Game.¹¹²
- 75 After this period expired, the State could only authorise or approve the playing of games commonly played in casinos for the Perth Casino or for any other casino the subject of a casino complex agreement. In relation to any new casino, there was a stipulation that if it were situated within a 100 km radius of the Perth Casino it would have to be of 'comparable size and standard to the Burswood Casino and the first hotel within the resort complex'.¹¹³ There were some exclusions; for example, two-up could be permitted as long as it was played outside of a 200 km radius of Perth Casino.¹¹⁴
- 76 There are two apparent reasons to allow gaming exclusivity. The first is the minimisation of harm resulting from casino gaming by ensuring that gaming remains confined to casinos. The second is to afford casinos under the CC Act a monopoly, to help ensure that such casinos will be financially viable and reliably provide consequential government revenue.

- 77 Over time, the State Agreement has been amended to permit additional gaming. Two-up was allowed to be played at RSL locations on Anzac Day (with no radius limit), and the 200 km radius was reduced to 100 km. Gaming on cruise ships (including intrastate cruises) is permitted, provided it is not within 12 nautical miles of the Western Australian baseline.
- 78 In 2019, the State Agreement was amended to permit electronic simulated racing games to be played outside of Perth Casino.¹¹⁵ In order to offer electronic simulated racing games, the incoming wagering operator would be required to pay a one-off sum of \$1.2 million to the Perth Casino licensee.
- 79 As a result of the above changes, games which have been authorised under s 22 of the CC Act can in some instances now be played outside of the Perth Casino. However, these changes have been limited and highly regulated. This may be due to the potential for social harm or a consequence of the casino licensee having to agree to an amendment to the State Agreement. The benefits of expansion within the State include increased revenue from casino gaming.

Role of the Chief Casino Officer

- 80 When the CC Act was enacted, the CCO had no specific statutory powers or duties. The *Crown Casino (Burswood Island) (Licensing of employees) Regulations 1985 (WA) (CCBILE Regs)* were gazetted on 16 August 1985 and the CCO then became specifically responsible for receiving applications for casino key employee and casino employee licences and making a recommendation to the Control Committee as to whether or not a licence should be granted.
- 81 Over time, the statutory responsibilities of the CCO have become express. The *Acts Amendment and Validation (Casino Control) Act 1985 (WA)* inserted s 3(2) which provided that a reference to an ‘officer of the Committee’ included a reference to the CCO. The same set of amendments included provisions which extended the powers and functions of officers of the Control Committee to those conferred under the CC Act, any other Act or a casino complex agreement. The amendments also empowered an officer of the Control Committee, amongst others, to enter at any time and remain in any part of a licensed casino.
- 82 Later, the *Acts Amendment (Gaming) Act 1998 (WA)* expanded the powers, functions and duties of the CCO by including the CCO in the definition of an ‘authorised officer’. At the same time, the CCO was given the power, with the approval of the GWC, to delegate to another officer of the GWC any of the CCO’s powers, functions or duties, except the power of delegation itself.
- 83 Today, authorised officers have numerous powers, functions and duties under the GWC Act, including:
- a. examining and reporting on matters that affect the administration of the GWC Act;¹¹⁶
 - b. inspecting and remaining on premises where permitted gaming is or purports to be conducted;¹¹⁷ and
 - c. obtaining evidence in the course of exercising powers under the GWC Act.¹¹⁸
- 84 An authorised officer’s functions extend beyond casino regulation and include gaming and wagering functions.¹¹⁹ As such, the CCO, as an authorised officer, may exercise more than casino-related functions.
- 85 The CCO may institute proceedings for an offence under the CC Act.¹²⁰

Poker machines

- 86** Both the 1974 Royal Commission Report and the 1983 Advisory Committee Report recommended against the legalisation of poker machines for use at a casino, mirroring public and parliamentary concerns about those machines and games played on them.
- 87** When the CC Act was first passed it did not deal with the issue of poker machines at all, despite the fact that some Parliamentarians had called for them to be banned during debates.
- 88** A few months after the CC Act was passed, it was amended so as to preclude the (then) GC from declaring as an authorised game any 'games played with poker machines'.¹²¹
- 89** The proper construction of the term poker machine as it appears in the CC Act, and an analysis of how that may impact on the regulation of EGMs at Perth Casino, is dealt with in Chapter Thirteen: Electronic Gaming Machines.

Subsidiary legislation regulations made under the CC Act

- 90** Two sets of regulations have been made under the CC Act — the *Casino Control Regulations 1999 (WA) (CC Regs)*, gazetted on 5 February 1999; and the CCBILE Regs, gazetted on 16 August 1985. The relevant effect of each is addressed in turn.
- 91** In their present form, the CC Regs address only limited aspects. Relevantly, the CC Regs exempt certain service contracts from the class of 'controlled contracts' regulated by CC Act pt VA, and specify the offences for which infringement notices may be issued and the modified penalties that may be applied for certain offences.
- 92** Of the numerous amendments to the CC Regs, one is relevant. That amendment, made on 4 June 2010, repealed CC Regs pt 3, which had dealt with the regulation of junkets. The operation and circumstances of the repeal of the former CC Regs pt 3 are dealt with in Chapter Six: Junkets.
- 93** The CCBILE Regs relevantly deal with the licensing and regulation of employees of Perth Casino.
- 94** Certain Perth Casino employees are 'casino employees' or 'casino key employees' for the purposes of the CCBILE Regs. The former are those employed or working in the Perth Casino whose duties or responsibilities relate to or are in support of Perth Casino, but are not 'casino key employees' or certain others whose work does not have a relevant connection to gaming. The latter are those employed or working in Perth Casino in a managerial capacity, or empowered to make decisions involving the exercise of discretion that regulate the operation of Perth Casino, or who the GWC determines in the public interest by reason of their influence, remuneration or function should be so designated.
- 95** Where there is no express provision in the legislation for the GWC to grant probity approval for the appointment of a director to a licensee or to an entity associated with the licensee, the GWC appears to use the key casino employee provisions to ensure that the probity of that person is established before they commence work at Perth Casino.
- 96** Only current holders of relevant licences can be employed by Perth Casino as casino employees or casino key employees.
- 97** Those who desire to be employed at Perth Casino may make an application for a licence to the CCO. Applications must include:
- a. a birth certificate, passport or approved form of identification;
 - b. evidence the applicant is qualified by relevant experience, or has successfully completed a training course approved by the GWC (which evidence may be later provided); and
 - c. if the CCO requires, fingerprints, palm prints or other means of identification to be

taken and recorded by a Western Australia Police Force (**WAPOL**) officer for the purposes of an investigation by WAPOL.

- 98** The CCO may then submit particulars of an application (or of a current licence-holder) to the Commissioner of WAPOL to conduct an investigation as to the applicant's (or holder's) character, suitability to hold a licence, and other matters including their financial standing.
- 99** The CCO must separately cause any investigation they consider necessary to be made. The CCO must then consider the application, the accompanying and any relevant information, and the results of any such investigation to assess the suitability of the applicant. On the basis of that assessment, the CCO is to recommend to the GWC whether the application should be granted, refused, or granted subject to certain restrictions.
- 100** The CCO has power to issue a provisional licence if they anticipate there may be delay in their making the required recommendation, and certain other conditions are met.
- 101** The CCO has similar obligations in relation to licence renewal applications, except as to conducting investigations.
- 102** It is then for the GWC in its absolute discretion, having considered the CCO's recommendation and such other information as it thinks fit, to decide whether an application is to be granted, refused, or granted subject to conditions. Licences may remain in force for five years.
- 103** All licences are subject to conditions:
- a. requiring the licence-holder to provide information required by the CCO or GWC considered necessary to determine whether the licence-holder is a fit and proper person to continue to hold the licence;
 - b. requiring the licence-holder to comply with rules and procedures approved under the CC Act s 22(2), s 24; and
 - c. notifying the CCO if they are convicted of any offence.
- 104** If the GWC becomes aware of changed circumstances in relation to a licence-holder, the GWC may vary restrictions or approve a replacement licence subject to restrictions.
- 105** The GWC may also cancel or suspend a licence in certain circumstances, including if a licence-holder is convicted of an offence punishable by imprisonment, the GWC forms the opinion the licence-holder is not a fit and proper person to continue to hold the licence, or the licence-holder fails to comply with the requirements of GWC Regs or the licence.
- 106** The GWC may otherwise, or additionally, issue letters of censure or fines to licence-holders.
- 107** Of the numerous amendments to the CCBILE Regs, it is notable that:
- a. on 7 September 2004, the former requirement for the CCO to cause a record of an applicant's fingerprints to be taken was made discretionary;
 - b. on 2 May 2006, a requirement was included that for a provisional licence to be granted, unless the CCO had received a report of an investigation from the Commissioner of WAPOL, they must receive a certificate setting out details of any offences committed by an applicant in Australia; and
 - c. on 13 April 2011, the former requirement that the CCO submit particulars of an application to the Commissioner of WAPOL to conduct an investigation was made discretionary.¹²²

Regulations made under the GWC Act

- 108** The GWC Regs, gazetted on 29 April 1988 are only relevant to Perth Casino in limited respects. Relevantly, the GWC Regs appear to acknowledge the relationship between the CC Act and the GWC Act, and deal with gambling advertising and inducements to gamble.

- 109** The GWC Regs provide that if the GWC Act deems gambling to be permitted at Perth Casino (including, if it be the case, because a casino gaming licence is held under the CC Act), no 'permit' is required to conduct gaming.
- 110** Separately, under the GWC Regs certain kinds of 'gambling advertisements' cannot be published by Perth Casino. Perth Casino must also include details of the national problem gambling helpline and (or) counselling website, and responsible gambling messages in its advertisements.¹²³
- 111** Further, Perth Casino must not offer or provide to a person benefits, consideration or rewards in return for them participating in or continuing to gamble (other than, relevantly, in the form of a dividend or to existing customers), or opening or referring another person to open a betting account.¹²⁴
- 112** Those regulations dealing with 'gambling advertisements' and inducements to gamble were first inserted by regulations made on 8 January 2010,¹²⁵ and strengthened by further regulations made on 31 May 2019.¹²⁶

Use of Directions as principal means of regulating the casino

- 113** Section 24 of the CC Act currently provides that the GWC may give the casino licensee a Direction regarding the system of internal controls, administration and accounting procedures that apply to the gaming operations of the casino licensee.¹²⁷
- 114** The s 24 Directions given to the Perth Casino licensee are consolidated as the Burswood Casino Directions.¹²⁸
- 115** The GWC also has the power to direct a casino licensee to adopt, vary, cease or refrain from any practice in respect of the conduct of gaming operations.¹²⁹

Part VI: General

Directions and Casino Manual

- 116** The s 24 Directions require Perth Casino to maintain two documents being the:
- Casino Manual (Games Procedures) (**CM(Games)**) containing the rules by which authorised table games must be conducted;¹³⁰ and
 - Casino Manual (Operations) (**CM(Ops)**) containing the rules in accordance with which the records and accounts of Perth Casino must be kept,¹³¹ and the rules relating to surveillance, security and information technology.¹³²
- 117** The CM(Ops) contains at least 20 sections which in turn contain many sub-sections requiring Perth Casino to conduct gaming operations in particular ways. The CM(Ops) provisions extend beyond the matters referred to in the definition of gaming operations and are also concerned with basic operational matters such as roles and responsibilities relating to the collection of gaming revenue during shifts and cage operations.
- 118** The Casino Manual (CM(Games) and CM(Ops) together) is the basis for the current regulation of casino operations. If the Perth Casino licensee seeks to amend any part of the Casino Manual that is subject to a Direction, it must obtain GWC approval.¹³³
- 119** It is a condition of the Perth Casino licence that the licensee comply with the Directions.¹³⁴ It is also an offence for a licensee to contravene these Directions.¹³⁵ Consequently, it is a breach of the Perth Casino licence and an offence for the licensee to fail to comply with a Direction or any provision of the Casino Manual that is subject to the Directions.

Endnotes

- 1 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 5.
- 2 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 4 – 9 [13].
- 3 *Racing and Gambling Legislation Amendment and Repeal Act 2003* (WA) [PUB.0033.0011.0448] s 121.
- 4 Part I of the Act dealt with the usual preliminaries concerning the Act's short title, commencement and interpretation.
- 5 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 4(1).
- 6 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 10.
- 7 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 14.
- 8 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 19(1). The *Casino Control Act 1984* (WA) was amended by the *Acts Amendment and Validation (Casino and Control) Act 1985* (WA) [PUB.0033.0006.0001] s 23(c) to rename an agreement, a Casino Complex Agreement.
- 9 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 21.
- 10 Western Australia, Parliamentary Debates, Legislative Council, 3 May 1984, 7774 (Mr Dans, Member for South Metropolitan) [PUB.0016.0013.0274].
- 11 Western Australia, Parliamentary Debates, Legislative Council, 3 May 1984, 7775 (Mr Dans, Member for South Metropolitan) [PUB.0016.0013.0274].
- 12 The relevant amendments to *Casino Control Act 1984* (WA) s 20(1) [PUB.0004.0005.0001] s 20(1) were made by the *Acts Amendment and Validation (Casino Control) Act 1985* (WA) [PUB.0033.0006.0001].
- 13 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 21(2) – (4).
- 14 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 68 – 71, 73 – 74, 79 – 83.
- 15 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 21(2).
- 16 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 22 – 29.
- 17 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 22(1) – (2).
- 18 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 22(3).
- 19 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 23.
- 20 *Acts Amendment and Validation (Casino Control) Act 1985* (WA) [PUB.0033.0006.0001] s 34.
- 21 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 4(3).
- 22 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 8.
- 23 *Acts Amendment and Repeal (Gaming) Act 1987* (WA) [PUB.0033.0001.0001] s 14.
- 24 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 6 – 9 [13].
- 25 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 4 – 18.
- 26 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 21(2) – (3).
- 27 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 21(2) – (4).
- 28 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 21(6).
- 29 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 21(2).
- 30 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 22, 24, 29(3), 37, sch 2.
- 31 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 17 – 18.
- 32 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 28.
- 33 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 6 [13(b)].
- 34 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 117, 125.
- 35 Government Casino Advisory Committee, Parliament of Western Australia, *Reports of Chairman and Members to the Cabinet Sub Committee* (1983) [PUB.0004.0002.0010] 15, 40 – 41, 57 – 58, 73, 83.

- 36 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0033.0007.0001].
- 37 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0033.0007.0001] cl 22(3).
- 38 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0033.0007.0001] cl 9(3).
- 39 Western Australia, Parliamentary Debates, Legislative Assembly, 26 May 1987, 1377 – 1378 (Mrs Beggs, Member for Whitford) [PUB.0016.0013.0223].
- 40 Government Gaming Inquiry Committee, Parliament of Western Australia, *Report of the Committee Appointed to Inquire into and Report upon Gaming in Western Australia* (1984) [PUB.0004.0002.0261] 10, 33.
- 41 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 53, 64.
- 42 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 112.
- 43 Western Australia, Government Gazette, No 23 (4 March 1988) [PUB.0016.0013.0076] 665.
- 44 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 112(1), (3).
- 45 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 12(2).
- 46 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 112(4); Western Australia, Government Gazette, No 36 (22 April 1988) [PUB.0016.0013.0077] 1226.
- 47 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 7(1), 12(1); ‘Betting’ was defined to exclude betting on horse races which was regulated by the *Betting Control Act 1954* (WA) [PUB.0033.0016.0001].
- 48 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 12(1)(a).
- 49 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 7(1)(b).
- 50 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 7(1)(f).
- 51 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] s 7(1)(h).
- 52 *Casino Control Act 1984* (WA) [PUB.0005.0003.0079] s 28.
- 53 *Gaming Commission Act 1987* (WA) [PUB.0033.0007.0053] pt III.
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- 113 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0033.0007.0001] s 22(4).
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- 125 *Gaming and Wagering Commission Amendment Regulations (No. 2) 2009* (WA) [DLG.8001.0036.3584] reg 4.
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- 129 *Casino Control Act 1984* (WA) s 24(2) [GWC.0001.0007.0198] s 24(2).
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CHAPTER 4

Corporate Governance

CHAPTER FOUR

Corporate Governance

Purpose of Chapter

- 1 The relevance of corporate governance to the suitability of Burswood Nominees Ltd (**BNL**), Burswood Resort (Management) Limited (**BRML**) and Burswood Limited (**BL**) (together, the **Burswood entities**) and Crown Resorts Limited (**CRL**) to hold or be associated with a casino licensee has been addressed in Chapter One: Subject Matter of Inquiry and Terms of Reference.
- 2 This chapter will examine and assess issues of corporate governance, that is, the structures, systems and processes through which decision-making is exercised within the Burswood entities and CRL, including examining risk management and culture. This chapter includes observations and findings on the issues considered relevant to the present suitability of the Burswood entities and CRL.
- 3 The broad corporate governance themes to which attention is given include:
 - a. the legal structure of Perth Casino in fact and as mandated by the Casino (Burswood Island) Agreement the subject of the *Casino (Burswood Island) Agreement Act 1985* (WA) (**CBIA Act**) entered into on 20 February 1985 between the State of Western Australia, West Australian Trustees Limited and Burswood Management Limited for the establishment of Perth Casino (and depending on context, point in time versions) (**State Agreement**) and other instruments;
 - b. the people, systems and procedures through which the Burswood entities and CRL have been and are governed including conclusions as to past failings or deficiencies in governance;
 - c. steps taken to remediate or change corporate governance, risk management and culture during and since the inquiry by the Honourable PA Bergin SC under s 143 of the *Casino Control Act 1992* (NSW) established on 14 August 2019 (**Bergin Inquiry**) and the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**) to address certain corporate governance failings identified in those inquiries and generally; and
 - d. steps that may be considered to improve compliance with the mandated governance of Perth Casino and to enhance corporate governance to address past failings or deficiencies.
- 4 In relation to remediation and change, CRL adduced evidence of its Remediation Plan which will be discussed in detail later in this chapter. The Remediation Plan is relevant to considerations of present suitability and the pathway to suitability. On 14 February 2022, CRL made a public announcement concerning a takeover offer by Blackstone Inc (**Blackstone**) to acquire all of the share capital in CRL. The implementation deed, which accompanied the announcement, contemplates that there may be changes to the boards of directors of CRL and its subsidiaries, including the Burswood entities. This may have ramifications for the future implementation of the Remediation Plan. The possible impact of the Blackstone transaction generally and, in particular, on the implementation of the Remediation Plan, will be dealt with elsewhere in this report. However, unless otherwise expressed, the balance of this chapter should be read as if the implementation of the Remediation Plan will continue under the leadership of the personnel mentioned during, and in the form presented to, the PCRC in the course of the inquiry.

Introductory comments

- 5 The Bergin Inquiry and the RCCOL dealt with certain failings in the corporate governance and risk management of CRL. CRL also made a number of concessions to the Bergin Inquiry and the RCCOL relating to certain failings of CRL's risk management processes.
- 6 As authorised by the Terms of Reference (**terms of reference**), the PCRC has had regard to the fact that certain conclusions in the report published by the Honourable PA Bergin SC on 1 February 2021 (**Bergin Report**) were made, and the fact that certain concessions were made, and satisfied itself that the matters the subject of those conclusions and concessions have been sufficiently and appropriately dealt with by the Bergin Report, the Report submitted by the RCCOL to the Victorian Governor on 15 October 2021 (**RCCOL Report**) or the concessions.
- 7 The focus of attention in this chapter, is on the organs of governance of CRL and the Burswood entities. The PCRC makes a number of observations in relation to the conduct of the various boards as composite entities. In doing so, the PCRC is not commenting on compliance by individuals with their duties. That is an exercise of a different type that has not been carried out.
- 8 Where comments are made in relation to the boards at particular points in time, they reflect observations about the collective board, and are not directed towards individual officers.

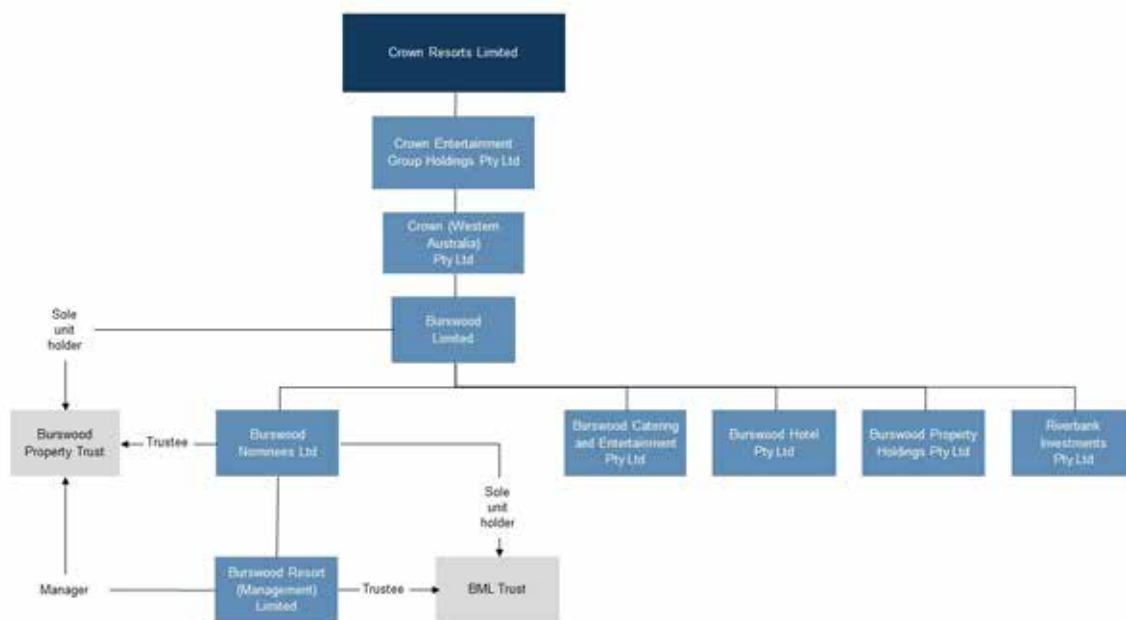
Perth Casino structure

- 9 The current structure of ownership and management of Perth Casino is complex. The complexity is, at least in part, a legacy of the manner in which the original Burswood Casino and Resort was established under legal instruments, including the State Agreement and the trust deed establishing the Burswood Property Trust (**BPT**) dated 20 February 1985 and replaced on 18 April 1985 (as varied by the First to Thirteenth Supplemental Deeds) (**Trust Deed**), and how it has evolved since 1985. As described in Chapter Two: History of Perth Casino, changes to those instruments have been made over time, particularly as a result of the corporatisation of the structure.
- 10 To understand the governance and operational issues, it is necessary to have regard both to the historical and present structures.

The present Burswood subgroup structure

- 11 The Burswood entities (BL, BNL and BRML) are involved in Perth Casino. There are other companies of which BL is a holding company that participate in the operation of the businesses carried out at Crown Perth Resort.¹ BL, BNL and BRML, along with these other companies, are referred to as the **Burswood subgroup**.
- 12 BNL is the legal owner of all assets of Crown Perth Resort and Perth Casino. Those assets include the casino licence, liquor licences and the land, buildings, plant, equipment of the Resort Complex, and the goodwill, stock in trade and personal property acquired for the operations of Crown Perth Resort and Perth Casino. BNL holds the assets as part of the Trust Fund of the BPT. The trust structure is addressed in more detail below.
- 13 BNL is the Burswood entity which enters into contracts with third parties. BNL has no employees.
- 14 BRML is the Burswood entity that employs the majority of the employees who work at Perth Casino, and the associated hotel and hospitality venues.²
- 15 BL is a holding company of both BRML and BNL. BRML is a subsidiary of BNL and BNL is a subsidiary of BL.³ BL has no employees.

- 16 Due to this corporate structure, BL has the ability to appoint the directors of BNL and, through BNL, to appoint the directors of BRML, and so control the composition of the boards of those companies.
- 17 Riverbank Investments Pty Ltd (**Riverbank**) is another company in the Burswood subgroup, and BL holds all of the shares in this company. In the past, Riverbank has been used to hold bank accounts to which patrons could deposit funds with a degree of anonymity.
- 18 The current corporate and trust structure of the Burswood subgroup is depicted below.⁴



Crown structure

- 19 BL is a wholly owned subsidiary of CRL, through two interposed entities: Crown (Western Australia) Pty Ltd and Crown Entertainment Group Holdings Pty Ltd. CRL is an Australian Securities Exchange (**ASX**) listed company.
- 20 Crown Melbourne Limited (**CML**), which holds the casino licence for Melbourne Casino, and Crown Sydney Gaming Pty Ltd (**Barangaroo Licensee**), which aspires to hold a licence for the restricted gaming facility at premises located in Barangaroo, Sydney (**Barangaroo Casino**), are wholly owned subsidiaries of CRL.
- 21 A simplified corporate structure of Crown is depicted at Appendix J: CRL Corporate Structure.

Burswood Property Trust

- 22 The BPT is a unit trust.⁵ Since corporatisation in 1997, BNL has been the trustee of the BPT (**Trustee**), BRML has been the manager of the BPT (**Manager**) and BL has been the sole unitholder of the BPT (**Unit Holder**).
- 23 In summary, the BPT structure is:
 - a. BNL, as Trustee, holds as legal owner, 'Authorised Investments', which include the casino licence, the land, buildings, plant, equipment of the 'Resort Complex', and the goodwill, stock in trade and personal property acquired for the operations of Perth Casino;

- b. BL has been the holder of all of the units in the BPT and, in that sense, it is the beneficial owner of all assets of the BPT including Perth Casino and the casino licence; and
- c. BRML, as Manager, has the duty (and obligation) to manage the Authorised Investments.

24 The Manager has the duty and function of managing Crown Perth Resort (which includes Perth Casino) and the Trustee's duties and powers under the Trust Deed are subordinated to the Manager. A summary of some of the more significant terms of the Trust Deed is contained in Appendix K: Trust Deed. It is sufficient to record here that the Trust Deed includes provisions to the following effect:

- a. the Trustee has all the powers in respect of the assets and investments of the Trust Fund which it could exercise as if it were the beneficial owner but those powers are to be exercised only upon the request and in accordance with the directions of the Manager; and
- b. the Manager is to manage the Trust Fund for the benefit of the Unit Holder with complete powers of management subject to the provisions of the Trust Deed and is to carry on any business that is part of the Trust Fund in a proper and efficient manner.

25 The State Agreement has a number of provisions that are relevant to the BPT.⁶ They include the following:

- a. The Trust Deed (a defined term)⁷ shall not be altered or amended without the approval of the Minister.⁸
- b. There shall be no appointment of any new, additional or substitute Trustee or Manager under the Trust Deed without the prior consent of the Minister.⁹
- c. The Manager is to obtain prior approval of the Gaming and Wagering Commission (**GWC**) to the registration of any transfer of the shares in the capital of the Manager.¹⁰
- d. The Manager is to obtain prior approval of the GWC to any appointment of a director or alternate director of the Manager.¹¹
- e. The Manager is to obtain the prior approval of the Minister to alter or amend its constitution.¹²
- f. The Approved Company (BL) may not sell or otherwise dispose of any units without the prior approval of the Minister.¹³
- g. The Manager means any person from the time being appointed, subject to the provisions of the Agreement, Manager under and pursuant to the terms of the Trust Deed, provided that if there is no person appointed Manager or the Trustee is appointed Manager, then references in the State Agreement to Manager will be read as references to the Trustee, except where the context so requires.¹⁴
- h. The Trustee means West Australia Trustees Limited (who was the initial Trustee) or any other person for the time being appointed, subject to the provisions of the Agreement, Trustee under and pursuant to the provisions of the Trust Deed.¹⁵

26 The effect of these provisions of the State Agreement is that, as of the date of the last amendment to the State Agreement, all parties, including the Minister and GWC, were aware and accepted or agreed that:

- a. BNL is the Trustee;
- b. BRML is the Manager;
- c. BL is the sole Unit Holder under the Trust Deed;

- d. there could not be any change to the ownership of the shares in the Manager without the approval of the GWC, or an amendment to the Constitution of the Manager, or an Approved Company, or a change in the ownership of the units without the approval of the Minister;
 - e. there could not be any change of the Manager or Trustee without the consent of the Minister;
 - f. the GWC is to approve the appointment of a director or alternate director to the Manager, and may require a director of the Manager to vacate office;
 - g. the form of the Trust and corporate structure (which includes the Trustee is to be the trustee of the BPT and the Manager is to be the manager of the BPT) shall be followed, subject to any amendment or variation approved by the Minister; and
 - h. at some time in the future the appointment of the Manager may cease, or it may be folded into the role of the Trustee.
- 27** As will be explained, some significant changes were made in 1997. However, as a general statement, most of the provisions of the Trust Deed and the State Agreement set out above have been in those instruments since inception in the same or similar terms to the way they currently appear.
- 28** It follows that the existing Perth Casino trust structure was acknowledged, agreed and, in effect, entrenched by the State Agreement, subject to certain approvals or consents. Likewise, the terms of the Trust Deed were acknowledged, agreed and, in effect, entrenched by the State Agreement, subject to the approval of the Minister to any alterations or amended.
- 29** It follows logically from the terms of the Trust Deed for the BPT, as recognised in the State Agreement, that:
- a. BRML is the Burswood entity with the obligation to manage Perth Casino and discharge BNL's obligations as casino licensee; and
 - b. BRML must carry out those obligations for the benefit of BL, as the current sole unitholder in the BPT.

Historical changes to the structure

- 30** From time to time since 1985 there have been changes to elements of the corporate and trust structures. A general description of some of the more material changes is contained in Chapter Two: History of Perth Casino and the following discussion should be read in conjunction with that material. Three of them are of particular relevance to this aspect of the inquiry, namely:
- a. the corporatisation of the structure in 1997;
 - b. changes in 2003 prior to the 2004 takeover of BL by Publishing and Broadcasting Limited (**PBL**); and
 - c. a restructure of the PBL interests in 2007 that led to CRL becoming the ultimate holding company of the Burswood entities.

Corporatisation

The proposal

- 31 A summary of the corporatisation proposal and its implementation is contained in Chapter Two: History of Perth Casino.
- 32 On 8 April 1997, a statement was made by the then Minister for Racing and Gaming about the intention to 'corporatise' the trust by BPT acquiring the management interests in the casino and resort held by Victoria Co Ltd (**Victoria Co**), the operator of the casino.
- 33 In the Parliamentary debates concerning the corporatisation proposal, two themes were mentioned. First, that it would open the trust structure up to market forces, including fundraising and retention, election and performance reviews of directors managing the affairs of the trust and broadening development opportunities.¹⁶
- 34 Secondly, retaining the business as a Western Australian entity and restricting foreign ownership and control was a factor, including that the head office be located in Western Australia and that the board consist predominantly of Australian citizens.¹⁷

Implementation of the proposal

- 35 On 18 September 1997, BL was admitted to the official list of the ASX. On 26 September 1997, BL acquired all of the units in the BPT with the former unit holders receiving shares in BL in exchange.
- 36 On 7 October 1997, BNL replaced the then professional public trustee as trustee of the BPT.¹⁸
- 37 On 10 October 1997, the Operation Management Agreement was cancelled. The shares in BRML previously held by Victoria Co were transferred to BNL. BRML became a wholly owned subsidiary of BNL, which was, in turn a subsidiary of BL.
- 38 Also on 10 October 1997, the Twelfth Supplemental Trust Deed¹⁹ was signed to evidence amendments to the Trust Deed to remove aspects related to the units being listed on the stock exchange and other changes. On the same day, the Burswood properties were transferred to BNL.
- 39 On 28 October 1997, the casino licence was assigned to BNL. This marked the effective completion of the corporatisation.
- 40 In the Annual Report of BL for 1998,²⁰ the chair noted that the Operations Management Agreement had been cancelled and under the corporatisation and restructure of the BPT, direct control of all facilities at the Burswood complex had been achieved.
- 41 Before corporatisation, activities had been accounted for as the BPT with BRML, as the Manager, responsible for the management of the assets constituting the Trust Fund.²¹ Following corporatisation, reporting was in the conventional way for groups of companies with a listed ultimate holding company. In BL's 1998 annual report, the notes to the financial statements (basis of preparation) include:²²

[BL] was incorporated on 15 July 1997. These general purpose financial statements for the period from incorporation to 30 June 1998 comprise the consolidated accounts of the Company and the entities it controlled at the end of, or during that period. [BL] acquired control of the [BPT] on 26 September 1997...The proforma financial information represents the aggregated results, cash flows and notes thereto of the group comprising [BL], the Trust, [BRML], [BNL], [and other companies].

An Approved Company

- 42** The Seventh Supplementary Agreement amended cl 17 and introduced cl 17A of the State Agreement and imposed a number of conditions on an Approved Company, and thus on BL:²³
- a. the constitution of an Approved Company cannot be changed without the prior approval of the Minister;
 - b. an Approved Company cannot sell or dispose of any units in the Trust without the prior approval of the Minister;
 - c. an Approved Company must be a public company with voting shares capable of being quoted on the ASX;
 - d. the memorandum and articles of an Approved Company must comply with the requirements set out in Schedule B to the Agreement and be approved by the Minister;
 - e. Schedule B provides that the articles of association must contain the following provisions (among others):
 - i. the head office of the Approved Company (defined to mean 'the place of business where central management and control are exercised') must always be located in Western Australia;
 - ii. no one shareholder can nominate or appoint more than one member of the board of directors;
 - iii. at least two to three of the directors must be Australian citizens and the presiding member must always be an Australian citizen;
 - iv. without the approval of the Minister:
 - A. an individual person cannot have a relevant interest in more than 10% of the voting shares in an Approved Company;²⁴ and
 - B. foreign persons cannot hold relevant interests that represent, in total, more than 40% of the voting shares in an Approved Company;
 - f. without the approval of the Minister, an Approved Company cannot take action to bring about a change of its company name to a name that does not include the word 'Burswood';
 - g. the Trustee and Manager must make available to the GWC for inspection all information held in respect of unit holdings, shareholdings and directors and all minutes of meetings of unitholders, shareholders and directors;
 - h. the Trustee and Manager must deliver to the GWC notice of meetings of unit holders or directors; and
 - i. the GWC has the right to attend and speak at any meeting of the BPT or the Manager.
- 43** Section 10 of the CBIA Act provides that cl 17A and Schedule B of the State Agreement are not to be amended or deleted.²⁵

The 2003 changes to the corporate arrangements

- 44** In 2003, the legislation was amended to alter some of the restrictive elements in the corporate arrangements. These changes are also summarised in Chapter Two: History of Perth Casino.
- 45** In the Parliamentary debates concerning the changes, the two themes mentioned in relation to the 1997 amendments (opening the company up to market forces and retaining its

Western Australian status) were canvassed. The Minister outlined the reasons advanced by BL in support of the proposals and expressed the Government's view that removing the 10% shareholder cap would expose BL to the normal forces of capital markets, including potential takeover, and would improve accountability arrangements for management in the performance of the entity.²⁶

- 46 In his response, the Minister said that there was nothing in the arrangements that would prevent that outcome. However, the constraint that it must be headquartered in Western Australia would remain. The mechanisms to achieve that (through the mandatory articles for headquarters, Australian citizenship control of the board and limitations on the ability of individual shareholders to appoint more than one director), although relocated, would be 'in essence as they exist now' and 'essentially the pre-existing requirements for the Western Australian status of the operation'. The Minister also said the current arrangements for the shareholding cap had not resulted in ownership of Perth Casino by Western Australians as most major shareholders were companies with offices outside the State.²⁷
- 47 The Eighth Supplementary Agreement to the State Agreement, dated 18 June 2003, sets out the changes.²⁸ It was ratified by amendments to the CBIA Act. Although Schedule B (which had been introduced in the Seventh Supplementary Agreement) remains in force, the Eighth Supplementary Agreement introduced a provision that is specific to BL as an Approved Company.²⁹ It required BL to amend its constitution to introduce art 3 that contains provisions set out in Schedule E, which it did. BL was not made a party to the State Agreement and that remains the position.
- 48 Many of the 1997 conditions, mentioned above, were largely replicated or left unchanged in the 2003 changes although some were differently formulated. The following list, which identifies the relevant provision in the State Agreement and the BL constitution, describes those conditions:
- a. the constitution of an Approved Company cannot be changed without the prior approval of the Minister: unchanged, cl 17(1)(ea);
 - b. an Approved Company cannot sell or dispose of any units in the BPT without the prior approval of the Minister: unchanged, cl 17(1)(eb);
 - c. the memorandum and articles of the Approved Company must comply with the requirements set out in Schedule B to the Agreement and be approved by the Minister: unchanged, cl 17(2)(b); and
 - d. Schedule B provides that the articles of association must contain the following provisions (among others):
 - i. the head office of the Approved Company (defined to mean 'the place of business where central management and control are exercised') must always be located in Western Australia; unchanged, now appears in Schedule E, art 3.12 (**head office requirement**);
 - ii. at least two thirds of the directors must be Australian citizens and the presiding member must always be an Australian citizen; unchanged, now appears in Schedule E, art 3.14 and art 3.15; and
 - iii. without the approval of the Minister, foreign persons cannot hold relevant interests that represent, in total, more than 40% of the voting shares in the company: unchanged, Schedule E, art 3.6, although arts 3.8 to 3.9A also place restrictions on the right of foreign persons to vote on resolutions for the appointment of directors.
- 49 The obligation on BNL and BRML to provide information about unit holdings, shareholdings and directors, to permit GWC representatives to attend and speak at meetings, and to

provide GWC with notices of meetings were retained.³⁰ Accordingly, the Trustee and Manager still have responsibilities under those provisions. However, similar obligations were imposed on an Approved Company through specific provisions in the mandatory articles.³¹

- 50 Prior to 2003, the State Agreement specified that the Approved Company must be a public company with voting shares that are capable of being quoted on the ASX. While the requirement that it must be a public company remains, the effect of the 2003 amendments is that the stipulation that the shares be capable of quotation on the ASX only applies 'at the time of approval'.³² In other words, it has no present relevance to BL as an Approved Company.
- 51 Two other areas in which changes were made relate to the ability of individual shareholders to nominate multiple directors and to the 10% cap on shareholdings.
- 52 The CBIA Act was amended to introduce the notion of a probity approval notice. A person must not have a relevant interest in more than 10% of the voting shares of an Approved Company unless the person holds a probity approval notice issued by the GWC within 90 days before or after the person becomes the holder of that interest.³³ The GWC may issue a probity approval notice for the acquisition if it is satisfied that the applicant is a suitable person to hold that interest.³⁴ In other words, the power to grant exemptions from the 10% shareholding limit lies with the GWC, rather than the Minister.
- 53 The effect of the 2003 changes to the State Agreement reflected the probity approval arrangements in the CBIA Act.³⁵ Similarly, an individual shareholder cannot nominate more than one director unless that shareholder holds more than 10% of the voting shares and the company has received a probity approval notice in respect of that shareholder.³⁶
- 54 The CBIA Act empowers the Minister, on the advice of the GWC, to order the holder of a probity approval notice to dispose of shares if satisfied that the person is no longer a suitable person to hold an interest in more than 10% of the voting shares of the company.³⁷ This power is in addition to that in the *Casino Control Act 1984 (WA)* (**CC Act**) empowering the Minister to order a close associate of a licensee to dispose of shares.³⁸
- 55 In summary, the effect of these legislated changes is that:
- a. it was (and is) no longer necessary for BL, as an Approved Company and as the holder of all the units in the BPT, to be a listed public company;
 - b. any person or persons can hold more than 10% of the voting shares in BL (and, with no other express limitations, could therefore hold 100%) of the shares in BL if the person held a probity approval notice from the GWC;
 - c. restrictions on foreign ownership totalling more than 40% remain in force;
 - d. a shareholder who holds more than 10% of the voting shares in the company can nominate multiple directors to the board of BL, subject to the receipt by the company of probity approvals for that shareholder; and
 - e. BL became subject to similar obligations to those affecting BNL and BRML in relation to the provision of information to the Minister and the GWC.

The 2004 PBL takeover

- 56 In April 2004, PBL announced a takeover offer for all of the voting shares in BL. The GWC granted a probity approval notice and by September 2004, a subsidiary of PBL had acquired all of the shares in BL. As a result of the takeover, PBL acquired ultimate ownership and control of the casino licence held by BNL.
- 57 BL continued to hold all of the units in the BPT but it was removed from the ASX lists.

The 2007 PBL restructure

- 58** A further relevant change occurred in 2007 when the businesses and holdings of PBL were restructured and the gaming assets (including Perth Casino and Crown Perth Resort) were acquired by Crown Ltd, a publicly listed company domiciled in Melbourne. Crown Ltd later changed its name to CRL. BL became a wholly owned subsidiary of CRL, the structure that exists at present.
- 59** The restructure was announced on 8 May 2007,³⁹ with an effective date of 30 November 2007. Approximately two weeks before this announcement, Ministerial consent was received for the Thirteenth Supplemental Trust Deed and on 30 April 2007 the deed was executed.⁴⁰ It removed the mandatory requirement for the BPT to prepare, and have audited, half-yearly and yearly accounts and replaced it with a provision leaving those decisions to the discretion of the Manager (BRML).
- 60** BL was a party to the Thirteenth Supplemental Trust Deed.

Crown Perth concept

- 61** The Burswood subgroup operated and continues to operate under the trading name 'Crown Perth'. That business name is registered and held by BNL.⁴¹ The trading name appears to have changed or been re-branded to Crown Perth from 'Burswood Entertainment Complex' in 2012.⁴²
- 62** In terms of financial reporting, BL, BNL and BRML have not had and do not have separate accounts. Those companies, along with other companies in the Burswood subgroup, were consolidated together as the Perth operations. The financial reporting to the BL board was on this consolidated basis.⁴³ Annual budgets were also set on a consolidated basis.⁴⁴ The consolidation of Perth Casino and Crown Perth Resort operations into a composite group occurred around the time of the corporatisation of the Burswood operations in 1997,⁴⁵ and was already entrenched by the time of the PBL takeover. It was not an initiative introduced by PBL interests. However, the changes in 2007 by which the preparation and auditing of accounts of the BPT, as a trust, became optional were made at a time when the current owners were in control.
- 63** In its interactions with the regulator, the name Crown Perth is commonly used,⁴⁶ with the explanation in the footer of documents that this is 'Burswood Nominees Limited a.t.f. The Burswood Property Trust trading as Crown Perth managed by Burswood Resort (Management) Limited'.⁴⁷
- 64** In total, approximately 5,500 people work at Crown Perth Resort.⁴⁸ Crown Perth Resort staff are engaged in 'on the floor' activities such as gaming, food and beverage, security and surveillance. Those staff are employed by BRML.⁴⁹
- 65** Staff who provide services to and manage the operations of Crown Perth Resort are known as the 'Business Operating Team'. This team is comprised of about 40 – 45 people.⁵⁰ These employees are engaged in providing services and managing the operations of Crown Perth Resort, including Perth Casino and provide the functions of information technology, legal and corporate services, finance, human resources, casino operations, surveillance and marketing. Some of the members of the Business Operating Team have been, and still are, employed by BRML, and some are employed by CRL or other Crown companies. Some of the changes which have occurred to Crown Perth Resort's Business Operating Team, and their employment, are set out later in this chapter.
- 66** Looking at the Burswood entities, it is difficult to discern any one single corporation that operates the complete business of Perth Casino. BNL holds the casino licence and is the counterparty for contracts with third parties, including trade suppliers. BRML employs

the day-to-day staff who conduct the operations on the floor, and some management staff. Other than the Trust Deed, there is no service agreement between BRML and BL or BNL, and BRML has no assets nor derives income on its own accord. CRL employs senior management and executives, whom the management of BRML take direction from and report to. BL (as the sole unit holder of the BPT) is said to have the legal ability to control the management and beneficial ownership of Crown Perth Resort and it has assumed the primary responsibility for governance of Crown Perth Resort, including Perth Casino.

- 67 In this way, Perth Casino can be seen to have been operating (and continues to be operated) by the conglomerate of BRML, BNL and BL, under the trading name 'Crown Perth'. CRL has also played (and continues to play) a role in the management and oversight of Perth Casino. This is discussed further below.

Implications of the corporate and trust structures

- 68 During the PCRC's inquiry, issues about the complexity of the corporate and trust structures have been examined, as has the impact these structures have had on governance considerations. The PCRC will return to these issues later in the chapter. Before doing so, it is necessary to discuss some systemic and operational issues relating to things such as the boards of the various entities and their activities, the process of centralisation of functions in a shared services model and risk management generally. These systemic and operational questions provide important contextual material for the resolution of the wider governance issues.

The boards

Burswood entities

- 69 BL and BNL operate pursuant to a company constitution and BRML operates pursuant to articles of association.⁵¹ At the time of writing, none of the Burswood entities have a board charter in effect. A draft board charter for BL was approved and adopted at its 10 December 2021 meeting, subject to CRL approval,⁵² although Crown contends it will be reviewed again depending on the outcome of the PCRC.⁵³
- 70 The company constitutions of BL and BNL, and the articles of association of BRML each provide that the 'business of the Company' is to be managed by its directors, who may exercise all the powers of the company which are not required to be exercised by the company in general meeting.⁵⁴ The business of each of the companies is not defined in the constitutions or articles of association.
- 71 Each constitution and articles contain provisions as to the conduct of board meetings.⁵⁵
- 72 Each of the constitutions and the articles permit the boards to establish board committees.⁵⁶ From around the time of PBL's acquisition of BL in 2004 until the time of writing, none of BL, BNL or BRML have maintained any board committees.⁵⁷ In contrast to the position in Victoria,⁵⁸ the State Agreement does not require the Burswood entities to have any specific board committees, notify changes to the composition of those committees, or provide to a regulator the minutes and papers of those committees.
- 73 None of the constitutions or articles of BL, BNL or BRML contain a provision permitting directors to act in the best interests of a holding company under s 187 of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- 74 There previously were no codes of conduct specifically applicable to the directors of BL, BNL or BRML. However, in April 2021 a code of conduct was introduced.⁵⁹

- 75 A full list of the persons who have been directors, secretaries, and senior executives of the Burswood entities is at AppendixL: Table of Directors. The number of directors on the BL board has been between three (in 2021) and nine (in 2008).
- 76 From 2004 until the appointment of Bruce Carter (**Carter**) in August 2021, the majority of the board of BL were executive directors, and the entire boards of BNL and BRML were executive directors.
- 77 For a long period of time, the two non-executive directors on the board of BL were John Poynton (**Poynton**), who resigned in February 2021, and Timothy Roberts (**Roberts**), who resigned in June 2019. Maryna Fewster (**Fewster**) was appointed to the BL board as a non-executive director in July 2019 following Roberts' resignation.
- 78 Historically, although with some exceptions, the person occupying the role of Chief Executive Officer (**CEO**) (or equivalent) of Crown Perth Resort has been a director of each of the Burswood entities. The current directors of BL are:
- Fewster;
 - Stephen McCann (**McCann**) – who is also CEO of CRL, and managing director of CRL and who is scheduled to be appointed to the boards of BRML and BNL;
 - Carter – who is the chair of BL and is also a director of CRL, BNL and BRML; and
 - Dr Zygmunt Switkowski (**Switkowski**) – who is also a director and chair of CRL.
- 79 The current directors of BNL and BRML are:
- Carter;
 - Lonnie Bossi (**Bossi**) – who recently resigned as CEO – Crown Perth and will be replaced as a director of BRML and BNL in due course; and
 - Alan McGregor (**McGregor**) – who is the Chief Financial Officer (**CFO**) of CRL.
- The BNL and BRML boards are comprised of two executive directors, and one non-executive director. The articles of association for BRML and the constitution of BNL provide for a quorum for meetings of two directors.⁶⁰
- 80 James Packer (**Packer**) was the chair of BL in the period September 2004 to May 2016, and John Alexander (**Alexander**) was the chair of BL in the period May 2016 to January 2020. Poynton was chair of BL from 24 January 2020 to 28 February 2021.
- 81 With the exception of Barry Felstead (**Felstead**) and Rowen Craigie (**Craigie**), who had prior roles in the gaming industry, none of the directors of BL had any experience in casino gaming, casino risk management, or financial crime risk management prior to their appointment.⁶¹ Packer agreed this was an oversight.⁶²
- 82 Prior to 2019, the non-executive directors had broad corporate experience, as they held numerous roles on other ASX-listed boards.⁶³ Packer and Alexander said the non-executive directors in that period were experienced business figures who could give the BL board advice on political, economic and financial trends in Western Australia.⁶⁴
- 83 Roberts said on his appointment he received a half-day induction which covered an overview of the business including various policies and procedures,⁶⁵ but did not recall if he received any further training during his tenure.⁶⁶
- 84 The skills and experience of the current BL board is discussed later in this chapter.

CRL board

- 85 CRL has operated, and continues to operate, pursuant to a company constitution and board charter.⁶⁷
- 86 The CRL constitution, which has been in place since 2013, provides that the directors are responsible for managing the 'business of the Company'. 'Company' is defined as CRL. The 'business of the Company' is undefined.
- 87 The CRL constitution provides for the conduct of board meetings,⁶⁸ and it permits the board to establish board committees.⁶⁹
- 88 The current CRL board charter provides that the:⁷⁰
- a. board is responsible for guiding and monitoring CRL (defined as 'the Company') on behalf of its shareholders;
 - b. board is responsible for identifying areas of significant business risk and ensuring arrangements are in place to adequately manage those risks;⁷¹
 - c. directors are responsible for overseeing the management of the business of the Company;⁷² and
 - d. responsibilities of the directors include satisfying themselves 'that the Company has in place an appropriate risk management framework (for both financial and non-financial risks)⁷³ and 'monitoring the effectiveness of the Company's governance practices'.⁷⁴
- 89 Since 2008, the directors of CRL have also been subject to a code of conduct.⁷⁵ The code of conduct provides, among other things, that the directors must:
- a. act in the best interests of 'Crown as a whole'; and
 - b. recognise their primary responsibility is to Crown's shareholders as a whole, but should, where appropriate, have regard to the interests of all of 'Crown's stakeholders'.
- 90 In the code of conduct 'Crown', 'Crown as a whole' and 'Crown's stakeholders' are not defined.
- 91 CRL historically has had, and continues to have, a number of board committees, of which the non-executive directors have been members and (or) chairs. Each committee has a charter approved by the CRL board.⁷⁶
- 92 The current CRL committees include:⁷⁷
- a. Audit and Corporate Governance;
 - b. People, Remuneration and Nomination;
 - c. Safety and Sustainability;
 - d. Responsible Gaming; and
 - e. Risk Management.
- 93 Since 2007, the CRL board has been comprised of a majority of non-executive directors. This is consistent with the ASX 'Corporate Governance Principles and Recommendations'.
- 94 In the period 2008 to the beginning of 2021, the CRL board has had at least three directors nominated by Consolidated Press Holdings Pty Ltd (**CPH**) on the board at any one time.⁷⁸
- 95 Alexander was also an employee of CPH from 2014 to 2017 (whilst being employed by CRL and acting in the role of chair of BL).⁷⁹
- 96 In the period 2008 to the beginning of 2021, the following directors of CRL were also directors of one or more of the Burswood entities in the periods as set out in Appendix L: Table of Directors:

- a. Packer;
 - b. Alexander;
 - c. Kenneth Barton (**Barton**);
 - d. Craigie;
 - e. Poynton (CRL director from November 2018 to February 2021); and
 - f. Helen Coonan (**Coonan**).
- 97** The current board of CRL is:
- a. Switkowski, who is chair;
 - b. Jane Halton (**Halton**);
 - c. Nigel Morrison (**Morrison**);
 - d. Carter, who is also a director of each of the Burswood entities;
 - e. McCann, who is the CEO of CRL, director of BL, and scheduled to become a director of BNL and BRML; and
 - f. Anne Ward (**Ward**).
- 98** With the exception of Craigie, Barton and Antonia Korsanos (**Korsanos**), and now Carter and Morrison, no director of CRL had experience in the gaming industry prior to their appointment to the board of CRL.⁸⁰ The previous non-executive directors of CRL had a broad range of corporate, not-for-profit and government experience,⁸¹ but no experience in casino risk management.
- 99** Prior to 2020, CRL directors were not required to complete specific casino risk training.⁸²

Activity of the boards

Burswood entities

BNL and BRML boards

- 100** Meetings of the BNL and BRML boards were held infrequently, and material transactions were approved by circular resolution with no evidence of any board discussion.⁸³
- 101** The BNL board meetings were conducted at Crown Perth Resort, Crown Melbourne Resort or via video conference. The BRML board meetings were conducted at Crown Melbourne Resort with the exception of one meeting in 2012 which was held at Crown Perth Resort.⁸⁴
- 102** In a practical sense, the BNL and BRML boards did not oversee the management or operation of Perth Casino, or the risks associated with those operations. The board meetings and circular resolutions for both companies concerned statutory compliance matters such as annual solvency declarations, ASIC class order exemptions and deeds of cross guarantee resolutions, the appointment of company officers, and approving entry into some formal documents.⁸⁵
- 103** BRML is authorised, and required, to give directions and make requests to BNL under the Trust Deed but there is little evidence of it doing so. The only examples the PCRC has seen are a 2014 resolution of the BRML board directing BNL, as Trustee of the BPT, to enter into a deed of assignment of debt as part of an inter-company restructure,⁸⁶ and a 2006 resolution of BNL to enter into a new deed of guarantee following a direction from BRML.⁸⁷ There is no evidence of BRML directing BNL prior to BNL contracting with third parties.⁸⁸ There is no evidence that BRML gave any direction to BNL in relation to the 'Designated Business

Group' for Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) purposes. Crown contends that this is of no moment because directions need not be formal or in writing, and while there was no evidence of tangible directions, in substance BNL acted at the direction of BL.

- 104** However, the Trust Deed provides for the Trustee to exercise their powers 'pursuant to the directions of the Manager as herein provided and upon the request and in accordance with the direction of the Manager'. The Trust Deed then provides all notices, consents and requests given by the Manager to the Trustee, or by the Trustee to the Manager shall be given in writing and signed by duly authorised persons. This provision was not removed on corporatisation and has not been altered since then. The Trust Deed therefore contemplates a level of formality in requests by the Manager to the Trustee (and vice versa). The absence of evidence of any formal directions or requests (other than as described) raises questions about authority and accountability.
- 105** On the state of the evidence, it seems that neither of the boards of BRML nor BNL were conducting material oversight of the operations of Perth Casino, and BRML was not directing or making requests of BNL in the operation of Crown Perth Resort, including Perth Casino. It is not clear whether BRML was managing or supervising Perth Casino, a trust asset, as contemplated in the Trust Deed.

BL board

- 106** Of all the Burswood entities and CRL, it was the BL board that received the most information from management about Crown Perth Resort and Perth Casino operations.
- 107** A review of the minutes from 2013 to 2018 indicate that, generally speaking, BL board meetings were short in duration,⁸⁹ with only four to five meetings per year.⁹⁰ BL board meetings were conducted at Crown Perth Resort or by videoconference. The minutes for BL board meetings contain limited detail, in some instances being only one page in length.⁹¹
- 108** Poynton said the chair determined the duration of board meetings.⁹² Roberts, Poynton and Alexander said that there were informal and un-minuted discussions which occurred between directors over dinner, outside of formal BL board meetings.⁹³ Alexander also said Poynton was in regular contact with him and regularly visited the Crown Perth Resort and senior management. Alexander said he had not considered there was a need for more frequent board meetings.⁹⁴
- 109** Discussions conducted outside of board meetings (less formal communications) are a common feature of corporate life and they can be informative and sometimes necessary for individual directors. They have an important role to play in informing directors about the affairs of the company. However, the critical question is how they translate to the decision-making function. They can lead to situations where the board does not act as a single unit due to asymmetrical distribution of information, particularly where not all members are privy to the discussions. Further, those discussions are not recorded or minuted unless they are repeated at the meeting. As a matter of good governance, decision-making of a board should be reserved for board meetings.
- 110** Joshua Preston (**Preston**) (company secretary from 2014), McGregor (company secretary since 2021) and Roberts said that the minutes were an accurate record of what took place at BL board meetings.⁹⁵
- 111** Crown contends that an analysis of board minutes or a count of the decisions taken by the board does not reveal the full extent of its activity. That may be so but it has to be borne in mind that, by statute, a minute that is recorded and signed is evidence of the proceeding to which it relates, unless proved otherwise.⁹⁶ The first agenda item at BL board meetings was to confirm the accuracy of the previous meeting's minutes.⁹⁷ Given that the BL board

had assumed governance oversight of Perth Casino, it was important for minutes to record accurately what took place.⁹⁸ The PCRC takes the view that the minutes and a count of the decisions of the BL board are relevant in assessing the activities at board meetings and are the best evidence that is available to it.

- 112** The minutes record the BL board rarely passing formal resolutions, and, in relation to most matters, it is recorded as merely accepting, agreeing, approving or noting management reports with limited or no minuted discussion.⁹⁹
- 113** In the period September 2004 to September 2020 (a 16-year period), the BL board held 74 meetings and in that period it:
- a. made 72 resolutions – these resolutions were for statutory compliance matters such as the appointment of directors, solvency declarations, ASIC class order exemptions, deeds of cross guarantee resolutions and formal approval of agreements;
 - b. ‘approved’, or ‘agreed’ – 34 times;
 - c. ‘adopted’ – 13 times; and
 - d. ‘noted’, ‘taken as read’ or ‘accepted’ – 444 times.
- 114** A review of the minutes since September 2004 suggests there is only one instance of the BL board rejecting a matter put forward by management.¹⁰⁰
- 115** Similarly, the minutes record few instances in which the BL board requested further information from management. However, from 2019, Poynton appears to have increased his questioning significantly. This continued during his tenure as chair of BL in 2020.¹⁰¹
- 116** The general agenda and subject matter of the board packs for BL board meetings remained relatively static through the period from 2007 to 2020. The agenda of the board packs included items addressing:¹⁰²
- a. financial results of Crown Perth Resort;
 - b. key management issues relating to Perth Casino operations;
 - c. development updates;
 - d. internal audits;
 - e. legal, risk and compliance; and
 - f. occupational health and safety issues (from June 2018 onwards).
- 117** The BL board had no board committees. The oversight of risk came from the Perth Executive Risk and Compliance Committee (**Perth ERCC**), which was a management committee.
- 118** From 2014 onwards, the minutes record more discussion on the financial performance and development updates than on legal, risk and compliance or internal audit.¹⁰³ Preston said more time was spent on the financial reporting and the ‘CEO’s report’,¹⁰⁴ than other agenda items.¹⁰⁵ The internal audit reports and legal, risk and compliance reports provided to the BL board were noted or taken as read in this period.¹⁰⁶ It was contended that the independent directors frequently asked questions of Preston during the presentation of internal audit and legal, risk and compliance reports. This may be so, but given that Preston acknowledged he generally recorded any significant discussion in the minutes,¹⁰⁷ it is difficult to assess the extent of un-minuted inquiries. As indicated, the PCRC takes the view that the minutes are a reflection of the BL board’s activity.
- 119** From the board packs and the minutes, the BL board appears to have been significantly focused on the development of the resort which occurred in various stages. From 2007 onwards, CRL approved and provided the capital expenditure for the development.¹⁰⁸ This culminated in the construction of the Crown Towers hotel.¹⁰⁹

- 120** From the board packs and the minutes of the various boards, it appears that from 2014 onwards, the financial plans and budgets for Crown Perth Resort were considered and set by the CRL board prior to being presented to the BL board.¹¹⁰ The BL board then ‘notes’ or ‘takes as read’ the financial plan and budget.¹¹¹ The PCRC has considered the submission that there has always been a commonality of interests as between CRL and BL which explains why financial plans and budgets were simply taken as read. While this may be so, the evidence does not indicate any significant level of participation by BL in the financial planning or budgeting process, and the financial plan and budget (with the exception of one year) was submitted to the CRL board for approval before being submitted to the BL board.
- 121** The BL board did not receive the minutes or reports from the BNL or BRML boards,¹¹² nor did the BNL or BRML boards receive minutes or reports from the BL board. Although, from mid-2019, the BL board began supporting the BNL board entering into supply agreements¹¹³ and adopting some internal policies.¹¹⁴ The executives on the BNL and BRML boards were directors of BL or reported to the BL board in their executive capacities, so it may have been the case that information was communicated via those executives, rather than through formal reports or minutes.

Activities of the BL board in 2021

- 122** Following the departure of executive directors and Poynton after the Bergin Inquiry, the only continuing directors were Coonan and Fewster. This meant the BL board did not have a quorum for board meetings.
- 123** On 1 March 2021, Bossi, who already had probity approval, was appointed an interim director of BL.¹¹⁵ This appointment was made despite the announcement of the PCRC which would be scrutinising the management of Perth Casino. Fewster recognised that the appointment of Bossi was premature.¹¹⁶
- 124** Bossi remained on the BL board until 24 December 2021.¹¹⁷
- 125** In December 2020, Bossi was promoted to the role of CEO – Crown Perth, and was required to take on a larger number of responsibilities, particularly with the removal of the Australian Resorts roles (described later in this chapter). Bossi remained in this role until 20 January 2022. Requiring Bossi to be a director in addition to his other roles increased his work demands during a period of intense change, which had organisational consequences.
- 126** During 2021, the BL board held four meetings.¹¹⁸
- 127** Fewster was concerned there was no BL board meeting between December 2020 and April 2021. Crown have conceded that this was undesirable and was due to Crown being in crisis and undergoing significant change. However, at times of crisis or change, board oversight is critical, and it is good governance for a board to meet more regularly in those times.
- 128** On the evidence available to the PCRC, the BL board did not approve any executive key performance indicators (**KPIs**) at any of these meetings.¹¹⁹ The BL board did not consider and discuss the Deloitte report on culture or a financial year budget until its 10 December 2021 meeting.¹²⁰ The CRL Remediation Plan (discussed later in this chapter) was not provided to the BL board until June 2021,¹²¹ and Fewster did not receive the Crown Perth Resort remediation plan, originally dated 13 May 2021, until 24 October 2021.¹²² Neither plan was approved by the BL board. Fewster stated that in her experience, given the nature of the proposed remediation, the BL board should have met monthly to review the progress against the agreed remediation actions and ensure these were being completed on a timely basis.¹²³
- 129** Fewster gave evidence that she has not been adequately informed about matters of which she should have been informed during her tenure as a non-executive director. Fewster has

taken steps to inform herself about the affairs of BL and improve the operation of the BL board in accordance with her duties.¹²⁴

- 130** Given the gravity of the issues confronting the Burswood entities, the PCRC observes that enhanced board oversight by the BL board was needed in 2021.
- 131** It is acknowledged that 2021, particularly the early months, was a time of upheaval and change for Crown and that the BL board suffered the loss of Barton and Poynton in that period. The enormous workload on Coonan and the other CRL directors and officers is also recognised. Nonetheless, Perth Casino was continuing to operate and it was not immune to the upheavals that other parts of the organisation were experiencing. It is therefore surprising that more was not done to reconstitute the BL board so that it could oversee necessary change.
- 132** The papers and draft minutes of the meeting of the BL board on 23 August 2021 and 10 December 2021 have been produced to the PCRC. There have been improvements to the board processes during the second half of 2021 (**2021 Board Improvements**). The structure of the board packs demonstrates that significant steps have been taken to improve the board agendas and processes following the appointment of Carter as chair and Bronwyn Weir (**Weir**) as Group Company Secretary.¹²⁵ It is noted that specific agenda items are now given required action items, whether that be discussion or decisions, and significant material has recently been provided to the BL board, including on risk, compliance culture, internal audit, AML/CTF, responsible gaming and remediation.¹²⁶
- 133** There is evidence of BL directors questioning management in order to inform themselves about reports being presented, and challenging executives on particular issues.¹²⁷ The current non-executive directors have indicated a willingness to take on additional responsibilities, with Carter accepting the role as chair and Carter and Fewster (and others) attending a meeting with the regulator on behalf of the board.¹²⁸
- 134** Carter is an experienced chair, who has shown a dedication to understanding the Crown Perth Resort business and being 'on the ground'. Under his leadership, the PCRC considers the operation of the BL board should improve significantly. Switkowski is also an experienced director whose presence should aid the improvement.
- 135** The PCRC concludes:
- a. insufficient priority was given to the restructuring of the BL board in the first half of 2021 to enable it to confront the challenges that it and Crown were facing, to operate efficiently and to carry out its governance responsibilities in respect of Perth Casino;
 - b. the recent appointments are positive steps;
 - c. until June 2021, the BL board had little involvement in considering or providing oversight over the various remediation measures being adopted and implemented at Perth Casino; and
 - d. the 2021 Board Improvements demonstrate positive changes during the second half of 2021 in the nature and extent of the BL board's processes.

CRL board

- 136** Since 2010, the CRL board has had an average of six regular meetings each year, as well as several extraordinary meetings to approve statutory compliance matters.¹²⁹ There were a number of extraordinary meetings during 2020 due to the Bergin Inquiry as well as the need to provide updates to the board on the impact of COVID-19.¹³⁰
- 137** Between 2009 and 2021, only a small number of CRL board meetings were held in Perth,¹³¹ with the majority held in Melbourne, or via videoconference.

- 138** The CRL board considered matters expected of a publicly listed company, including statutory compliance matters,¹³² dividend recommendations,¹³³ approving ASX announcements,¹³⁴ and deliberating on CRL's participation in capital markets.¹³⁵ CRL was the entity that had primary oversight over internal and external financing arrangements.¹³⁶
- 139** The CRL board, rather than the BL board, approved budgets and financial plans for Crown, including Crown Perth Resort.¹³⁷
- 140** In the period before 2021, the CRL board received regular reports on Crown results, development updates, accounting and treasury matters, operating businesses, and investor relations. These reports were usually noted, without minuted discussion.¹³⁸ At each regular meeting, the CRL board received a 'CEO report' presented by Craigie, Alexander or Barton, often with input from Felstead. The minutes record that Felstead updated the CRL board on trading results and key management issues of Crown Perth Resort.¹³⁹
- 141** The CRL board approved the formation of several board committees,¹⁴⁰ and approved the amendment of board and committee charters.¹⁴¹
- 142** The CRL board received the minutes from each board committee meeting, which were usually just noted.¹⁴² The updates from the Audit and Corporate Governance Committee were often more comprehensive,¹⁴³ but this is likely due to the corporate and financial integrity matters that this committee considered.
- 143** The board minutes for CRL, for the period prior to 2020, contain few references to detailed discussion of the operations and specific risks of Perth Casino. Apart from the results and management issues presented by Felstead as part of the CEO reports, the only other matters considered by the CRL board directly relevant to Perth Casino concerned capital developments and approving capital expenditure.¹⁴⁴ Packer (who was chair of CRL from 2004 to 2015) saw the development of Crown Perth Resort as one of CRL's primary aims.¹⁴⁵
- 144** In 2020, the reports contained in the board packs provided to the CRL board concerning Crown Perth Resort became more comprehensive.¹⁴⁶ From when he became chair of BL in January 2020, Poynton they provided updates to the CRL board on matters considered at the most recent BL meeting and this is recorded in the minutes.¹⁴⁷
- 145** As mentioned above, the CRL board had a number of board committees. With the exception of the Audit and Corporate Governance Committee, in the period 2008 to 2020, it was only the minutes of the committee meetings which were provided to the CRL board. From a review of the minutes of the CRL committees, the consideration of the operations of Perth Casino was as follows:
- a. Audit and Corporate Governance Committee – was primarily responsible for the statutory and corporate affairs of the Crown group, within the context of CRL being a publicly listed company. The committee considered full and half-year results.¹⁴⁸ This committee did not consider Crown Perth Resort operations in isolation, but rather was aware of the financial contribution of Crown Perth Resort to the wider Crown group as part of the financial results.
 - b. Risk Management Committee – the reporting of the Risk Management Committee and its consideration of Crown Perth Resort and Perth Casino is considered later in this chapter.
 - c. People, Remuneration and Nomination Committee – was responsible for nominating directors to the CRL board,¹⁴⁹ reviewing the remuneration of key executives employed by CRL,¹⁵⁰ and considering bonus arrangements.¹⁵¹ The committee had the delegated oversight for the employment arrangements of CRL.¹⁵² This committee was involved in the employment and bonus arrangements for some senior executives who provided services to Crown Perth Resort.

- d. The Responsible Gaming Committee is discussed in Chapter Twelve: Harm Minimisation.
- e. Brand Committee – this committee was established in August 2019 (following a media report) and considered the responses and Crown’s position to the Bergin Inquiry, an AUSTRAC investigation, and to media allegations. The minutes for 2019 to 2020 do not appear to concern Crown Perth Resort’s operations (though the minutes produced are heavily redacted).
- f. Corporate Social Responsibility Committee – this committee considered initiatives that were applicable to Crown Perth Resort in the context of corporate social responsibility, including diversity employment programs, and environmental sustainability reports.

Centralisation

- 146** The issue of centralisation is of particular significance to the head office requirement, which is considered in further detail later in this chapter. This section outlines the PCRC’s observations on the process of centralisation. It is also relevant to considerations of proper governance generally.
- 147** A level of centralisation has been adopted by Crown for efficiency and for consistency, alignment and information sharing across the Crown group.¹⁵³ This centralisation process occurred gradually. The focus of attention here is on the process of centralisation, not the concept of a shared services model in a corporate group. As will appear later, the PCRC accepts the reality of a shared services model as a matter of principle and outlines some recommendations as to how this could be incorporated in compliance with the head office requirement.

First phase: 2007 to August 2013

- 148** In the period from 2007 to August 2013, there were common directors amongst various companies in the Crown group, who were also executives in relation to CRL, and the Burswood entities.¹⁵⁴
- 149** During this period, some internal systems and processes of Crown Perth Resort and Crown Melbourne Resort were standardised across the operations.¹⁵⁵ Roberts stated that branding, vision, policies and procedures were adopted at Crown Perth Resort by way of ‘shared learnings’.¹⁵⁶

Second phase: August 2013 to 2017

- 150** The centralisation of some functions across Crown Perth Resort and Crown Melbourne Resort was discussed from at least February 2013 in the context of it streamlining ‘management issues’.¹⁵⁷ Documents presented to the BL board refer to an ‘extensive review’ of the Crown Melbourne Resort’s and the Crown Perth Resort’s human resources operations and structures with respect to ‘examining opportunities to centralise processes to capitalise on synergies across both properties’.¹⁵⁸ Cost savings were a factor in the centralisation proposal.¹⁵⁹
- 151** Prior to August 2013, Crown Perth Resort had its own CEO (Felstead), a Chief Operating Officer (**COO**) – Gaming (Bossi), a COO – Hotels and Entertainment, and its own CFO (McGregor and then Craig Spence).¹⁶⁰ The CEO – Crown Perth and the COO – Gaming were employed by BRML.¹⁶¹ The COO – Gaming and the CFO – Crown Perth reported to the CEO – Crown Perth.¹⁶² The CEO – Crown Perth reported to the CEO of CRL (Craigie).¹⁶³
- 152** On 1 August 2013, Felstead was appointed to a new role, the CEO – Australian Resorts.¹⁶⁴

- 153** The positions of CEO – Crown Perth and CEO – Crown Melbourne were removed. The CEO – Australian Resorts role became responsible for Crown Perth Resort, Crown Melbourne Resort, the VIP International business and Aspinalls.¹⁶⁵ Felstead effectively became the CEO of all of those operations.¹⁶⁶ At this time, Felstead’s employer changed from BRML to CRL.¹⁶⁷ Felstead said that he spent about 70 – 75% of his time physically in Melbourne, and spent a lot of time managing Crown Perth Resort remotely by electronic means.¹⁶⁸
- 154** In this role, Felstead had a direct reporting line to the CEO of CRL and the executive chair of CRL at different points in time.¹⁶⁹
- 155** There are no board minutes (nor any decisions of the CRL People, Remuneration and Nomination board committee) recording a resolution by any board or a decision of a board committee for the creation of this new role, Felstead’s appointment or his job description.¹⁷⁰ There is no record in the minutes of the BL board meetings of any consideration of the change in Felstead’s role from CEO – Crown Perth to CEO – Australian Resorts and the impact this would or might have on Crown Perth Resort’s operations or risk management, or on the Burswood entities’ compliance with the head office requirement.
- 156** Crown contends that the appointment of Felstead to the role of CEO – Australian Resorts did not require a resolution or decision of the BL board. The PCRC does not accept this view. As a matter of good governance, the relevant Burswood entities ought to have considered this appointment given that it could have a material impact on the availability of the most senior executive of Crown Perth Resort to manage Perth Casino.
- 157** It was not until 2019 that the Crown group implemented a formal delegations policy.¹⁷¹ Prior to this, there was only one instance where the BL board approved the delegation of specific powers to Felstead.¹⁷² In passing this resolution, the board minutes do not record any consideration of the head office requirement.
- 158** In his role as CEO – Australian Resorts, Felstead continued to provide management updates to the BL and CRL boards.¹⁷³
- 159** Felstead had a number of people reporting to him, including the COO – Crown Perth, Bossi.¹⁷⁴
- 160** Felstead was a director of a number of subsidiary companies, sat on a large number of management committees, and was a frequent invitee to CRL board committee meetings.¹⁷⁵ Felstead remained as a director of each of the Burswood entities and CML.
- 161** Following Felstead’s appointment, various support roles within the Crown group were centralised, including information technology, finance and marketing.¹⁷⁶
- 162** In August 2014, McGregor was appointed CFO – Australian Resorts, based in Melbourne.¹⁷⁷ There is no resolution recorded in any board minutes for this appointment, and no recorded decision of the People Remuneration and Nomination Committee. In this role, McGregor was responsible for the overall financial management of Crown Perth Resort and Crown Melbourne Resort.¹⁷⁸ McGregor continued to attend BL board meetings as an invitee to inform the BL directors of matters relevant to the financial management of Crown Perth Resort and Perth Casino, including presenting budgets and plans in conjunction with Felstead.¹⁷⁹
- 163** There is no record in the minutes of the BL board meetings that there was any consideration of the change in McGregor’s role from CFO – Crown Melbourne to be CFO – Australian Resorts, with responsibilities over other operating businesses. Nor is there any BL board consideration of the impact this would have on Crown Perth Resort’s operations or risk management, or on the Burswood entities’ compliance with the head office requirement.

Third phase: 2017 to 2020 centralisation of legal, risk, audit, regulatory, compliance, responsible service of gaming and AML/CTF

- 164** Until 1 March 2017, Preston was the Executive General Manager – Legal Services at Crown Perth Resort. On 1 March 2017, Preston was appointed to the role of Chief Legal Officer (**CLO**) – Australian Resorts. In this role, he became responsible for legal, risk, audit, regulatory, compliance, responsible service of gaming, and AML/CTF for the Australian Resorts, which included both Crown Perth Resort and Crown Melbourne Resort.¹⁸⁰ He remained employed by BRML,¹⁸¹ and was based in Perth. Preston’s appointment was made by Felstead and Alexander,¹⁸² although Preston said he was unaware in what capacity they were acting.¹⁸³ There is no resolution recorded in any board minutes for this appointment, and no recorded decision of CRL’s People Remuneration and Nomination Committee.
- 165** From 2017, Preston oversaw the appointments of further centralised roles including the positions of Group General Manager – Audit and Risk, Group General Manager – AML, Group General Manager – Regulatory and Compliance, and Group General Manager – Responsible Gaming. These roles were based in Melbourne and all reported to Preston. The centralised roles for Australian Resorts were referred to as ‘group’ roles or functions.¹⁸⁴
- 166** Following the expansion of the centralised functions, critical policies that were applicable to Crown Perth Resort and Perth Casino were formulated and implemented by group roles.
- 167** The directors of BL were aware that the majority of the senior management reporting to the BL board held roles with CRL. Poynton said that this gave him confidence that they had a national perspective on CRL issues and on the casino industry more broadly.¹⁸⁵ Roberts understood that the senior roles reported directly to the CRL board and through the BL board.¹⁸⁶
- 168** It is not apparent that the BL board ever formally delegated authorities or responsibilities to those centralised roles.¹⁸⁷ A delegation policy was put in place in 2019, although only in relation to certain individuals.¹⁸⁸ Without a clear delegations policy, a board’s ability to hold a delegate accountable for the exercise of delegated authority can be difficult.
- 169** The Crown Perth Resort’s Business Operating Team charts demonstrate the progressive transition to group or centralised roles.¹⁸⁹
- 170** In the 2017 Crown Perth Resort Business Operating Team chart, 10 roles are marked as group roles.¹⁹⁰ In the 2018 Crown Perth Resort Business Operating Team chart, 12 of the roles are marked as group roles – with the addition of Group General Manager – Risk and Audit and Group General Manager – AML.¹⁹¹ By 2019, Crown Perth Resort’s Business Operating Team included 14 group roles.¹⁹² A number of the ‘group’ or centralised roles were Melbourne-based.
- 171** In its 2018 Sixth Review of the Casino Operator and Licence, the VCGLR noted the shift to centralisation of functions at group level.¹⁹³
- 172** A question that this raises is whether the expansion of critical management and executive functions to ‘group’ level, based out of Melbourne, demonstrates a shift in central management and control away from Western Australia.
- 173** It does not appear from the board packs and minutes that the directors of the Burswood entities were informed about this gradual shift towards centralisation (other than in the human resources function),¹⁹⁴ or how those centralised functions would service Perth Casino. Nor do the board packs or minutes disclose consideration of the appointment of Felstead, Preston or McGregor to the roles they held in Australian Resorts, other than a change in the title listed next to their attendance.

- 174** The PCRC concludes:
- a. through the changes of titles of personnel attending BL board meetings, the BL board was alerted to the creation of the Australian Resorts function, and the appointment of quite critical senior roles to this function which had responsibilities in relation to Crown Perth Resort;
 - b. the BL board made no formal decision or resolution in relation to the creation of the Australian Resorts function, or the creation of the critical senior roles;
 - c. the BL board did not consider the implications of the creation of the Australian Resorts function and the creation of critical senior roles, on the operations of Perth Casino, including risk management; and
 - d. the BL board did not consider the implications of the creation of the Australian Resorts function, and the creation of critical senior roles within that function with responsibilities for Perth Casino, in compliance with the head office requirement.

Fourth phase: end of 2020 to 2021 additional centralised roles and centralised policies

- 175** In December 2020, during the Bergin Inquiry, Preston left the role of CLO – Australian Resorts, and Felstead left the role of CEO – Australian Resorts.¹⁹⁵ The CRL board resolved to change the title of the COO – Crown Perth and COO – Crown Melbourne to be the CEO of each respective property.¹⁹⁶ Bossi became the CEO – Crown Perth.¹⁹⁷ There is no written job description for this role.¹⁹⁸ The CEO – Crown Perth role is controlled at ‘group’ level.¹⁹⁹ The minutes of the BL board record no consideration or resolution of Bossi’s title change to the CEO – Crown Perth role. This change was made at CRL level.²⁰⁰ The reason for the appointment was said to be ‘to assist in discussions with the relevant state regulators’.²⁰¹
- 176** The October 2021 Crown Perth Resort Business Operating Team chart includes 26 group roles.²⁰² The majority of these group roles are Melbourne-based.
- 177** The centralisation of functions has existed for quite some time and continues to exist in the management and executive structure of Crown. With the creation of additional roles specifically to address casino risks, there has been a further shift towards centralisation of senior executive functions based in Melbourne, rather than Perth. The key difference between the current management operations and the centralisation which existed in the period from 2013 to 2020 is that centralisation is no longer concentrated around the role of CEO – Australian Resorts, but is now effected by direct reporting to the CEO of CRL, who is McCann.
- 178** Essentially, the senior executive roles related to many of the key operations supporting Perth Casino have been centralised with many of those individuals based in Melbourne, not Perth.²⁰³ BRML employed most of Crown Perth Resort’s employees and this remains the case. However, individuals who have centralised roles and are responsible for functions relating both to Crown Perth Resort and other Crown businesses, are generally employed by CRL.²⁰⁴ That was not universally the case. For example, Preston, while he had the group role of CLO – Australian Resorts, maintained he was employed by BRML.²⁰⁵
- 179** It does not appear that any of the boards of the Burswood entities engaged in the performance management and the setting of remuneration or KPIs for personnel who provided services related to Crown Perth Resort, including senior executive and management personnel.²⁰⁶
- 180** In addition to the centralisation of senior management roles, in the period 2020 to 2021, there has been a number of joint or centralised policies adopted across all of the Crown

businesses, including Crown Perth Resort. For instance, various centralised risk policies have been adopted and implemented, including a joint AML/CTF policy.

- 181 McCann stated that the consideration of a centralised versus decentralised structure has been paused pending the finalisation of the inquiries.²⁰⁷

Risk Management

Pre-2018

- 182 Historically, Perth Casino had its own risk management system with risk committees and risk policies.
- 183 Prior to the PBL takeover of BL in September 2004, BL had a risk policy, a board committee called the Audit and Compliance Committee which was responsible for the risk policies and risk management, and a process by which management, along with the BL board, annually reviewed operational and strategic risks.²⁰⁸ From at least 2005, Crown Perth Resort (then called the Burswood International Resort Casino) had an enterprise risk management policy,²⁰⁹ an Enterprise Risk Management Committee responsible for assisting the BL board, and a CEO tasked with identifying and managing risks.²¹⁰ It also had an Executive Compliance Committee.²¹¹ It appears Crown Perth Resort may have developed and maintained a risk register and used a risk profile (in the form of a risk matrix) as far back as 2005.²¹²
- 184 Following the PBL restructure and acquisition of Perth Casino by CRL, the approach to risk management changed.

Risk Framework Policies

- 185 In 2008, a CRL risk policy (**2008 CRL Risk Policy**) came into effect.²¹³ This policy effectively created a two-tiered risk management system – a local system at the operating businesses of Crown Perth Resort and Crown Melbourne Resort, as well as a CRL level system.
- 186 This policy specified that the ‘Crown Board’ assumed responsibility for the risk management of ‘Crown’. The policy provided that the CRL board (Crown Limited board at the time) had delegated the oversight responsibility for risk management of ‘major’ risks of the ‘Company’ to a committee called the Crown Risk Management Committee (**CRL RMC**). The terms ‘Crown Board’, ‘Crown’ or ‘Company’ are not defined in the 2008 CRL Risk Policy, but from their context, it seems that ‘Crown’ and ‘Company’ are references to CRL, and the ‘Board’ is a reference to the CRL board.
- 187 The 2008 CRL Risk Policy provided that each of CRL’s ‘wholly-owned operating business units’, defined as ‘Crown Businesses’, were responsible for identifying, assessing and managing material risks. Each of the Crown Businesses were required to have their own risk management committees and report twice per year to the CRL RMC.²¹⁴ The committees were to include senior managers of the relevant Crown Business who were ‘best equipped to identify the risks associated with the relevant business’.²¹⁵ The Crown Business was responsible for preparing and maintaining risk registers of material risks, both financial and non-financial.²¹⁶ The policy provided that each Crown Business was to report regularly to ‘Head Office’ any changes to their divisional risk profile. ‘Head Office’ was defined as the ‘CRL head office’.
- 188 Crown accepts it is not specifically clear in the 2008 CRL Risk Policy:²¹⁷
- a. who or which structure (CRL RMC, CRL board or some management position) was the ‘Head Office’. Crown contends that it is open to infer that this is the location of CRL

- where the risk registers were kept; and
- b. what were the 'Crown Businesses', and hence what structures were required to have their own risk committees, maintain risk registers, and report to the CRL RMC. Crown contends that it is open to infer that the expression included Crown Perth Resort.
- 189** As the policy does not specify what 'Crown Businesses' are, if new business units were created, the 2008 CRL Risk Policy did not specify whether those units would be required to comply with the requirements of the 2008 CRL Risk Policy.
- 190** The 2008 CRL Risk Policy did not contain a risk appetite, or define a 'major' risk (that is, the risks reportable to the CRL RMC) by any quantitative or qualitative measures. Similarly, the policy did not define what a 'material' risk was.
- 191** The 2008 CRL Risk Policy was silent as to the role and responsibility of the boards of the Crown Businesses in risk management.
- 192** It appears the 2008 CRL Risk Policy was in effect until 2019, without any amendments being made.
- 193** The CRL RMC operated pursuant to a charter.²¹⁸ Prior to 2018, the charter provided that the:
- a. CRL RMC was to be comprised of a minimum of three directors, with the majority being independent non-executive directors;
 - b. CRL RMC was to meet at least twice annually; and
 - c. CRL RMC's role was to provide strategic risk management leadership, oversight and analysis to the 'Crown Board' and also was responsible for reviewing and assessing the adequacy of the 'Crown Group's risk management systems', including identifying areas of significant business risk or exposure. The term 'Crown Board' is not defined. In the context of the charter, it seems that this reference is to the CRL board.
- 194** In July 2008, Crown Perth Resort (then the Burswood Entertainment Complex) revised its enterprise risk management policy.²¹⁹ It was further amended in 2012.²²⁰ From a review of the minutes and board packs for the Burswood entities, the amendments to the enterprise risk management policies were not approved by the Burswood entities' boards prior to being put into effect. It does not appear that the boards of the Burswood entities were made aware of the amendments.
- 195** The 2008 enterprise risk management policy was headed 'Burswood Entertainment Complex' and referred to 'Burswood'.²²¹ It also referred to a 'Board of Directors' and a 'Board'. The policy was silent as to the corporation or board within the corporate structure of the Burswood entities to which reference was made. The enterprise risk management policy for 2012 referred to 'Crown Perth' and a 'Board of Directors' and a 'Board', but was silent as to which entity or board it applied to. It appears that from at least 2009, the BL board was the only board of the Burswood entities receiving any risk reporting. On this basis, which Crown accepts, it seems the reference to the 'Board of Directors' and the 'Board' in the enterprise risk management policy was to the BL board, or at least the management at Crown Perth Resort considered this to be the responsible board referred to in the enterprise risk management policy.²²²
- 196** The enterprise risk management policy provided for a number of lines of defence or responsibilities. 'The Board' was ultimately responsible for risk oversight.²²³ The CEO was accountable to 'the Board' for implementation of the risk management process. The Executive General Manager of Legal and Corporate Services facilitated the enterprise risk management framework and process, as directed by the CEO and the Perth ERCC. The Internal Audit Manager was responsible for providing objective assurance to 'the Board' on the effectiveness of enterprise risk management activities.

- 197 The enterprise risk management policy did not contain a risk appetite, but referred to the term and stated that effective risk management required 'a balance between the cost of managing risk and the anticipated benefits'.²²⁴

Perth ERCC

- 198 Following the introduction of the 2008 CRL Risk Policy, the Enterprise Risk Management Committee and the Executive Compliance Committee were amalgamated and became the Perth ERCC.²²⁵
- 199 The Perth ERCC was, and remains to this day, a management committee. It is not a committee of the board of any of the Burswood entities.²²⁶ It operates under a charter which identifies its membership. It includes certain executive or management roles but no directors.²²⁷ The charter sets out the Perth ERCC's purpose, composition, meeting requirements, responsibilities and duties.²²⁸ The charter specifies that meetings are to be conducted quarterly or at such other time as agreed. According to the 2008 and 2010 versions of the charters,²²⁹ the purpose of the Perth ERCC was to assist the CEO and the board in, among other things:²³⁰
- a. assessing and providing oversight for the identification and evaluation of material risks involved in the business operations of BL and its related entities; and
 - b. reviewing and evaluating BL and its related entities' actions to mitigate and manage business risks.
- 200 There is no indication in the minutes and board packs for the boards of the Burswood entities that the versions of the Perth ERCC charter were reviewed or approved by those boards. The BL board appears to have been made aware of the charters as copies are attached to the 'Strategic Risk Management Plan' in 2008 and 2009.²³¹
- 201 The Perth ERCC met quarterly and the meetings occurred prior to BL board meetings, so that the BL board could be updated at its meeting.²³² The attendees at Perth ERCC meetings were all members of senior management and executives, including Preston (who was chair until August 2020),²³³ Felstead, McGregor, and Bossi.²³⁴ During this period, Felstead was also a director of BL, BNL and BRML and McGregor was a director of BNL and BRML until 2013. There were no other directors of BL, BNL and BRML who attended Perth ERCC meetings.²³⁵ The invitees to Perth ERCC meetings included a representative of the internal audit function, who, in this period, was Rachel Murray (**Murray**).²³⁶
- 202 Until at least 2020, whilst Preston was chair, the consistent standing agenda items for Perth ERCC meetings were:²³⁷
- a. internal audit activity report;
 - b. fraud update;
 - c. risk update;
 - d. compliance and regulatory update;
 - e. litigation update;
 - f. AML/CTF update; and
 - g. health, safety and wellbeing update.
- 203 Detailed papers were prepared and distributed before meetings of the Perth ERCC.²³⁸ Those papers included the minutes of the management committees which supported the Perth ERCC.²³⁹ The papers included a corporate risk register for Crown Perth Resort²⁴⁰ and an internal audit activity report detailing the status of completed internal audits, the results of spot checks and any outstanding audit recommendations.²⁴¹ The Perth ERCC also received

the draft Strategic Internal Audit Plan which sets out the proposed internal audits to be conducted over the course of the financial year.²⁴²

204 At Perth ERCC meetings, the high level strategic risks to Perth Casino were identified and discussed.²⁴³

205 From the minutes of the Perth ERCC from 2012 to 2018, it appears the Perth ERCC engaged in the following actions:

- a. receiving updates on agenda items;
- b. conducting discussions on agenda items;²⁴⁴
- c. noting updates and information;²⁴⁵
- d. in some instances, confirming (as a committee) particular courses of action, including:
 - i. changes to the corporate risk register;
 - ii. policies to be signed off by executives;
 - iii. amendments to the compliance policy; and
 - iv. endorsement of the Strategic Internal Audit Plan;²⁴⁶ and
- e. endorsing amendments to the 'Internal Audit Charter'²⁴⁷ and its own charter.²⁴⁸

206 Roberts said the Perth ERCC carried out the functions he would ordinarily expect of an audit and risk committee in other commercial enterprises.²⁴⁹ Roberts said his recollection was that the responsibility for developing Crown Perth Resort's risk matrix and risk register lay with the Perth ERCC.²⁵⁰ He said the Perth ERCC considered the risks of the Crown group and the risks of Perth Casino.²⁵¹

Perth Internal Audit

207 Crown Perth Resort had its own internal audit function. It appears that this department has operated pursuant to a charter since at least 2004.²⁵²

208 Prior to PBL's acquisition of BL, the Burswood Audit and Compliance Committee, a board committee, was responsible for overseeing the internal audit function.²⁵³ At some point after PBL's acquisition of BL, the Burswood Audit and Compliance Committee ceased to exist and the internal audit function ceased to have a direct reporting line to, or oversight from, the boards of the Burswood entities.

209 The former Internal Audit Manager for Crown Perth Resort, Murray, said she reported directly to the Perth ERCC and presented the internal audit activity reports.²⁵⁴ Murray was not a permanent member of the Perth ERCC and attended meetings by invitation.²⁵⁵ She said she appreciated that the Perth ERCC was not a board committee.²⁵⁶

210 Murray had dual reporting lines. Murray said she was never invited to, nor attended, any meeting of the BL board, and never directly reported or made presentations to the BL board.²⁵⁷ The internal audit reports were included in the board papers for the BL board meetings.²⁵⁸ The internal audit function did not independently seek, nor was it provided with, a budget from the BL board.²⁵⁹ Murray did not have access to the independent directors of the BL board.²⁶⁰ Murray could not recall any occasions where she dealt with anyone from the BL board in respect of her appointment as internal audit manager, her salary, or the terms of her employment.²⁶¹ Murray agreed that the structure she operated in during her time at Crown Perth Resort had failures as she did not have direct access to the board and this had the potential to undermine the independence of the audit function.

211 In 2014, the Institute of Internal Auditors Australia provided an independent Quality Assessment of the Internal Audit of Crown Perth.²⁶² It concluded that there was general

conformance with the Institute of Internal Auditors 'International Standards for the Professional Practice of Internal Auditing' (**IIA Standards**), including as to independence. However, the assessment suggested there was general conformance with Standard 1111, which provides for direct interaction with the board. This is inconsistent with the evidence of Murray above, that there was no direct interaction with the BL board.²⁶³ It has been pointed out that direct reporting to the board is only one factor of independence. This may be so, but it is an important factor. Further, it is not clear from the face of the independent Quality Assessment report whether the directors of BL were consulted as part of the assessment or that it was appreciated that the Perth ERCC was not a board committee.

- 212** Jessica Ottner (**Ottner**), who has recently been appointed as Group General Manager – Internal Audit, said that it was essential that internal audit have unfettered access to the board and agreed it was a requirement of the IIA Standards.²⁶⁴
- 213** Murray said she could not recall an example of an audit being outsourced and the internal audit plan was based on the skills available in-house.²⁶⁵ However, Murray said there were always audits that were not completed each year and the internal audit department could have had more resources.²⁶⁶ This was reflected in the Internal Audit Annual Report, which was prepared and presented to the Perth ERCC in 2015²⁶⁷ and 2016,²⁶⁸ and to the BL board in 2017²⁶⁹ and 2018.²⁷⁰
- 214** Murray said that in her role she did not have access to the records of Melbourne Casino relating to the International Commission Business (**ICB**) and the Crown Melbourne Resort internal audit team audited that aspect.²⁷¹
- 215** Crown Perth Resort's internal audit department personnel were required to adhere to the IIA Standards.²⁷²
- 216** The IIA Standards state that internal audit activities must be independent, and internal auditors must be objective in performing their work.²⁷³ Murray accepted this required independence between management and internal audit.²⁷⁴
- 217** The IIA Standards also require an internal audit executive to develop and maintain a quality assurance program which includes both internal and external assessments conducted by an independent assessor.²⁷⁵
- 218** From 2011 to 2017, Crown Perth Resort's internal audit department did not conduct an audit of the risk management framework.²⁷⁶ It appears from the Strategic Internal Audit Plans that audits of Crown Perth Resort were deferred on a number of occasions.²⁷⁷ Murray said that a specific audit on risk management was seen as a low priority as the risk registers were looked at as part of other internal audits, and internal audit was 'comfortable' with the framework which was in place.²⁷⁸ However, Ottner said a review of the risk management framework was key for internal audit to understand the effectiveness of different assurance partners and the risk function.²⁷⁹ Ottner said the internal audit function utilises the risk register to influence their work, and that the internal audit function has to have comfort in the risk register, and that the processes of risk can be relied upon.²⁸⁰
- 219** It does not appear from the evidence that Crown Perth Resort engaged an external expert in this period to review and advise on its risk management framework.
- 220** The PCRC concludes that:
- a. in the period 2011 to 2017, the internal audit function at Crown Perth Resort was not sufficiently independent from management due to it lacking a reporting line to a board;
 - b. the internal audit department was under-resourced; and
 - c. the internal audit function did not conduct regular audits specifically on the risk management framework at Crown Perth Resort.

221 The PCRC also has the impression that, at least in the period to 2018, the Burswood entities and the boards did not seek external advice as to the effectiveness and robustness of their risk management framework.

Consideration of risk by the boards of the Burswood entities

222 The role of the BL board was provided for in the enterprise risk management policy, and the Perth ERCC charter.²⁸¹ The 2008 CRL Risk Policy did not provide for any role of the boards at the Crown Business level.²⁸²

223 Following each meeting of the Perth ERCC, key and material matters from the papers presented were extracted and a Legal, Risk and Compliance Report for the BL board was prepared.²⁸³ That report addressed the operations at Crown Perth Resort, including Perth Casino, and commonly covered:²⁸⁴

- a. material changes in government policy and regulatory changes;
- b. material changes to the corporate risk profile;
- c. matters related to Perth Casino's AML/CTF Program; and
- d. material litigation matters.

224 These reports were reviewed by Felstead, and possibly Craigie and Alexander, and were then included in the board papers for meetings of the board of BL.²⁸⁵ From the minutes of the Perth ERCC it does not appear that the Perth ERCC approved these reports before they were issued to the BL board. The BL board did not receive a copy of the minutes of meetings of the Perth ERCC.²⁸⁶ Accordingly, the BL board was not made specifically aware of what matters the Perth ERCC had considered, or the deliberations and decisions made by the Perth ERCC. The only information before the BL board was the Legal, Risk and Compliance Report.

225 By the time the report was issued, the only directors of BL without prior knowledge of the matters in the Legal, Risk and Compliance Report were Packer and the non-executive directors, Poynton and Roberts.²⁸⁷ All of the executive directors had either attended the Perth ERCC meeting or been involved in finalising the Legal, Risk and Compliance Report.

226 The BNL and BRML boards did not receive any reports on risk or compliance.

227 From a review of the board packs for BL board meetings from 2012 to 2018, the BL board was provided with:

- a. a Legal, Risk and Compliance Report;²⁸⁸
- b. an Internal Audit Activity Report, setting out the completed internal audits including the key issues, progress against the audit plans, and the status of outstanding audit recommendations;²⁸⁹
- c. a corporate risk register, which was a table recording a given risk, a risk rating and any controls and action plans in place;²⁹⁰
- d. a corporate risk profile, which was a matrix which diagrammatically rated risks based on their likelihood and consequence, and assigned a colour (green, yellow and red);²⁹¹ and
- e. any external audit reports.²⁹²

228 In the period 2012 to 2018, the BL board was also provided with a Strategic Internal Audit Plan, which was prepared on a rolling three-year basis, and updated annually.²⁹³

229 Roberts expressed the view that the reporting to the BL board on risk was consistent with his experience as a director in other companies.²⁹⁴

230 Preston said that at BL board meetings, there were discussions about risk issues in terms of key threats to the business and what management would be doing and questions asked

by the directors.²⁹⁵ However, in the period 2012 to 2017, the BL board minutes record that there was limited discussion of risks, the Internal Audit Activity Report, the Legal, Risk and Compliance Report, the corporate risk profile, or the corporate risk register.²⁹⁶

- 231** Those reports, when presented, were consistently 'accepted as read' or noted. The PCRC has identified 10 instances in the period from 2012 to 2017 where discussion is recorded against the Internal Audit Activity Report or the Legal, Risk and Compliance Report.²⁹⁷ Of those 10 instances, in relation to the Legal, Risk and Compliance Report, on seven occasions the discussion is limited to litigation only. The minutes record that Felstead presented these reports to the BL board.²⁹⁸
- 232** The PCRC has considered the submissions that the compliance and audit reports were read, discussed and questioned and that there were un-minuted discussions. The PCRC observes this is not reflected in the minutes of the BL board for the period 2012 to 2017 and given the relatively short duration of many of those meetings, it is difficult to assess the extent and efficacy of any discussion.
- 233** The PCRC acknowledges that during the period from 2012 to 2017, the BL board received extensive written material on risk management in relation to Crown Perth Resort. However, the management of risks associated with casino operations called for a more active level of oversight and governance by the BL board. For example, the board could have taken steps to:
- a. ensure that risk identification was properly addressed, the risk mitigation measures were followed through and there was direct access from the internal audit function to the board;
 - b. set appropriate risk appetites for the organisation;
 - c. ensure periodic reviews of the effectiveness and robustness of the risk management framework and of the process of the board to consider and manage risk;
 - d. consider and formally approve the risk framework policies relevant to Crown Perth Resort, and any material amendments to those documents; and
 - e. model a risk culture for the organisation.

CRL level risk oversight

- 234** Michael Neilson (**Neilson**), the General Counsel and company secretary of CRL, stated that he and the CFO of CRL met twice per year with the CFO – Crown Perth, the General Counsel – Crown Perth, Crown Perth Resort's Risk Manager, and Crown Perth Resort's Internal Auditor, to review the papers presented at Perth ERCC meetings. Neilson then reported any issues to the CEO of CRL prior to BL board meetings.²⁹⁹
- 235** In the period from 2012 to 2018, the CRL RMC met twice per year.³⁰⁰ An additional meeting occurred in 2017 to provide an update in relation to the detention of employees in China.³⁰¹ In total, the CRL RMC met 13 times during this period. The minutes show that all meetings of the CRL RMC occurred in Melbourne.³⁰²
- 236** Neilson said that prior to the CRL RMC meetings, Mary Manos (**Manos**), Senior Legal Counsel of CRL, received an update from the risk managers on the risk registers for each property and convened a meeting of the CFO of CRL, the Financial Controller, the General Counsel of CRL and the Company Secretary to review the risks of CRL.³⁰³ Neilson said the risk register for Crown Perth Resort was discussed and debated at these meetings.³⁰⁴
- 237** From that process, an updated risk profile for CRL was prepared, which included risks from Crown Perth Resort, and other businesses of Crown.³⁰⁵ The risk profile was a risk matrix and a report of high level risks.³⁰⁶ This updated risk profile was reviewed by the General Counsel, Company Secretary and the CEO of CRL,³⁰⁷ before being provided to the members

of the CRL RMC.³⁰⁸ Neilson said any new or emerging risks would be identified either at the Crown Perth Resort or Crown Melbourne Resort risk management process or by the CRL risk management process.³⁰⁹

- 238** In the period from 2012 to 2017, the CRL RMC minutes record discussion generally structured according to the material high risks.³¹⁰ Preston said the CRL RMC discussed the status of risks at CRL level and the risks of the operating businesses, including Crown Perth Resort and Crown Melbourne Resort as they would relate or impact on the corporate risks.³¹¹
- 239** From a review of the minutes between 2012 to 2017, the following observations may be made in relation to the CRL RMC meetings:
- a. the average meeting length was 52 minutes;
 - b. the report against material high risks was always 'taken as read' with some discussion;
 - c. there was limited discussion recorded in relation to the annual review of the risk profile; and
 - d. the CRL RMC sought to revise its charter on only one occasion.
- 240** In this period, the twice-yearly minutes of the CRL RMC meetings were included in the board packs for CRL board meetings. The minutes of the CRL RMC contained a section on the report on material high risks which recorded the discussion at the CRL RMC about the risks. Crown accepts that the CRL board was not provided with the risk register, or the report against material risks provided to the CRL RMC.³¹² The PCRC is left with the impression that the CRL board as a whole was not informed about the ratings (likelihood and consequence) of each risk, the complete description of the material risk or the mitigation or control measures for each risk being considered by the CRL RMC.
- 241** In addition to the minutes of the CRL RMC, Neilson said the other mechanism by which the CRL board was apprised of risks was in the 'CEO report' prepared by Felstead which was included in each board pack and presented at each meeting.³¹³
- 242** Felstead said that the chair of the CRL RMC provided updates to the CRL board when the CRL RMC minutes were being considered and issues of note were discussed, debated and dealt with.³¹⁴ Neilson said the chair of the CRL RMC was invited to speak.³¹⁵ From a review of the minutes of the CRL board meetings, the minutes of the CRL RMC are generally noted without any recorded discussion, apart from one meeting in 2012.³¹⁶
- 243** Felstead said information on risks relevant to Crown Perth Resort was more truncated than the information provided to the BL board.³¹⁷

Risk appetite

- 244** Prior to 2018, there was no formal risk appetite set by the boards of BL or CRL.³¹⁸ However, some of the directors believed that, through the risk management process, an informal risk appetite may have been set.³¹⁹ This belief is not supported by the BL and CRL board minutes, which record no decisions or directions being made by the BL or CRL boards in relation to the risks being reported to them. Preston stated that a risk appetite was articulated or embedded through the risk matrix which set out the qualitative and quantitative positions about what the business was willing to accept.³²⁰ Preston said there were different levels of tolerance for different areas of the business.³²¹
- 245** A number of directors considered that the BL board adopted a low-risk appetite or tolerance,³²² and after the arrest of 19 Crown staff residing in China on 13 and 14 October 2016 (**China Arrests**), the risk appetite was further lowered.³²³ The PCRC has seen no documentary evidence to confirm this.

2018 and after

246 After the China Arrests, CRL instigated a number of changes to its risk management policies and the risk management function under the leadership of Anne Siegers (**Siegers**) (the Group General Manager – Risk and Audit, and then Chief Risk Officer (**CRO**)). The current Chief Risk Officer is Steven Blackburn (**Blackburn**), who was appointed on 23 December 2021. The roles and experience of Blackburn are discussed in Chapter Eight: Money Laundering.

247 The changes included:

- a. the creation of the role of Group General Manager – Risk and Audit, which subsequently became the Chief Risk Officer, which was and is based in Melbourne.³²⁴ This role is a member of the executive teams of Crown Perth Resort and Crown Melbourne Resort,³²⁵ and reports to the CEO of CRL and has a direct reporting line to the CRL RMC,³²⁶
- b. the creation of a separate risk management function, with a team that has increased from one full-time equivalent to 10;³²⁷
- c. preparation by the risk management function of risk profiles for the majority of the business unit;³²⁸
- d. the creation of a group internal audit function, led by the Group General Manager – Internal Audit, who is currently Ottner,³²⁹ with its own CRL level internal audit charter;³³⁰
- e. the internal audit function now has functional oversight from the CRL Audit and Corporate Governance Committee, and Ottner has a direct reporting line to the chair of the CRL Audit and Corporate Governance Committee (as a delegated authority for the CRL board),³³¹ and has administrative oversight by the CFO of CRL;³³²
- f. the internal audit function has access to all boards in the Crown group through Ottner,³³³ including the BL board, for which she is responsible for providing quarterly reports to and attending board meetings;³³⁴
- g. the internal audit charter provides that internal auditors are to have unrestricted access to Crown records, personnel and properties;³³⁵
- h. a number of new CRL risk management framework documents have been adopted which apply to each 'Crown Business', including:
 - i. a risk management policy;³³⁶
 - ii. a risk management strategy;³³⁷ and
 - iii. a risk and compliance culture framework;³³⁸
- i. the charters of the CRL RMC and the CRL Audit and Corporate Governance Committee have been amended; and
- j. there are monthly meetings of compliance officers.³³⁹

248 These changes have had the effect that the risk management function has become a centralised function, with risk management policies determined at group level. A number of the key personnel in the risk management function are located in Melbourne, rather than Perth.

249 The CRL risk management framework documents still require each Crown Business (which includes Crown Perth Resort) to be responsible for identifying, assessing and managing material risks, maintaining a risk profile, and reporting material changes to the CRL RMC.

250 However, the following changes have been made:

- a. CRL RMC meetings have increased to at least four times per year,³⁴⁰ and, in practice, there have been six per year with meeting times of three hours;

- b. CRL RMC standing agenda items now include:
 - i. emerging risks;
 - ii. compliance; and
 - iii. anti-money laundering (**AML**);³⁴¹
- c. reporting to the CRL board includes an executive summary of emerging risks, risk appetite dashboards, proposed adjustments to the risk profile, and a summary of key risk indicators based on operational data;³⁴²
- d. the risk management policy expressly provides for the board and executive review of the risk profiles in each Crown Business;
- e. the documents are more prescriptive, in that the risk management strategy specifies the content of the risk profile;
- f. the risk management strategy provides for the three lines of defence at group level, with the boards of the wholly owned subsidiaries, the CEOs and other executives, and the CRL RMC as the first line of defence;³⁴³
- g. the separate risk management function is responsible for, among other things, preparing an aggregate corporate risk profile for CRL;
- h. the risk management strategy includes a risk appetite adopted by the CRL board in 2019,³⁴⁴ with quantitative and qualitative thresholds for escalation, and a nil-risk appetite related to:
 - i. regulatory, legal or statutory requirements, including in respect of financial crime;
 - ii. any association with or influence from criminal elements;
 - iii. any activity that would be inconsistent with its social licence to operate; or
 - iv. employee health and safety, the maintenance of appropriate security and surveillance across its properties or loss of, or unauthorised or accidental disclosure of, customer, or other sensitive information or data;
- i. training programs have been mapped against specific risks;³⁴⁵
- j. the risk management strategy and the risk and compliance culture framework expressly recognise risk culture, and specify responsibilities to monitor and improve risk culture; and
- k. the reporting trigger in relation to AML has been amended such that any breach of the AML/CTF Program requires reporting to the CRL RMC.³⁴⁶

251 The role of the CRL RMC was changed in the February 2019 iteration of the CRL RMC charter from assisting the CRL board in overseeing the organisation's risk management and compliance frameworks, to assisting the CRL board in overseeing 'the Company's' risk management and compliance frameworks, with 'Company' defined as CRL. This change appears in further revisions to the CRL RMC charter.³⁴⁷

252 The choice of definition of 'Company', and the use of that word throughout the CRL RMC charters is noteworthy. Prior to February 2019, the CRL RMC charters used words such as 'the organisation's risk management and compliance frameworks' and 'review[ing] and assess[ing] the adequacy of the Crown Group's risk management framework'.³⁴⁸ Whilst 'Crown Group' is not defined, the word 'group' suggests that the obligation extends beyond one entity. For example, before February 2019, the CRL RMC had an obligation to monitor the insurance coverage for the 'Crown Group' and had authority to engage external consultants and independent experts to advise on risk management and compliance practices of the 'Crown Group'.

- 253** A further revision to the CRL RMC charter³⁴⁹ was presented and approved at the November 2021 meeting of the CRL RMC, and at the December 2021 meeting of the CRL board.
- 254** Crown contends that the revised CRL RMC charter makes it clear the CRL RMC is responsible for the whole group, and not just CRL. The wording in the revised CRL RMC charter is not clear and can be read as providing that the CRL RMC is responsible for reviewing and assessing the adequacy of CRL's, rather than the Crown group's, risk management framework and risk appetite, and CRL's risk profile, and not that of Crown Perth Resort. This may simply be a lack of precision in the wording. Consideration should be given to amending the charter further to make clear its remit. It would be appropriate for any amendment to be considered and adopted by both the BL and CRL boards.
- 255** From a review of Perth ERCC minutes and documents from 2018, it appears the Perth ERCC continues in operation as it generally did before the new CRL risk management framework was put in place. Bossi agreed that the Perth ERCC continues to have quarterly meetings preceding BL board meetings.³⁵⁰ Halton said the Perth ERCC is a 'mechanism for reporting'.³⁵¹ Halton agreed that risks which were 'red zones' for the Crown group would be reported from the Perth ERCC to the BL board, and from the Chief Risk Officer to the CRL RMC.³⁵² Halton said that the Perth ERCC was part of both the first and second line of defence, but more of the second line.³⁵³
- 256** The CRL risk management framework documents and the CRL internal audit charter make no reference to the Perth ERCC. Bossi said that the recently amended Perth ERCC charter³⁵⁴ fits within, and is consistent with, the CRL risk management framework.³⁵⁵ This Perth ERCC charter still contains reference to an 'enterprise risk management' framework, and to the 'Board's risk appetite' but does not refer to the CRL risk management framework documents or the appetite outlined in the CRL risk management strategy. Bossi said that when he was CEO – Crown Perth he worked consistently with the new CRL risk management framework documents and the enterprise risk management policy.³⁵⁶
- 257** From a review of the BL board meetings and board packs from 2018, it appears that the BL board is still receiving:
- a. a risk update;
 - b. an AML/CTF update;
 - c. an internal audit report; and
 - d. a legal and regulatory update.
- 258** The CRL risk management strategy does not specify any risk reporting triggers or risk appetite for reporting to the BL board. The CRL risk management strategy provides that the wholly owned subsidiary boards have overall responsibility for the effectiveness of risk management (culture, values, risk appetite and delegations). The Perth ERCC charter provides that a legal, risk and compliance update is still to be provided to the BL board,³⁵⁷ and the CRL risk management policy provides that the BL board is to review the risk practices on a regular basis to ensure the profiles remain up-to-date.³⁵⁸
- 259** In looking at the risk management policy, the risk management strategy and the risk and compliance culture framework, some uncertainty remains about the roles and responsibilities of the Perth ERCC and the BL board in the risk management of Perth Casino and risk escalation triggers to the BL board. Beyond a regular review of the risk profiles for Crown Perth Resort, the specific responsibilities of the BL board to ensure the effectiveness of risk management are not set out in the CRL risk management strategy.
- 260** Crown accepts that the escalation processes between the Perth ERCC and the BL board could be clarified.³⁵⁹
- 261** Crown accepts that the charter of the Perth ERCC should be amended to more accurately reflect and refer to the CRL risk management framework documents which are in force and operative.³⁶⁰

- 262 Crown accepts that in respect of policies of operating subsidiaries that are no longer in force, this should be made clear to staff and all references to them should be removed from risk management framework documents.³⁶¹
- 263 Crown have indicated that the review and update of the charters of the Perth ERCC and the subsidiary boards is included in its plan to improve its risk management capabilities and framework (**Risk Uplift Plan**).
- 264 It would be desirable for the review and update of the charters to include clear definitions of the reporting lines to the BL board and intersection with the CRL board and the CRL RMC.
- 265 At CRL level, there is a Financial Crime Oversight Committee (**FCOC**) which assists the CRL board in fulfilling its oversight responsibilities with respect to the Crown group's exposure to financial crime risk. This involves monitoring and assessing the effectiveness of the financial crime programs and initiatives.
- 266 It is not clear from the documents how this committee interrelates with the Perth ERCC and the CRL RMC. Blackburn said that the FCOC reports to the CRL RMC and presents to the BL board, probably through the CEO – Crown Perth.³⁶² Neither is it clear what the formal delineation of responsibility between the FCOC and the Perth ERCC is, and nor is there any formalised reporting requirement to the BL board of the functions of the FCOC.
- 267 In December 2021, a charter for the FCOC was put into place providing for reporting and escalation requirements,³⁶³ which is a favourable development. This charter should be amended to reflect the intersection with risk management at Crown Perth Resort.

BL governance issues

- 268 The PCRC concludes that, until recently, there has been a lack of clarity about the role of the BL board and the interrelationship between entities.
- 269 The lack of clarity may have arisen, at least in part, from the complex overlay of the trust and corporate structures, with the requirements of the State Agreement and the regulatory regime, which were in place before the PBL takeover. However, it was incumbent on the BL board to identify and address the issues to ensure that the realities of day-to-day conduct of the Perth Casino operations fitted with the legal structure.
- 270 The organic nature of the 'Crown Perth' concept makes it difficult to identify divisions of responsibility between the Burswood entities. This impacts on the governance responsibilities of the respective boards. Nor is there a clear division of responsibilities between the BL and CRL boards.
- 271 Given the nature of casino operations, the special nature of the casino licence, and the risks involved, it was critical that the boards had a consensus understanding of their roles and responsibilities in the governance of Perth Casino. That understanding had to be consistent with the legal structure and operating practices, so as to ensure executives were held accountable, and to provide an effective system of risk management. By not having such an understanding, the processes of proper governance of Perth Casino were rendered more difficult. Perth Casino was not governed strictly according to its legal structure, and risk management was compromised.
- 272 The PCRC has identified some examples that demonstrate the lack of clarity in the BL board's approach to governance and they are discussed below. Many of these examples are historical in nature, and some have been addressed in the improvements made by Crown in recent times. Accordingly, it is necessary to have regard to the remedial measures that are dealt with later in this chapter to understand their import.

The BL business, and the role and responsibility of the BL board

- 273** In their evidence, the directors of BL expressed differing views as to the business of BL and the role and responsibility of the BL board.
- 274** Submissions have been made that the former directors of BL gave generally consistent evidence, aside from a single outlier, and that the differences were superficial. The PCRC does not accept this view.

Evidence of the BL directors

- 275** The evidence of directors falls into at least four categories:
- the BL board was responsible for the governance of Crown Perth Resort and Perth Casino, and reported to the CRL board;
 - the BL board was responsible for the governance of Crown Perth Resort and Perth Casino, but was bound to a strategy set by the CRL board;
 - as ultimate parent company and shareholder, the CRL board was responsible for the governance of Crown Perth Resort and Perth Casino, and the BL board had no power to make directions as to the management or operations of Perth Casino; and
 - the BL board should have been responsible for the governance of Crown Perth Resort and Perth Casino, but in practice, direction came from the CRL board or CRL executives.
- 276** Packer said the business of BL was the financial trading of Crown Perth Resort, including the re-development plans of the Perth Casino site.³⁶⁴ Packer stated that the BL board had oversight of the operations of the Burswood complex,³⁶⁵ including the management of Crown Perth Resort.³⁶⁶
- 277** Packer said that the BL board made the key strategic decisions in relation to Crown Perth Resort, with the exception of final investment approval for significant capital expenditure,³⁶⁷ because BL did not have access to capital for development independently from CRL.³⁶⁸ Packer stated the affairs of Crown Perth Resort were reported to the CRL board through executive members and through CRL board committees,³⁶⁹ such that both boards had oversight of the risks at Crown Perth Resort.³⁷⁰
- 278** Packer's position is consistent with the first category above.
- 279** According to Alexander, BL conducted the business of Perth Casino and the licence was held by BNL.³⁷¹ Alexander said that the BL board made strategic decisions about the operations of Crown Perth Resort,³⁷² and had primary oversight for the governance responsibilities in respect of Perth Casino.³⁷³
- 280** Alexander understood that the management of Crown Perth Resort, in conjunction with the BL board, drove the direction of Perth Casino,³⁷⁴ and the BL board had the power to make a number of decisions, including in relation to capital expenditure.³⁷⁵
- 281** Alexander said that the role of the CRL board was to influence or advise, but not to dictate.³⁷⁶ The boards of BL and BRML had 'enormous flexibility' to make decisions and 'go their own way' in the operation of Perth Casino,³⁷⁷ and the influence of CRL was to assist Crown Perth Resort to be successful and aligned with the Crown brand.³⁷⁸
- 282** Alexander's evidence falls into the first category above.
- 283** Roberts said that the business of BL was to be the unitholder for the BPT.³⁷⁹ Roberts said there was no demarcation between BL, BNL and BRML, and the affairs of those entities and the BPT were discussed holistically at BL board meetings.³⁸⁰ Roberts said governance of BL, BNL and BRML occurred at BL level,³⁸¹ and it was the role of the BL board to make decisions

and for executives to carry out their duties and day-to-day operations.³⁸² Roberts added that BL was required to provide oversight in regards to Crown Perth Resort.³⁸³

- 284** Roberts said that the BL board reported its activities to the CRL board through its common directors.³⁸⁴ Those common directors at the time were Packer, Alexander, Barton and Craigie. Roberts understood that where a decision was made at CRL level, the BL board would consider the decision and determine whether it would be accepted or not.³⁸⁵
- 285** Roberts' evidence is consistent with the first category above.
- 286** Felstead said the business of BL was the running of Perth Casino pursuant to the licence held by BNL.³⁸⁶ Felstead stated the board of BL set the strategic direction of the business of BL, including in respect of Perth Casino,³⁸⁷ and that operational decisions concerning the supervision and control of Perth Casino and its gaming operations were made at BL level.³⁸⁸ During examination, Felstead said that final decisions lay with the CRL board, and the BL board was a sounding board to test the strategy of CRL in a Western Australian context.³⁸⁹
- 287** Felstead said that decisions concerning the business of BL, including in respect of the licence held by BNL, were reflected in the minutes for BL board meetings.³⁹⁰ However, these decisions were made within the parameters given to BL by CRL and by its executives who were on the BL board, and ultimate responsibility was with those executive directors and the CRL board.³⁹¹
- 288** Felstead's evidence falls into the second category above.
- 289** Barton said that the BL board was responsible for the oversight of Crown Perth Resort's business,³⁹² and was the body that set the overall strategic direction for Crown Perth Resort, including in relation to the governance of BNL.³⁹³ Matters proposed by management, including in relation to BNL and BRML, were ratified by the BL board.³⁹⁴
- 290** However, Barton also stated that the overall strategic direction for all companies within Crown, including BNL, was set by CRL.³⁹⁵ This appears to indicate that Barton understood the BL board had the most involvement in setting the direction for Perth Casino,³⁹⁶ but was bound by decisions made at CRL level, including in relation to large capital investment, finance, senior executive appointments and overall approach to risk management.³⁹⁷
- 291** Barton's evidence has elements of the first category but perhaps more closely falls into the second category.
- 292** Poynton said the business of BL was to look after the interests of its sole shareholder, CRL.³⁹⁸ His evidence was that the only assets of BL were the units in the BPT, and it had no staff.³⁹⁹ Poynton said that the BL board was not directly responsible for the management of Perth Casino,⁴⁰⁰ as governance was with the board of CRL, who owned all of the shares in BL and could replace the BL directors.⁴⁰¹
- 293** Poynton said the immediate governance of Perth Casino operations occurred at BNL board level, as the entity which held the licence with the State Government.⁴⁰² Poynton said the BL board had a monitoring role and oversight of the operations of Perth Casino but did not have the power to direct the licensee or its management in any way.⁴⁰³ This is why the minutes of the BL board are in the nature of noting and accepting matters, rather than resolutions or directions to the management of Crown Perth Resort or BNL.⁴⁰⁴
- 294** According to Poynton, the responsibilities of the BL board included:
- a. ratifying matters agreed to elsewhere;⁴⁰⁵
 - b. challenging senior management of Perth Casino or escalating concerns to the chair of CRL;⁴⁰⁶ and
 - c. ensuring ongoing compliance, within the risk framework established and monitored by CRL.⁴⁰⁷

- 295** Poynton said that in his role as an independent director of BL, he could provide a political and economic overview of the situation in Western Australia, and act as an ‘ambassador’.⁴⁰⁸ Poynton believed his responsibilities as a director of BL were clear, and did not need to be documented.⁴⁰⁹
- 296** Poynton’s evidence falls into the third category above.
- 297** Fewster said the business of BL was looking after Crown Perth Resort, including its casino and entertainment hub.⁴¹⁰ Fewster understood that the board of BL was responsible for the governance, strategic direction and management of BL.⁴¹¹ However, the manner in which governance operated was not influenced or directed by BL, as the governance structures were developed and monitored by the CRL board and its sub-committees.⁴¹² Fewster believes that under the present structural division between the boards of BL and CRL, the board of BL is unable to fulfil its role and responsibilities.⁴¹³
- 298** Fewster was appointed to the BL board in 2019, by which time, there had been a shift towards centralisation of management and governance at CRL level. Fewster recognised that governance functions were centralised and that executives had a line of reporting to the CEO of CRL.⁴¹⁴ Fewster said it was difficult for the BL board to run Perth Casino, and difficult for her as a director to perform her duties, as direction and changes to policy at CRL level flowed down to BL level and on to BNL,⁴¹⁵ whereby the BL board noted matters that had already happened or been approved.⁴¹⁶ Fewster submitted that inadequate information was provided to the board, despite her best efforts to obtain the same.⁴¹⁷
- 299** Fewster’s evidence falls into the fourth category above.
- 300** Coonan said the business of BL was to conduct the licence and to manage Crown Perth Resort.⁴¹⁸ Coonan stated that the CRL board set the overarching strategic direction and managed the centralised group functions, with the BL board providing additional oversight in respect of local operations.⁴¹⁹
- 301** Coonan said that the BL board had ‘assumed’ responsibility for the strategic oversight of Crown Perth Resort,⁴²⁰ and could direct management with respect to local matters.⁴²¹ Coonan described the division between the boards of BL and CRL as ‘shared responsibilities’ which ‘feed up and down’.⁴²² Coonan identified sole responsibilities of the BL board including the local roll-out of Perth Casino’s AML/CTF Program, Perth Casino’s risk profile, and dealing with the Western Australian regulator.⁴²³ Coonan said the BL board did not set or approve annual budgets independently of the CRL board, who was authorised to approve major capital expenditure and obtain funding.⁴²⁴
- 302** Coonan’s evidence falls into the second category above.

Dealing with risk in the legal framework

- 303** However the business is described, the Perth Casino operations are intimately connected to the legal framework under which the casino licence was granted and this includes the legislation, the State Agreement and the Trust Deed.
- 304** From the analysis of the activity of the BL board set out earlier in this chapter, the PCRC concludes that from 2008 to 2020, the BL board took a relatively passive role in relation to risk management of Perth Casino. From the board packs and minutes, there seemed to be a comparatively greater focus on the financial performance of Crown Perth Resort and development of the resort complex than on risk management of Perth Casino.
- 305** The PCRC does not question that the BL board received information, noted and accepted it. The board also met with management. However, it made few formal resolutions, and those resolutions were mainly on statutory compliance matters. The minutes record limited challenging of management, and those challenges seldom concerned risk management at

Perth Casino or the requirements of the State Agreement. That having been said, and as indicated earlier, the level of active questioning increased in and from 2020.

- 306** The directors of BL were aware that BNL was the Perth casino licensee.⁴²⁵
- 307** Not all of the directors of BL were familiar with the obligations of the Perth Casino licence. Barton could not recall reading the Trust Deed.⁴²⁶ Roberts could not recall reading the CC Act.⁴²⁷ Poynton could not recall reading the State Agreement,⁴²⁸ and Fewster confirmed she had not done so at the time she was examined.⁴²⁹ Packer believed that he had acquainted himself with the State Agreement during his tenure as a director of BL.⁴³⁰ Alexander confirmed that he had acquainted himself with the State Agreement and understood that it was predicated on the BPT, but although not a director of BRML until 2017, presumed that BRML was ensuring it was being adhered to.⁴³¹
- 308** Packer did not identify responsibilities unique to the chair.⁴³² Alexander agreed that generally the chair was responsible for leading and guiding the board to ensure it understood its roles and responsibilities for proper and efficient functioning.⁴³³ He Alexander did not take any specific steps to identify any confusion or differences in approach the directors may have had in relation to the role of the BL board.⁴³⁴ An effective chair during this period may have enabled the BL board to periodically review the role of the BL board and the effectiveness of its governance processes.
- 309** Based on the evidence, the BL board did not have a practice or system of periodic or continuous assessment about the discharge of its functions in relation to governing casino operations.

Board charter

- 310** The BL constitution provides that the business of BL is to be managed by its directors.⁴³⁵ Similar clauses are also contained within the BNL constitution,⁴³⁶ the articles of association of BRML,⁴³⁷ and the CRL constitution.⁴³⁸
- 311** CRL has a board charter, and this contains a clause that the directors are responsible for the business of the company,⁴³⁹ and reserves for the CRL board a number of matters,⁴⁴⁰ including:
- a. in conjunction with management, establishing a vision and strategy for CRL;
 - b. approving CRL's annual business plan and budget;
 - c. approving specific items of capital expenditure, investments and disinvestments;
 - d. appointing and approving the terms and conditions of appointment of the CEO and CFO; and
 - e. approving company policies which may be developed from time to time.
- 312** As set out above, the directors of BL expressed differing views as to what constitutes the business of BL. As is common in company constitutions, the provisions of the BL constitution (and the constituent documents of the other entities) contain few express references to matters that would clarify the board's role and responsibilities.
- 313** Prior to 2021, BL did not have a board charter and there is no evidence that, until recently, consideration was given by the BL board to putting one in place.⁴⁴¹ This was said to be because BL was a wholly owned subsidiary of a listed entity.⁴⁴²
- 314** Packer agreed that without a board charter, there was the risk of directors misunderstanding their role and confusion as to where responsibility for governance lay between CRL and BL.⁴⁴³ Coonan said that it was an omission, and that the BL board should have a board charter,⁴⁴⁴ and Alexander said that in hindsight a board charter should have been introduced for BL.⁴⁴⁵ Packer said that the need for a board charter for BL (and the operating subsidiaries) was simply overlooked.⁴⁴⁶

- 315** Crown accepts that, as a matter of good governance, the BL board should have had a board charter.⁴⁴⁷ A board charter would have set out and, accordingly, provided clarity on:
- a. the role of the BL board vis-à-vis the CRL board;
 - b. the role of the BL board vis-à-vis the boards of BNL (Trustee and licensee) and BRML (manager);
 - c. the BL board's role in relation to Perth Casino operations and the casino licence; and
 - d. the responsibilities, obligations and expectations of the BL directors.
- 316** The PCRC concludes that:
- a. there was a divergence of views among directors of BL as to their roles and the responsibility of the BL board; and
 - b. the lack of a common understanding was contributed to by:
 - i. the lack of a board charter;
 - ii. the absence of inquiry as to the ramifications of the effective consolidation of the governance of the three Burswood entities;
 - iii. an absence of consideration by the board as to the obligations under the State Agreement, and the BL constitution;
 - iv. failures of leadership in clarifying the roles and responsibilities; and
 - v. the absence of clarity as to the governance being conducted by the boards of the Burswood entities and CRL.
- 317** At its 10 December 2021 meeting, the BL board approved and adopted a board charter subject to approval by CRL.⁴⁴⁸ Crown contends that any basis for confusion about the business of BL, and the role and responsibility of the BL board, has been remedied through the adoption of the BL board charter. This is discussed in more detail later in this chapter.

The chair's prolonged absence

- 318** From 2004 to 2016, Packer was the chair of BL, as well as being the chair of PBL and then CRL. Poynton said that as chair, Packer controlled the flow of information at BL board meetings.⁴⁴⁹ Packer identified six responsibilities of the chair:
- a. 'contributing to [BL's] strategy, monitoring its operating results, and monitoring its capital requests and improvements',⁴⁵⁰ and by strategy he 'meant the strategy of re-developing the resort';⁴⁵¹
 - b. representing Crown Perth Resort in the Western Australian community,⁴⁵² by 'putting Crown Perth's best foot forward' and 'trying to have Crown seen as a good corporate citizen';⁴⁵³
 - c. facilitating the board being kept up to date by management on key issues through the board meeting process;⁴⁵⁴
 - d. facilitating board oversight of management;⁴⁵⁵
 - e. endorsing the appointments of senior executive positions;⁴⁵⁶ and
 - f. complying with regulatory obligations.⁴⁵⁷
- 319** Packer agreed that all of the responsibilities he identified were shared responsibilities with the other directors of BL,⁴⁵⁸ rather than being responsibilities uniquely that of the chair.
- 320** In the period from August 2013 until his resignation in 2016, Packer did not attend BL board meetings.⁴⁵⁹ The timing of his absence coincides with the second phase of centralisation:

the creation of the Australian Resorts function and the appointment of Felstead as CEO – Australian Resorts. Packer said that he continued to monitor the affairs of Perth Casino through the CRL board and its board packs.⁴⁶⁰ Despite Alexander being deputy chair, the minutes record that there was no chair acting in the period until August 2014 when Alexander stepped in as acting chair. Alexander remained acting chair until Packer resigned, and he was formally appointed chair from 2016 to 2019.⁴⁶¹

- 321** Crown concedes that, at times, aspects of the BL board's processes and performance have not met the standards that Crown expects.⁴⁶² Crown acknowledges that it was unacceptable for Packer not to attend board meetings, and that the other members of the BL board should have expressed concern and taken steps about the prolonged absence.⁴⁶³
- 322** CPH contends that Packer's absence did not reduce the capacity of the BL board to oversee and govern the affairs of Perth Casino. However, leadership is a material part of governance. The absence of an active chair left the company vulnerable to the consequences of a lack of leadership, thus placing at risk the capacity of the BL board, particularly its non-executive directors, to contribute to overseeing and governing the affairs of Crown Perth Resort. This was at a time when the Australian Resorts function was in its infancy, with the appointment of a single CEO over Crown's casino operations. It also covered the period when the Riverbank account held with the Australia and New Zealand Banking Group Limited (**ANZ**) was closed.
- 323** Packer conceded that he should have attended board meetings or have formally resigned⁴⁶⁴ and that his non-attendance and lack of involvement in the BL board meetings was inconsistent with the requirement for the governance of BL to meet its responsibilities to the Western Australian community.⁴⁶⁵
- 324** There is no evidence that the BL board questioned whether it was appropriate for the chair to be absent for such an extended period. The BL board was comprised of experienced directors and it is surprising that they did not do so.

The impact of centralisation, management accountability

- 325** The gradual shift to centralisation accelerated from 2013, when the Australian Resorts function was created.
- 326** A review of the board minutes indicates there was little, if any, consideration given by the BL board to the effect of the several phases of centralisation on the operations of Perth Casino and the impact on the head office requirement.
- 327** It is not suggested that centralisation of functions in a corporate group is, as a governance strategy, flawed. In fact, there are many benefits.⁴⁶⁶ The question is how it is done, and in the context of Perth Casino, it is impacted by the head office requirement (which is discussed later in this chapter).
- 328** It is not the role of the board of directors to become embroiled in functions that are properly the province of management and it was impractical for the CRL or BL boards to be involved in the day-to-day operations of Perth Casino. However, this heightens the need for the board to be informed as to, and be clear on, what functions were to be carried out at both group and local levels.
- 329** The BL board does not appear to have given much consideration to how the centralisation of functions would affect the way the operations of Perth Casino would be conducted or governed, and its risks managed in light of management changes that were occurring. There is no evidence that the possible impact of centralisation on the head office was considered.
- 330** After Felstead's appointment to the role of CEO – Australian Resorts in August 2013,⁴⁶⁷ Felstead became the central point of communication between the management of Crown

Perth Resort, and the BL and CRL boards. The minutes of the BL and CRL board meetings show that, between August 2013 and 2020, Felstead led the discussions about most of the agenda items relating to Crown Perth Resort.

- 331** Whilst this is not unusual for the role of a CEO, the issue with this particular arrangement was that Felstead was not clearly accountable to either the CRL or BL boards. Felstead was not appointed to the role of CEO – Australian Resorts by either board. After August 2013, Felstead was no longer employed by BRML, he was employed by CRL.⁴⁶⁸ His function was to manage multiple sites and businesses, and he had directorship roles in addition to his CEO role. Felstead’s reporting line was to the CEO of CRL and the executive chair of CRL, but not directly to the CRL board.⁴⁶⁹
- 332** This created some ambiguity regarding his accountability to the BL board in his CEO – Australian Resorts capacity. Despite Felstead being a director of BL, BNL and BRML during this period,⁴⁷⁰ a structural tension existed between his directorships and his reporting line. When asked about the source of authority to transact on behalf of Crown Perth Resort, Felstead referred to his reporting line to the CEO of CRL or the executive chair of CRL, rather than to the BL board.⁴⁷¹ However, Felstead did refer to instances where he may have sought authority from the BL and CRL boards in relation to capital expenditure.⁴⁷²
- 333** The directors of BL gave evidence about the accountability of management. Roberts understood that management reported to the CRL board, but through the BL board.⁴⁷³ Alexander said that senior management of Crown Perth Resort were accountable to both the BL board and to the CEO of CRL.⁴⁷⁴ Packer understood that the senior management of Crown Perth Resort were accountable to both the CRL and BL boards,⁴⁷⁵ but recognised that reporting lines were through the CEO of Crown Perth Resort to the CEO of CRL.⁴⁷⁶ Poynton said that senior management were not directly accountable to the BL board,⁴⁷⁷ but were accountable to the CRL board.⁴⁷⁸ Poynton recognised that senior management were also directors of BNL and BRML and so in both capacities were expected to be accountable to the BL board ‘to do the right things’.⁴⁷⁹
- 334** In his role as COO – Crown Perth, Bossi said his function was to manage the operations and strategy of the business on the ground at Crown Perth Resort.⁴⁸⁰ Bossi understood he was accountable to Felstead as his direct reporting manager,⁴⁸¹ and assisted Felstead with operational issues that arose at BL board meetings.⁴⁸² Bossi said he felt more accountable to the CRL board than the BL board.⁴⁸³ However, it seems Bossi did not attend any CRL board meetings in his role as COO – Crown Perth,⁴⁸⁴ although he conceded that he did not consider where board oversight of his role actually came from.⁴⁸⁵ In a similar way to Felstead, Bossi understood authority to perform his role came from his job description and reporting line.⁴⁸⁶
- 335** Preston said there was no document that demarcated responsibilities of the Australian Resorts roles.⁴⁸⁷ Throughout the phased approach to centralisation, it appears there were no attempts to update the various boards, document how the Australian Resorts roles were to be accountable, or consider the demarcation of responsibilities. There is no evidence that consideration was given by the BL board as to how existing policies and systems would operate under the centralised framework, including risk.
- 336** In addition to his responsibility for the operations of Crown Perth Resort, Felstead had voluminous responsibilities.⁴⁸⁸ The PCRC observes that, given the complexity of the casino business, reposing operational responsibility for all of these additional activities, together with those of Crown Perth Resort, in the same individual,⁴⁸⁹ particularly without a direct line of accountability to the CRL or BL boards, raised practical difficulties. There is no evidence that the BL board considered these questions.
- 337** A similar issue arises in relation to the position of Preston, who was tasked with a large number of responsibilities.⁴⁹⁰ Despite the multiplicity in reporting brought about by

centralisation, the reality was that the responsibility for escalation and distribution of information was concentrated with Preston. Preston was not appointed to the role of CLO by the BL or CRL board,⁴⁹¹ and had no direct reporting line to either board. There should have been clear reporting lines from Preston, and the BL and CRL boards should have had direct oversight of his role, and should have considered whether the volume of his responsibilities was appropriate.

- 338** Given that there was no documented division of responsibility as to which board the group functions were accountable,⁴⁹² the BL board's capacity to take primary responsibility for governance was inhibited. The lack of control on the part of the BL board over the appointment of the CEO – Australian Resorts position, and the blurring of reporting lines did not facilitate accountability of the person in that role, Felstead, to the board.
- 339** From the BL board packs and minutes, there is no evidence that the BL board gave formal or material consideration to the implementation of centralisation. The PCRC concludes the blurred reporting lines are a reflection of the informal and gradual implementation of centralisation, without adequate consideration by the BL board.

Skills and competencies

- 340** None of the non-executive directors of BL, in the period 2008 to the beginning of 2021, had prior experience in gaming, or in casino risk management, including AML/CTF. It is noted that, save for brief intervening periods, BL has had at least one executive director with significant experience in the gaming industry.
- 341** Since 2020, training has been provided on AML/CTF.
- 342** It is not suggested that only persons with experience in those areas should have been appointed to the board. However, it was incumbent on BL to ensure the non-executive directors received adequate training in casino risk management. This is particularly so in the area of AML/CTF.
- 343** Crown has indicated that the composition of the BL board will be the subject of ongoing review and succession planning.⁴⁹³

The complexity of the Burswood entities structure: analysis

Overview

The issue

- 344** The trust and corporate structure of the Burswood entities has been described as complicated and as creating confusion in terms of responsibility and accountability for the governance and management of Perth Casino.⁴⁹⁴ The PCRC agrees with that description. The complexity has consequences for many governance issues, including the head office requirement in the constitution of BL. It extends to the regulatory framework as well as strictly to internal governance of the corporate entities.
- 345** Within the Crown group, the structure for Melbourne Casino and Barangaroo Casino is relatively simple: there is a single corporate entity that holds (or aspires to hold) the gaming licence and that is, directly or indirectly, a wholly owned subsidiary of the corporate entity CRL. It is easy to identify the 'Casino Operator' within that structure. That is not the case for Perth Casino. It is a hybrid of trust and corporate structures, and it is no easy task to

identify a 'Casino Operator'. It carries with it a potential for competing, perhaps conflicting, relationships and responsibilities.

- 346** There are two broad areas in which the complexity emerges, and they are related. First, the structure and relationship between the entities within the Burswood subgroup. Secondly, the requirement that BL have its head office in Western Australia.

The structure

- 347** The structure of the Burswood entities, the BPT and their relationship to CRL is described earlier in this chapter. Without repeating what has already been said, the following paragraphs are a summary of key features germane to this discussion.
- 348** The Trust Deed, which is recognised in the State Agreement and is part of the regulatory regime, creates certain relationships. The relationship between BNL and BL is a hybrid: trustee and beneficiary (with restrictions on the capacity of a beneficiary to interfere) as well as subsidiary and holding company. The relationship between BNL and BRML is also a hybrid: trustee and manager of trust assets (with the manager to direct the trustee), as well as subsidiary and holding company. The connection between BRML and BL is derivative.
- 349** The relationship between BL and CRL is a conventional subsidiary and holding company one but it is complicated by the flow-on effect of the association of the Burswood entities.
- 350** There is a tension between the legal framework (which involves a trust and corporate entities) and the way the Burswood entities are governed and managed in practice.
- 351** No single corporation operates the business of Crown Perth Resort, or Perth Casino. Crown's position is that the business is operated as a conglomerate known as 'Crown Perth' by BL, BNL and BRML (when considering Perth Casino) and by BL and all of its subsidiaries in relation to Crown Perth Resort. It can be described as a 'collaborative operational model'. From a commercial and practical perspective, the BL board has practically assumed the responsibility of oversight and governance of Crown Perth Resort, including Perth Casino.
- 352** The tension, referred to earlier, is how these arrangements fit with the division of responsibility pursuant to the Trust Deed.
- 353** That having been said, it is clear that the imposition of BL as a corporate entity, in the first instance as a company listed on the ASX and later as a subsidiary of a listed company, on top of the trust structure, has Parliamentary sanction (in the sense that amendments were made to the State Agreement and the CBIA Act) and was well known. In this sense, the structure that exists at present is inherited and might be described as an accident of history.
- 354** At the time of corporatisation in 1997, the Trust Deed was amended to reflect a change from a listed unit trust to a listed company. There is no evidence that, at the time, consideration was given to how the corporatisation would affect the operation of the Trust Deed, or whether the BPT remained a suitable vehicle to operate Perth Casino.
- 355** The Trust Deed was amended again in 2007 (the only amendment to the Trust Deed made since corporatisation) but the only material change was to remove the mandatory requirement for the Manager to prepare accounts of the BPT.⁴⁹⁵ BL, BNL and BRML were all parties to the amending deed.
- 356** Those matters aside, there is no evidence that, since the PBL takeover was effected, anyone has turned their mind to the possible ramifications for practical governance and management of this hybrid structure.
- 357** However, this may be changing.⁴⁹⁶ Crown accepts there could be room for improvement or simplification of the corporate structure and it expects it will, in due course, reconsider the structure for the purposes of streamlining it and will then seek the required regulatory

approvals. Crown accepts that the ‘collapse’ of the trust structure would require regulatory approval and also raise other important issues.

- 358** The second broad area of tension is the head office requirement. BL is required by its constitution (as recognised in the terms of the State Agreement) to have its ‘head office’ (the place of central management and control) in Western Australia. This is discussed in more detail below.
- 359** The CRL board considers and approves key policies and programs which are to apply to Crown Perth Resort, and Perth Casino. For example, the CRL board considered and approved the changes made to the risk management framework, and also the CRL Remediation Plan.
- 360** Over time, important management and executive functions involved in aspects of the operation of Crown Perth Resort and Perth Casino have been centralised into group functions. Those group employees are employed by CRL. Those group roles report ultimately to the CEO of CRL. The management and executives of Crown Perth Resort report into these group roles or to the CEO of CRL.
- 361** The manner in which the centralisation of functions has been pursued, rather than the principle of a shared services model within a corporate group, raises questions about the real location of central management and control.
- 362** It is instructive to look at some examples of the way in which the complexity manifests itself in practical situations.

Examples of confusion from the complexity

Casino key employee approvals

- 363** The issue of probity approval for the appointment of directors of the corporate entities is an example of how the complexity affects the regulatory environment.
- 364** The State Agreement provides that prior approval of the GWC is to be obtained before the appointment of a director of the Manager (BRML). However, as explained earlier, it is not clear whether, in a practical sense, BRML is managing the business of Perth Casino. There is no equivalent for the appointment of a director of the Trustee (BNL). Accordingly, there is no express requirement for approval of appointment as a director of the entity that actually holds the casino licence. Nor is there an equivalent for the appointment of a director of the Approved Company (BL) even though, as explained above, the State Agreement and the constitution of BL provides that central management and control of the Approved Company (that is the holding company of the Manager and Trustee) will be located in Western Australia, presumably, at least in part, to facilitate the exercise of regulatory functions by the GWC.
- 365** In practice, there is a measure of probity approval for the appointment of directors of all three entities but the mechanism for this is not direct checking. Rather, it is by requiring that all directors of BL, BNL and BRML obtain a casino key employee licence under the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA) (CCBILE Regs)*.⁴⁹⁷
- 366** It seems that the issue was recognised at the time of the PBL takeover and GWC implemented a procedure to maintain some form of probity checking.⁴⁹⁸ The following approach has been adopted:
- a. directors of BL are considered to fall within one of the limbs of the definition of ‘casino key employee’ and are subject to that licensing requirement;
 - b. directors of Crown (Western Australia) Pty Ltd (the immediate holding company of BL) and the chair and CEO of CRL are licensed as casino key employees without the requirement for fingerprints;

- c. all directors in the Crown structure are required to complete a personal particulars form approved by the GWC and undertake national police clearance checks; and
- d. recently, CRL directors have been required to have casino key employee licensing.

367 It is difficult to understand why formal probity approval processes are not mandated for all officers with responsibilities for aspects of Perth Casino, especially in light of the shared services model which Crown maintains. In light of the potential impact on regulatory oversight the issue should be reconsidered.

Entity dealing with the GWC

- 368** Communications with the GWC and the Department under the consolidated 'Crown Perth' name, demonstrate a tension or confusion in the structure. It begs the question which entity in the corporate structure is communicating with the GWC and the Department.
- 369** Many of the communications with the GWC are on letterhead containing a notation that it is BNL as trustee for the BPT trading as Crown Perth and managed by BRML.⁴⁹⁹ This is not surprising as BNL is the casino licensee. However, not all communications are labelled in this fashion, and the evidence gives rise to a question as to whether BRML does manage the BPT assets, including Perth Casino.
- 370** There are instances where a CRL employee has communicated with the regulator. For instance, a number of the communications are by Felstead who was employed by CRL as CEO – Australian Resorts.
- 371** The difficulty is compounded by the apparent absence of consideration and approval of specific communications by any of the boards of the Burswood entities, or clear delegations to any agent to make those communications.
- 372** This can cause complications if, for example, a need arises to attribute inadequate communications to an entity. There ought to be greater clarity in the identity of the exact entity with whom the regulator is to deal.

Casino directions

- 373** One of the key features of the CC Act is to enable the GWC to provide directions with respect to gaming operations at Perth Casino.⁵⁰⁰ Under s 24 of the CC Act, directions are to be given to the casino licensee, BNL (consolidated as the Burswood Casino Directions and referred to as **Directions**). The licensee is then required to ensure that any Direction is brought to the attention of, and not contravened by, any person responsible for the organisation and management of gaming operations, or acting as an employee, agent or under the control of, the casino licensee. It is a condition of the casino licence that the licensee complies with any Direction.
- 374** In practice, Directions have been sent to 'Crown Perth', and to employees of BRML.⁵⁰¹
- 375** In order to satisfy its obligations under s 24 (for example, to ensure that Directions are not contravened), BNL must:
- a. in the case of BRML and its employees, exert some control or monitoring over it as the employer of the day-to-day employees of Perth Casino; and
 - b. in the case of BL (and CRL), exert control over, or monitoring of, its parent companies.
- 376** From the minutes of the BNL board meetings which are discussed above (bearing in mind BNL has no employees), it does not appear that this control or monitoring is occurring.
- 377** This tension has the capacity to undermine the effectiveness of the CC Act and the GWC's role in providing Directions to regulate Perth Casino.

Operation of the Riverbank account

- 378** Issues concerning Riverbank and bank accounts held in its name are discussed in detail in Chapter Eight: Money Laundering.
- 379** The history of Riverbank is dealt with in the Chapter Eight: Money Laundering. Riverbank started operating bank accounts that were used in connection with the Perth Casino operations, first with HSBC Bank Australia (pre-2013), then ANZ (2013 to 2014), and last Commonwealth Bank of Australia (2014 to 2019). Although the Riverbank accounts were used in connection with the Perth Casino operations, Riverbank was not a subsidiary (that is, under the legal control) of either BRML (Manager) or BNL (Trustee and licensee). There was no clear identification of responsibility for management of Riverbank, accountability for its activities, or its relationship with BRML (as Manager) and BNL (as Trustee and licensee).
- 380** In 2014, the ANZ bank raised serious issues about the way the accounts were being utilised and the danger of facilitation of money laundering and the bank closed the accounts. Neither the concerns raised by the ANZ bank, nor the closure of the accounts featured in board discussions of BL, BNL or BRML.
- 381** It was a failure of management of Perth Casino to fail to make the board of BL (as the only functioning board of the Burswood entities) aware of the risks of the operation of the Riverbank accounts. The lack of clarity over Riverbank's relationship with the licensee, the fact that the licensee did not have a board that functioned in any material way and the absence of direction to senior management of Perth Casino as to their reporting obligations may have contributed to the Riverbank accounts operating in a manner that was vulnerable to money laundering, despite concerns raised by banking institutions, and without any apparent board oversight.

The relationship between the entities

- 382** As already stated, there is a tension between the legal trust and corporate structures and the practical or organic operations of Perth Casino.
- 383** Under the Trust Deed, BRML is obliged to manage the assets of the Trust Fund, to conduct any business that is an asset of the Trust Fund and to give directions to BNL, as Trustee, in connection with the exercise of powers. That is part of the legal framework.
- 384** Neither BNL nor BL have employees. BRML formally employs staff who carry out day-to-day activities and some members of management. BNL holds the casino licence, is the legal owner of the real property and other assets and enters into contracts with third parties.
- 385** Crown's position is that the 'business' of Perth Casino is conducted under the collective arrangements of 'Crown Perth'. Crown describes it as, in reality as opposed to legal fiction, a singular entity 'Crown Perth'. BNL is the entity that conducts games at Perth Casino and does so pursuant to the licence. Staff and management provided by BRML physically conduct and oversee the games. BL controls both BRML and BNL because it is the sole unit holder and the BL board has assumed responsibility for the governance and oversight of Crown Perth Resort, including Perth Casino, and BNL and BRML act at the direction of BL.
- 386** The BL board charter (adopted in December 2021 subject to approval by CRL)⁵⁰² addresses some of these questions. It provides that BNL and BRML delegate authority and responsibility to the BL board for oversight and governance of both companies. The charter also provides that this is not to be in derogation of the role of the boards of BNL and BRML to discharge their roles, including as Trustee of the BPT. At the date of this Final Report, neither BNL nor BRML have implemented a board charter.
- 387** The first question is whether BRML is conducting the business of Perth Casino as it is obliged to do so. One thing is reasonably clear. Although BL is the beneficial owner and

- controls both BNL and BRML, its role is governance, oversight and direction and it is not conducting the business. In this respect, it can be characterised as a conventional parent company-subsidary relationship where the business is that of the subsidiary.
- 388** BRML employs the people on the ground that conduct the games and provide on-site support, and employs some management which provide on-site supervision. Historically, at a local level, it is those employees who have put in place local policies. Some BRML employees sit on the Perth ERCC. These matters are indicative of the conduct of a business.
- 389** On the other hand, BRML does not contract with third parties for the provision of goods and services and there is no evidence that it directs BNL on those matters. It does not have assets or bank accounts and has not made decisions about development of Crown Perth Resort. These are matters that would normally be considered as part of the running of a business.
- 390** The PCRC takes the view that, while it cannot be said that BRML, itself (and by itself), conducts the business, it participates in that endeavour along with BNL. This might qualify as conducting a business, although it is far from clear. It is even less clear in relation to the management of the trust assets because that role is the subject of detailed duties and prescriptions. This renders the collective approach, at least in this respect, problematic.
- 391** A further question arises as to how the controls and delegations that are part of the practical and organic arrangements fit with the provisions of the Trust Deed, which remain in place.
- 392** Clause 20 of the Trust Deed imposes a number of restrictions on BL as the Unit Holder, including that it cannot interfere with the rights or powers of the Manager (BRML) or the Trustee (BNL) in their dealings with the Trust Fund, which includes Perth Casino.⁵⁰³ Further, as Unit Holder, BL cannot exercise any rights, powers or privileges in respect of any Authorised Investment, which includes the business of Perth Casino.⁵⁰⁴
- 393** There are limitations on the right of a trustee to delegate powers at common law.⁵⁰⁵ There is no express right or power in the Trust Deed for the Trustee to delegate. In this respect it should be noted that the Ninth Supplemental Trust Deed dated 5 January 1996 inserted cl 2A into the Trust Deed which created an express right for the Trustee to appoint another trust company as delegate.⁵⁰⁶ However, the Trustee's express right to delegate was removed by the Twelfth Supplemental Trust Deed.⁵⁰⁷
- 394** Further, issues can arise in trust law where a beneficiary of a trust directs or controls or seeks to direct or control the powers and discretions of a trustee and this can have consequences for the continued existence of the trust.⁵⁰⁸ This is not to say that a trustee is obliged to, or should ignore the wishes of beneficiaries, but it still must discharge its duties and obligations on its own accord.
- 395** Crown does not accept that there have been departures from the obligations under the Trust Deed due to the way all of the entities have been operating together, and the commonality in the directing minds of the entities.
- 396** However, the Trust Deed does not sit in isolation. Crown has conceded that the corporate structure, including the BPT, is mandated by the State Agreement and cannot be changed without the consent of the Minister.
- 397** The State Agreement is premised on the existence of the BPT, and contemplates a continuing role of the Trustee (qua trustee) and the Manager (while a manager is in place).
- 398** By the terms of the Trust Deed and also the State Agreement, an amendment to the Trust Deed requires ministerial consent.
- 399** All of this raises difficult questions. Crown's position is that the practical and organic arrangements sit comfortably with the Trust Deed. However, if there are departures from it, the participation of all Burswood entities in the arrangements amounts to consent,

concurrence or waiver. A contrary view is that the consent, concurrence and waiver by the Burswood entities of strict (or material) compliance with the provisions of the Trust Deed may be characterised as, for all practical purposes, an amendment to the Trust Deed. If that is the case, a question would arise as to whether the conditions of the State Agreement have been complied with. It is acknowledged that state agreements have force and effect as contracts.⁵⁰⁹ However, in the context of this regulatory regime, compliance with the State Agreement is a condition of the exemption in s 23 of the CC Act, so it may have a regulatory implication beyond contract.

- 400** It is also acknowledged that the hybrid structure has existed since 1997 and that it has the sanction of Parliament.
- 401** There are tangible tensions and uncertainties arising from the hybrid structure. Non-compliance with obligations under the Trust Deed could be a breach of the State Agreement. Given the complexity of the issues and the gravity of the consequences which could flow from a breach of the State Agreement, the PCRC has not concluded that they constitute breaches of the Trust Deed. The apparent departures from the legal framework are not simply academic and may have contributed to some of the problems identified in the PCRC's inquiry. They need to be addressed, a matter to which the PCRC will return later in this chapter.

BL central management and control

Head office requirement

- 402** The head office requirement is to be found in Schedule B of the State Agreement and art 3.12 of the BL constitution, which is one of the Mandatory Articles specified in Schedule E of the State Agreement.⁵¹⁰ It provides:

The head office of [BL] must always be located in Western Australia. For this purpose, head office means the place of business where central management and control are exercised.

- 403** Schedule B was introduced in 1997 at the time of corporatisation and it applies to any entity that, from time to time, is an Approved Company. Schedule E was introduced in the changes made in 2003 and it is specific to BL. The combination of Schedule B and Schedule E are to the effect that:
- a. without prior approval of the Minister, the name of the Approved Company must include the word 'Burswood';
 - b. the head office of the Approved Company must be located in Western Australia;
 - c. at least 2/3 of the directors of the Approved Company, and the presiding member of board meetings, must be Australian citizens; and
 - d. the company must not take any action to become incorporated outside Australia.
- 404** In addition, the combination of the State Agreement and the BL constitution means that BL, BNL and BRML must:⁵¹¹
- a. make available for inspection by the Minister, the GWC or its nominated representative, information about ownership, directors or corporate structure of the three entities and all minutes of meetings of unit holders, shareholders and directors; and
 - b. provide the GWC or its nominated representative with notices of meetings of BNL, BRML and BL's shareholders and directors, with the right for the GWC or its

representative to attend and speak at meetings of the BPT, the Manager and BL as if it were a unitholder, shareholder or director, but without voting rights.

- 405** The GWC must approve any changes to the directors of, and any transfer of shares in, BRML and can direct that a director be removed from the board of BRML.⁵¹² A new Trustee or Manager cannot be appointed without approval of the Minister,⁵¹³ and the definition of Manager contemplates that if the Manager resigns or is removed without being replaced, the Trustee would effectively become the Manager.
- 406** The combination of these provisions suggests an intention that an Approved Company is to be firmly affixed to Australia and should have a connection to Western Australia. The latter can be described as a Western Australian status.
- 407** The rationale for this stipulation is not clear. It might have been purely parochial or may have had some commercial underpinning or been related to the economic interests of the State and the community, for example in securing employment opportunities. However, it seems likely from the provisions relating to the supply of information to the authorities that mechanisms by which the GWC could exercise regulatory oversight of an Approved Company were also a factor.

The meaning of central management and control

- 408** Article 3.12 is difficult to interpret. When it was first introduced, BL was the ultimate holding company of the Trustee and the Manager with a direct link to the casino operations and had no structural ties to external bodies. It was owned by investor shareholders in the conventional market system. The practical effect and operation of 'central management and control' was, in those circumstances, unproblematic.
- 409** The situation altered in 2003 when changes were made to the State Agreement in full contemplation that it could mean BL might cease to be the ultimate holding company of the Burswood entities and become a wholly owned subsidiary within a third party corporate group. In that event, the Burswood subgroup would become a group under and within a broader group that might not otherwise have a connection to this State. This is what happened in 2004 when, acting under the changes that had been made and ratified by Parliament in 2003, the GWC approved the takeover of BL by PBL.
- 410** When the 2003 changes were before Parliament, the head office requirement was mentioned as one of the factors preserving the Western Australian status of the company. However, the evidence before the PCRC does not disclose consideration by any person or body as to the practical effect of the head office requirement in a third party group structure.
- 411** As is stated elsewhere in this Final Report, the approach to the proper construction of a state agreement is an exercise of contractual construction, not statutory construction, with consequent limitations on the use that can be made of Parliamentary materials. Article 3.12 falls to be construed as a contract in the context of the State Agreement. The Parliamentary debate materials are referred to only as part of the background.
- 412** The 'business' of Crown Perth Resort is the conduct of casino gaming, and food, beverage, entertainment and related facilities for the casino and hotel-resort complex. This business is recognised by the terms of the State Agreement. Clause 9(1) of the State Agreement provides that the Trustee must maintain and operate, or cause the Resort Complex, to be maintained for the purposes it was constructed. The Resort Complex is defined in the State Agreement as the hotel, convention centre/theatre restaurant, exhibition centre, recreation and other facilities and the Burswood Casino established on the Site. The Site is defined as the various titles of the land on which the Crown Perth Resort is physically constructed.

- 413** Factually, BL does not itself conduct or run ‘the business’ but it is involved in, or has a connection back to, the business. This is so in the sense that it is part of the subgroup comprised of the Burswood entities and other companies that conduct and run the various components of the business over which BL has governance oversight. That supervisory role is of broad import and its exercise involves decision-making that affects the business affairs of the entities and the components they administer. The business of BL to which art 3.12 speaks is more than just the holding of units in the BPT and some limited understanding of governance and oversight of Crown Perth Resort.
- 414** The meaning of ‘head office’ is open to interpretation and a variety of constructions can be postulated. It is a composite phrase: it is not simply the ‘place of business’, but ‘the place of business where central management and control are exercised’.
- 415** The use of the expression ‘central management and control’ can be traced to *De Beers Consolidated Mines Limited v Howe* where Lord Loreburn LC identified the principle ‘that a company resides for purposes of income tax where its real business is carried on ... and the real business is carried on where the central management and control actually abides’.⁵¹⁴ The High Court has recently confirmed those broad principles in the context of residency under Australian taxation legislation.⁵¹⁵
- 416** Caution needs to be exercised in applying interpretations of taxation statutes to the construction of a contractual provision that is unrelated to revenue. Nonetheless, the cases suggest that ‘central management and control’:
- a. is a question of fact and degree;
 - b. is not sensitive to where trading occurs;
 - c. depends on where operations are controlled and directed; and
 - d. is directed to personal control of the business, not its physical operations.
- 417** The provision seems to be directed at the organs of governance and management, rather than to ultimate shareholder control because it is the organs of governance and management that exercise management and control over a company’s business. It appears to contemplate the direction and supervision of policy and decision-making that relates to the business affairs of the entity, as a whole, and which impact significantly on the way the business is conducted.⁵¹⁶ The concept of management appears to extend to the process of implementation as well as formulation of policy but not to day-to-day routine activities of the business. This may extend the reach of those involved in central management and control to officers generally, another area that is often fraught with legal niceties and difficulties.⁵¹⁷ There are a number of material uncertainties, including:
- a. the reach and extent of policy areas that are covered;
 - b. whether it is confined to the board or extends to activities of other officers such as senior management and, if so, to what levels; and
 - c. the opaque ways that it might operate in a corporate group setting.
- 418** In the end, and for the reasons that follow, the PCRC does not propose to resolve these issues of construction.

Location of BL's central management and control (prior to August 2021)

- 419** The activities of the BL board and the process of centralisation have been discussed earlier in this chapter.
- 420** The process by which group policies came to be formulated and implemented at Perth Casino is discussed earlier in the chapter. Arguably, decisions concerning those policies were made by 'officers' of the Burswood entities. In the period during which Felstead was CEO – Australian Resorts, the substantive decisions on the adoption of group policies were probably made by him. Arguably those decisions were made in Western Australia even if the other managers who formulated the policies were elsewhere. During the period in which the Australian Resorts function was in existence, centralisation was in managers of Australian Resorts, and Felstead was at the head of that structure.
- 421** The centralisation of services has resulted in a division of decision-making between locations. The dual reporting lines and authority of the CEO – Australian Resorts and other managers of Crown Perth Resort and of group managers blur the source of ultimate authority for the decision-making and policy-setting. It appears that some degree of that decision-making was made locally either through Felstead or other officers up to the time at which Bossi was appointed. If it is accepted that central management and control can be exercised through officers as well as directors, a formal conclusion that the place of business of BL where decision-making of that character has been exercised is other than in Western Australia is not justified.
- 422** If the focus of attention in relation to policy formulation and decision-making is confined to the board, rather than officers, the position may be different. The mischief lies in the relatively passive approach by the BL board to risk management. It is accepted that the board received considerable information about the operations of Perth Casino, but the question here is the absence of participation by the board in policy setting and a lack of accountability of senior management to the board. It extends across a wide range of group functions.
- 423** In substance, the BL board made few formal decisions concerning policy settings that affected the Perth Casino operations in relation to the approval, adoption and implementation of centralised functions. On the evidence discussed earlier, control in the relevant sense has not clearly been exercised by the BL board. Management has been exercising control without clear accountability to BL. There is no evidence that the BL board gave consideration to the manner in which centralisation of functions away from Perth would or might affect the head office requirement.
- 424** In other words, the issue here is not so much the location of the decision-making process and the place of business where central control and management is exercised but, rather, the approach to governance generally.
- 425** Good governance of gaming operations of Perth Casino requires an independent body (wherever located) to give specific consideration to the interests of the Perth Casino licensee and for the executives managing the gaming operations of Perth Casino to be accountable to that body. BL has not demonstrably performed those tasks. This is a material governance issue.
- 426** As already stated, there are material uncertainties about the meaning of article 3.12, particularly in its application to what has been referred to as the third party group structure. Given those uncertainties and the seriousness of the issue, the PCRC has been unable to reach the requisite level of persuasion as to the proper construction of the provision. This flows on to the resolution of the complex questions of fact and degree that are discussed in this section. In those circumstances, the PCRC is unable to reach a positive conclusion, one

way or the other, whether the head office was located in Western Australia. The PCRC does not find that BL has breached art 3.12.

427 While the provision remains in the Mandatory Articles, there must be compliance. It is obvious that the situation needs to be rectified. If, as the PCRC apprehends, the intention is that the Approved Company have a connection to Western Australia, and that this should be by a management and governance nexus directly to the local operation, consideration will have to be given as to how this can best be achieved in a corporate group setting. These are policy issues for Government to determine but it is at least clear that no matter what structures are used, the Western Australian casino regulator must be able to direct those who manage and govern the casino, and the Western Australian Government must be able to enforce the due payment of tax and other fees to the State and its instrumentalities. Further consideration is given to these questions later in this chapter.

The position in and since August 2021

428 The BL board is awaiting the outcomes of the inquiries, including the PCRC, before deciding on whether there should be a centralised or decentralised governance structure.⁵¹⁸ It is contended that the BL board charter reflects a version of decentralised governance where CRL has oversight of the overall strategic direction of the group, but the responsibility for the business of Crown Perth Resort and Perth Casino rests with BL.⁵¹⁹

429 As will be apparent from the previous section, the questions that are raised extend beyond compliance with the head office requirement and have direct relevance to control and good governance that are necessary for oversight and supervision of the Perth Casino operations. What follows should be read in that light.

430 During the PCRC's inquiry, the inadequacy of communications by the Burswood entities with the GWC in many areas arose as a matter of contention, as did the general lack of oversight by the board, and of reports to the board by management, concerning those communications. The PCRC notes that on 25 November 2021, Carter, Fewster, Bossi, McCann and Blackburn attended a meeting with the GWC, described in the minutes as 'the first meaningful engagement with the GWC' since February 2021.⁵²⁰ Fewster commented that there was engagement at the meeting and that it was beneficial for her to attend. Engagement of this nature is a positive step in remedying deficiencies in this area.

431 In her evidence, Fewster expressed doubts whether management and control was located in Western Australia,⁵²¹ and gave evidence as to what was required in order to ensure compliance.⁵²² Carter and McCann both gave evidence to the effect that they consider the obligation is presently being satisfied.⁵²³ They also testified as to their intentions as to the way in which BL would be operated in the future.

432 Fewster suggested that in order for central management and control of BL to be located in Perth, the following is required:⁵²⁴

- a. a review and simplification of the corporate structure;
- b. a constitution and delegation of authority that reflects the current business operations and ownership structure;
- c. a board charter that reflects the current business operations and ownership structure;
- d. an independent functioning board with suitably qualified directors;
- e. clarity on who the management team of Crown Perth Resort reports to and receives directions from; and
- f. a suitably qualified Crown Perth Resort management team.

- 433** Since August 2021, there have been marked improvements in the way the BL board operates, which coincides with the appointment of Carter as chair, and Weir as Group Company Secretary.
- 434** The PCRC does not have sufficient evidence to determine whether the 2021 Board Improvements have shifted the locus of central management and control of BL to Western Australia. However, further implementation of the centralisation process has been suspended pending the results of this inquiry.
- 435** The PCRC considers that the 2021 Board Improvements demonstrate that BL directors intend for the board to operate as a fully functioning board. This is illustrated by the changes to the BL board packs and minutes and the direct reporting to the BL board by group executives.
- 436** However, the nature of reports presented to the BL board are still by way of update, providing the BL board with information and decisions which have been made elsewhere. The BL board has not had input into the formation of group policies,⁵²⁵ transformation measures,⁵²⁶ or actions towards remediation.⁵²⁷ There has not been independent assessment by the BL board as to the appropriateness of measures for Perth Casino.
- 437** The PCRC notes the documented allocation of responsibilities between CRL and BL with respect to internal audit as an important step in addressing some of the confusion in the relationship between the CRL and BL boards.⁵²⁸ However, the BL board should still be in a position to refuse the services of group positions, and engage management which, in the BL board's opinion, are best suited to service Crown Perth Resort and Perth Casino.
- 438** Whilst Crown has made improvements to the functioning of the BL board, the PCRC observes that more needs to be done to put the question of compliance with the head office requirement in the State Agreement beyond doubt and to ensure that the requisite degree of governance and oversight is being exercised.
- 439** In order for BL to ensure compliance with the head office requirement and in any event in the interests of good governance of the Burswood entities, the BL board should (and this is not an exhaustive list):
- a. increase its active oversight of the management of Crown Perth Resort, including centralised roles and functions;
 - b. provide independent input into the formulation and requirement of policies and programs developed under the shared services model as applicable to Perth Casino and assess and monitor their appropriateness to the Perth Casino environment;
 - c. provide increased oversight of the implementation of policies and programs at the Perth level, including ongoing assessment of their suitability within the Western Australian regulatory framework;
 - d. appoint the CEO of Crown Perth Resort;
 - e. appoint senior management positions of Crown Perth Resort;
 - f. require senior management and functions to provide regular, comprehensive, and accurate reports to the BL board on Crown Perth Resort and Perth Casino operations;
 - g. formulate an arrangement whereby the CEO of CRL provides a report to the BL board; and
 - h. approve all significant communications with regulators, including the GWC.
- 440** Crown contends that any conflict of interest between BL's interests and CRL's interests is illusory. The PCRC accepts that there are some benefits to a shared services model and consistent programs across an organisation and there may be a congruence of interests

between CRL and BL on most matters. Such structures and programs should be assessed on their merit and appropriateness for Perth Casino. The BL board is best placed to make that assessment. It will always be open to the BL board to approve programs developed at all or any of the CRL properties or by employees of CRL. However, the BL board must still provide independent input and assess such programs based on the needs and regulatory framework of Perth Casino and must make decisions as to their adoption for, and implementation in, Perth Casino.

- 441** Such an approach would not conflict with BL's obligations to its shareholder. The viability of Perth Casino, the survival of the Perth Casino licence, and the reputation of Crown Perth Resort in the eyes of the Western Australian public are in the interests of BL and its parent company, CRL, and, for that matter, other companies within the Crown structure.

CRL governance issues

Bergin Inquiry

- 442** The Bergin Inquiry concluded that corporate governance, risk management and culture failings caused or contributed to the problems with Crown's China operations, junkets and AML/CTF.⁵²⁹ These failings included:
- a. Crown's risk management and corporate governance structures were compromised;⁵³⁰
 - b. Crown's directors were not informed of very significant matters which they should have been informed of;⁵³¹
 - c. Crown was exposed to risks which became eventualities (namely the safety of staff in China, money laundering and commercial relationships with junket operators which were not of good repute) which were not appreciated or averted;⁵³²
 - d. Crown's conduct was reflective of a culture in which profit prevailed over compliance with its legal obligations to protect the casino from criminal exploitation;⁵³³
 - e. risks to China-based staff were not adequately assessed, managed and escalated because:⁵³⁴
 - i. the risk management and compliance structures were ineffectual and underutilised;⁵³⁵
 - ii. legal advice was mismanaged;⁵³⁶
 - iii. there were blurred reporting lines;⁵³⁷ and
 - iv. there was a lack of effective governance of the VIP International unit;⁵³⁸
 - f. the 2008 CRL Risk Policy did not contain a 'risk appetite' or how the risk management framework worked to support the identification of material risks to ensure operations were within its risk appetite;⁵³⁹
 - g. the Crown board failed in its obligation to set, monitor and communicate a risk appetite for the operations in China,⁵⁴⁰ and if a risk appetite was set informally, it was excessive and inappropriate for a casino licensee. The CRL board, by its demands upon the VIP International business, and the basis on which it provided incentives, encouraged management to take inappropriate risks in the pursuit of success;⁵⁴¹
 - h. the corporate risk profiles did not properly or sufficiently detail the real nature of the risks associated with the VIP International business or the risks relating to a breach of gaming laws;⁵⁴²
 - i. the controls used by the VIP International business 'on the ground' were not

documented in the risk management controls and were incapable of being monitored and revised as to whether they were appropriate;⁵⁴³

- j. the Crown board failed to conduct a rigorous and systemic corporate analysis of the failures leading to the China Arrests and until this was done Crown could not propound that it had established appropriate risk structures;⁵⁴⁴
- k. there was no clear guidance as to whether to accept or reject junket operators, whether to terminate agreements with junkets or escalation points, and that clear guidance should have been clarified after proper consultation and direction from the Crown board;⁵⁴⁵
- l. the risk management documents overused 'management speak' and should have been in plain language;⁵⁴⁶
- m. the lack of understanding of AML/CTF amongst the directors of Crown showed a deficiency in the corporate character of Crown;⁵⁴⁷
- n. conflicts and potential conflicts of interest and duty of individuals who were executives of both CPH and CRL were not recognised;⁵⁴⁸
- o. the corporate needs of Crown were not given precedence over the corporate needs or desires of CPH;⁵⁴⁹
- p. Crown's confidential information was shared with Packer without this being documented or recorded and it occurred in a free flowing and unchecked manner,⁵⁵⁰ without regard to the conditions in the Controlling Shareholder Protocol;⁵⁵¹ and
- q. Packer's influence and ability to remotely manoeuvre aspects of Crown's operations when he was not on the board had disastrous consequences for the company.⁵⁵²

443 The Bergin Report contained a number of recommendations, including some targeted at addressing CPH's and Packer's influence in respect of Crown. Those recommendations included:

- a. 'purging itself of the offending individuals [so] they are no longer in a position to dominate, manage or meaningfully influence the business operations of the corporation';⁵⁵³
- b. the articulation of a risk appetite and approval of a risk management strategy;⁵⁵⁴
- c. the conversion of the language in the risk management strategy to plain language;⁵⁵⁵ and
- d. restricting CPH's shareholding in CRL to 10% without regulatory approval.

Concessions by Crown in the Royal Commission into the Casino Operator and Licence (Victoria)

444 Following the Bergin Report, the RCCOL was tasked with inquiring into and reporting on the suitability of CML to hold a casino licence as some of the conduct in the Bergin Report related to Melbourne Casino.

445 In its submissions in the RCCOL, Crown accepted that deficiencies in its governance, risk management and culture contributed to, and underpinned, the adverse findings in the Bergin Report. Crown accepted those deficiencies as being:⁵⁵⁶

- a. the pursuit of profit to the point of obscuring proper consideration of the welfare of staff and risks associated with money laundering;
- b. confused and blurred reporting lines;

- c. deficiencies in Crown's risk management framework;
- d. a lack of capability and insufficient resources in the risk management function; and
- e. insufficient resourcing in the compliance function.

446 Crown also accepted findings from the Bergin Report in the following terms:⁵⁵⁷

- a. the board failed in its fundamental responsibility to set, monitor and communicate the risk appetite;
- b. risk decisions were dominated by a pursuit of profit over the welfare of Crown's employees and compliance with the object of the *Casino Control Act 1992* (NSW);
- c. the CRL board, by its demands upon the VIP International business, and the basis on which it provided incentives, encouraged management to take inappropriate risks in the pursuit of that business' success;
- d. Crown's risk management and compliance structures were ineffectual and underutilised; and
- e. there were deficiencies in the various documents that were designed to capture risks.

447 Crown also accepted that it was only in recent years that the CRL board had taken appropriate steps to address risk management within the organisation and that, prior to 2018, Crown did not have a documented risk appetite, the documentation, escalation and reporting of risks was not systematic, and most risk issues were managed at the level of the individual properties.⁵⁵⁸

448 Following those concessions, the findings of the RCCOL in relation to corporate governance, risk management and culture, included:

- a. the matters uncovered in the RCCOL, namely the tax treatment of bonus jackpots, the China Union Pay issue, the foreign marketing practices and the approach to responsible gaming were caused by failures in risk management, and suggested that, despite the reforms to Crown's risk management framework, risks were still not being identified and escalated when Crown was operating outside its risk appetite;⁵⁵⁹
- b. those matters above, and CML's relationship and dealings with the VCGLR also strongly suggested that cultural problems remain within the organisation,⁵⁶⁰ and they may be difficult to overcome.⁵⁶¹ However, it was positive that Crown had acknowledged the problems and was making attempts to change;⁵⁶²
- c. prior to the VCGLR Report of its Sixth Review there had not been an external assessment of the robustness and effectiveness of CML's reformed risk management frameworks and systems or an external assessment of whether those were appropriate for a casino business;⁵⁶³
- d. it was unlikely that Crown had conducted the review required by recommendation three of the VCGLR Report of its Sixth Review which was that Crown 'assess the robustness and effectiveness of its risk frameworks and systems' and that this assessment be assisted by external advice;⁵⁶⁴
- e. some attitudes to recommendations on changes to the risk management framework made by Peter Deans (**Deans**), an expert engaged by the RCCOL, suggested there may be impediments to reform;⁵⁶⁵
- f. there were concerns about the proper functioning of Crown's risk management framework and systems because there had not been a root cause analysis conducted in relation to the China Arrests and the documents constituting the risk management framework were 'replete with management speak';⁵⁶⁶

- g. the risk management framework, system and processes would benefit from:⁵⁶⁷
 - i. a root cause analysis of the failures in the Bergin Report and the RCCOL Report;
 - ii. implementation of Deans' recommendations; and
 - iii. external reviews of the robustness and effectiveness of the risk management framework, systems and processes and their appropriateness to CML as a casino operator. This should happen every three years, with the next review scheduled for 2022;
 - h. the chair of the CRL RMC personally oversee Crown's implementation of the Deans recommendations and the external review;
 - i. in terms of culture, Crown must urgently and closely consider aligning the purpose of compliance and conduct with revenue generation and why staff are in fear of speaking up;⁵⁶⁸ and
 - j. Crown's cultural reform program will need to be closely monitored, potentially for years to come, to make sure Crown is not reverting to its 'old ways'.⁵⁶⁹ The RCCOL acknowledged that culture can change for the better, but it is unknown how long it will take and how successful it will be.⁵⁷⁰
- 449** Ultimately, the RCCOL recommended a 'Special Manager' be appointed to CML to investigate and report on a number of aspects, including the following aspects related to risk management and culture:⁵⁷¹
- a. whether appropriate risk management policies, processes and structures are being implemented, including the recommendations made by Deans;
 - b. whether an external review has been conducted of the robustness and effectiveness of CML's risk management framework, systems and processes and their appropriateness to CML as a casino operator, and whether any recommendations made as a result of that review have been implemented completely and effectively;
 - c. whether the casino operator is conducting its casino operations in a manner that has regard to the best operating practices in casinos of a similar size and nature to Melbourne Casino;
 - d. whether the casino operator has conducted a root cause analysis into the failures in the Bergin Report and the RCCOL Report; and
 - e. to evaluate the implementation and effectiveness of Crown's cultural reform program.

Packer/CPH influence

- 450** The Bergin Inquiry extensively considered and reported on various disclosures of information to Packer, and the influence of Packer and CPH in the affairs of CRL.
- 451** The PCRC received evidence of the existence of a consultancy agreement between CPH, Poynton and Mulloway Pty Ltd as trustee of the John Hartley Poynton Family Trust. The agreement was made on 7 May 2018,⁵⁷² and terminated on 10 February 2021.⁵⁷³ This consultancy agreement was not produced to the Bergin Inquiry.
- 452** The existence of the consultancy agreement does not require the PCRC to undertake a further or separate inquiry into the influence of Packer and CPH in the affairs of CRL. The PCRC is satisfied that the matter of that influence was sufficiently and appropriately dealt with by the Bergin Inquiry.

- 453** The PCRC relies on the fact of the findings made in the Bergin Inquiry and their consequences, including the consequences in the RCCOL but not the substance of those findings in this inquiry.
- 454** The PCRC is satisfied that by reason of the resignation of directors and senior managers, and undertakings and arrangements that are now in place, any influence Packer or CPH had or may have had in the past is no longer extant. In that context, and for the reasons that follow, the existence of the consultancy agreement does not add to or detract from the findings made in the Bergin Inquiry.
- 455** Relevantly, the consultancy agreement obliged Poynton to disclose confidential information of CRL and BL to CPH in certain circumstances.⁵⁷⁴ The existence of the consultancy agreement was disclosed to the CRL board,⁵⁷⁵ but the extent to which the terms of the agreement were disclosed is not clear.⁵⁷⁶ There is nothing in the BL board minutes recording that the consultancy agreement was disclosed to the BL board. However, Alexander (who was chair of BL) was apparently aware of it and the obligation to disclose information.⁵⁷⁷
- 456** Poynton said that he did not have a full appreciation of the extent of his obligation to disclose confidential information to CPH under the express terms of the consultancy agreement.⁵⁷⁸ Poynton submitted that such disclosure was not the common intention of the parties to the agreement. His evidence and that of Packer was to the effect that no confidential information was requested by, or provided to, CPH or Packer pursuant to that agreement.⁵⁷⁹ There is no contrary evidence before the PCRC.
- 457** As to the question of any potential ongoing influence, as a result of the Bergin Report, CPH has entered into an informal agreement with the Independent Liquor and Gambling Authority (**ILGA**) by which CPH undertook not to:⁵⁸⁰
- a. enter into any information sharing arrangements with Crown;
 - b. initiate any discussions with Crown, other than through public forums, about Crown businesses or operations;
 - c. seek to have an executive or nominee appointed to the CRL board, or requisition a meeting of Crown shareholders to seek the appointment of any person as a director of CRL before October 2026; or
 - d. seek any amendment to the Crown constitution that would affect the management or operation of the Crown business.
- 458** Undertakings on similar terms have been offered by CPH to the VCGLR⁵⁸¹ and the GWC.⁵⁸²
- 459** Crown is willing to undertake to regulators that similar arrangements will not be entered into in the future should this be required.⁵⁸³
- 460** The RCCOL acknowledged the undertakings. It found that, for reasons exposed in the Bergin Report, CPH should never be in a position to exert control over CRL or CML. Despite contrary views, while CPH maintains its shareholding, it could resume control once its undertakings to ILGA have expired.⁵⁸⁴ The RCCOL therefore recommended the *Casino Control Act 1991* (Vic) be amended to provide:
- a. that no person shall have or acquire a relevant interest in 5% or more of the issued capital in a casino operator, or 5% or more of the issued capital in the holding company or intermediate holding company of which the casino operator is a subsidiary, without the regulator's approval;
 - b. if a person does hold or acquire a relevant interest in 5% or more of the issued capital of a casino operator, or 5% or more of the issued capital in the holding company or intermediate holding company of a casino operator without the regulator's approval,

that holding company or acquisition should be deemed to be a breach by the casino operator of the casino licence;

- c. if a person contravenes the 5% rule, the regulator may serve that person with a notice requiring the person to dispose of the relevant interest within the relevant time; and
- d. a failure to comply with the notice should be an offence with a significant penalty and the Supreme Court should have power to make any order it considers appropriate to secure compliance with the regulator's notice, including an order directing the person to dispose of any relevant interest.⁵⁸⁵

461 This was to have effect from September 2024, though this date may be subject to change.⁵⁸⁶ This is a lower holding cap than the recommendation made in the Bergin Report (10%).

462 Packer does not object to the requirement to sell down the CPH interest to 5%.⁵⁸⁷

463 CPH submits that there is no need for the PCRC to impose any shareholder cap which requires CPH to dispose of some or all of their shares.⁵⁸⁸ If a shareholding cap were to be imposed, CPH proposes that a 20% limit is appropriate.⁵⁸⁹

464 More generally, it is a matter of public record that Blackstone has made a takeover bid to acquire all of the shares in CRL. This would include an acquisition of CPH's interest. On 14 February 2022, CRL announced an all cash offer by a company on behalf of funds managed and advised by Blackstone by way of a scheme of arrangement.⁵⁹⁰ The bid is subject to conditions, including probity approvals from the relevant regulators. If there were a takeover, the question of the influence of Packer and CPH would become moot, and, according to CPH, is already moot.⁵⁹¹

465 In the above circumstances, and at the date of this Final Report, the PCRC concludes that CPH's shareholding in CRL is not a matter that presently affects the question of whether CRL or any of the Burswood entities is a 'suitable person' within the meaning of the terms of reference.

Remediation of governance, risk management and culture

The Crown Remediation Plan

466 Crown has prepared and provided to regulators and the PCRC a remediation plan.⁵⁹² The remediation plan is a document which is updated and amended by Crown as its path to remediation develops.⁵⁹³ The last remediation plan provided to the PCRC is dated 23 December 2021 (**Remediation Plan**).⁵⁹⁴

467 The Remediation Plan was initially developed to record Crown's reform projects in response to the Bergin Report.⁵⁹⁵ The first version was provided to ILGA on 15 March 2021.⁵⁹⁶ Since that time, it has evolved to encompass reforms across all of Crown's properties, and updated versions have been provided to the GWC and the PCRC on a monthly basis since May 2021, showing the progress in its implementation. The Remediation Plan is a 'living document' reflecting ongoing changes to Crown's reform agenda.⁵⁹⁷

468 There is a separate plan developed for Crown Perth Resort which is a more detailed document for the operations teams.⁵⁹⁸ Bossi said remediation is approached organisationally and locally.⁵⁹⁹ Bossi stated the particular areas that were being focused on by Crown Perth Resort include AML/CTF, security system upgrades, the relationship with the West Australian Police Force, and responsible gaming.⁶⁰⁰

469 Nicholas Weeks (**Weeks**) is charged with coordinating and overseeing the Remediation

Plan, which includes reporting to the BL and CRL boards on the progress of the Remediation Plan.⁶⁰¹ McCann stated that Weeks reports directly to McCann at least fortnightly.⁶⁰² From April 2021, the BL board has received updates on the Remediation Plan,⁶⁰³ however, at the date of this Report, the Remediation Plan has not received formal approval from the BL board.⁶⁰⁴

- 470** The Remediation Plan contains 44 areas covering:⁶⁰⁵
- a. corporate governance;
 - b. organisational structure;
 - c. CPH relationship;
 - d. AML/CTF;
 - e. risk management;
 - f. culture;
 - g. junkets and significant player review;
 - h. audit and assurance; and
 - i. responsible gaming.
- 471** The Remediation Plan outlines the changes already made, the proposed next steps, who is responsible and targeted timing.
- 472** Whilst each reform item is assigned to an executive, a collective effort is required across the business to execute the transformation in the Remediation Plan.⁶⁰⁶ Members of the executive leadership team comprise a Steering Committee which meets weekly to steer the Remediation Plan,⁶⁰⁷ and it is subject to the oversight by the CEO of CRL and the CRL board. The following executives have been given responsibility to lead particular areas of the transformation:
- a. Weeks – Executive General Manager of Transformation and Regulatory Response;
 - b. Weir – governance;
 - c. Blackburn – Financial Crime and Compliance Change Program and responsible gaming;
 - d. Amy Gleeson (**Gleeson**) – risk management; and
 - e. Tony Weston (**Weston**) – culture.
- 473** ILGA requested, and Crown agreed, that Duff & Phelps Australia Pty Ltd (trading as **Kroll**) be engaged as an independent monitor to provide reports to ILGA and ongoing monitoring. Kroll’s scope of work includes assessing the adequacy and effectiveness of aspects of the Remediation Plan, and then periodically assess the implementation of the Remediation Plan.
- 474** The Remediation Plan has been investigated and analysed during the PCRC’s inquiry. A significant number of items have already been completed or are well progressed, and this reflects Crown’s commitment to remediating past failings and improving its systems, governance and processes.
- 475** In this section, the remediation areas for corporate governance, organisational structure, CPH relationship, risk management and culture are considered.
- 476** The BL directors gave the following evidence about the path to remediation:
- a. Carter said he has had experience in implementing similar remediation plans.⁶⁰⁸ He said, generally, in relation to remediation plans the ‘board needs to walk the talk, it

needs to put in place appropriate leaders⁶⁰⁹ and 'resources need to be put behind it'.⁶¹⁰ In relation to the Remediation Plan, he said Crown has the financial capacity to resource it.⁶¹¹ He stated that the challenge was the need for a 'massive change in culture'⁶¹² the 'whole way down' the organisation.⁶¹³ He said his concern about the Remediation Plan was its size, but that Crown is getting 'the best people we can get to deliver'.⁶¹⁴ He said he was committed to seeing Crown's remediation through to the end.⁶¹⁵

- b. Fewster stated the remediation plans will improve the gaming operations at Perth Casino⁶¹⁶ and sufficient resources have been or will be allocated to implement the plan within the time frame.⁶¹⁷ She stated that in the limited time she has spent with the relevant people, she believes they have the skills and are committed to remediating.⁶¹⁸ She said the corporate structures are not currently fit for purpose.⁶¹⁹ She stated in relation to the Remediation Plan, progress has been made in responsible gaming, financial crime and compliance, which demonstrates there has been promising delivery on these aspects.⁶²⁰
- c. McCann said that he knew that when he took on the role as CEO of CRL that 'Crown would need to undertake a rigorous transformation in terms of its culture, its risk and compliance regimes and its relationship with regulators'.⁶²¹ McCann stated that Crown could achieve 'best practice' across the areas in the Remediation Plan, but conceded these were 'substantial issues'.⁶²² He stated senior management and the CRL board was committed to addressing the issues.⁶²³ He said there did not need to be a 'massive replenishment across the various layers of the organisation'.⁶²⁴ McCann said that he is dedicated to transforming the organisation from the top down,⁶²⁵ and 'continuing to drive improvement and positive change'.⁶²⁶ McCann stated Weeks reported directly to him a minimum of fortnightly, and that status updates regarding implementation of the Remediation Plan are provided at the CRL and BL board meetings.⁶²⁷
- d. Switkowski said he had past experience in the transformation of an organisation.⁶²⁸ He said in relation to Crown there was a lot of work to be done but the 'momentum is there'.⁶²⁹ Switkowski stated his tasks as chair will be to continue to build up the CRL board and help the CEO to recruit key members of the executive.⁶³⁰ He stated the priorities will be the actions arising from the Bergin Inquiry, the RCCOL and the PCRC, and further actions may be developed.⁶³¹ Following that, the remuneration program needs to be remediated to reinforce financial and non-financial KPIs to signal what is important in monitoring performance.⁶³² He also said another area of priority was the 'resetting of the priorities of the enterprise'.⁶³³ His view was that Crown had the potential to be remediated,⁶³⁴ and could be a 'great company'.⁶³⁵ His concern appeared to be the amount which needed to be done at the same time,⁶³⁶ but it was 'within the capability of competent people to execute'.⁶³⁷

477 The directors of CRL (who are not directors of BL) gave the following evidence about the path to remediation:

- a. Morrison said he had prior experience in the remediation of a casino.⁶³⁸ He said all of the areas in the Remediation Plan were of significant importance, and 'there's a lot to do, but it is being worked through'.⁶³⁹ He said an important thing was getting the organisational structure set and filling the gaps in the management structure.⁶⁴⁰ He said cultural change needed to be reinforced from the top.⁶⁴¹
- b. Ward said she had experience in overseeing remediation programs.⁶⁴² Ward met with the executive leadership team, and was satisfied the directors and senior executives of CRL acknowledge the need for the Remediation Plan, and are committed to 'see it through'.⁶⁴³ She said there was 'quite a lot of work to do' to ensure Crown had 'consistent and mature processes and systems' to properly manage the risks of the

business.⁶⁴⁴ She said she believed the board should take an active role in remediation, particularly on cultural transformation.⁶⁴⁵ Ward said she was attracted to the role at Crown to assist in 'restoring trust and confidence of its regulators and communities in which it operates and restoring the pride of the people who work for Crown to be part of Crown'.⁶⁴⁶

- c. Halton said the Remediation Plan includes all things to put Crown 'on the right path' in terms of regulatory compliance and the social licence to operate,⁶⁴⁷ and there was the capacity to implement the Remediation Plan.⁶⁴⁸ She said the personnel who have been recruited have extensive experience, a 'single minded commitment' to the turnaround of Crown, and 'goodwill, character, and a way of working' which will be the 'tone from the top'.⁶⁴⁹ Halton said she was not concerned about the scope of the Remediation Plan.⁶⁵⁰ She said the board is focused on the strategy and the detail.⁶⁵¹ The board was very engaged in advancing the Remediation Plan and culture reform.⁶⁵²

478 The RCCOL concluded that, in relation to CML, it 'has the will and the capacity to reform itself'.⁶⁵³

479 Given the evidence above, the PCRC concludes:

- a. the directors of the CRL and BL boards have experience in leading remediation or transformation programs in large corporations;
- b. the Remediation Plan is subject to further change following ongoing inquiries;
- c. aspects of the Remediation Plan have been completed, but aspects which are in the progress of being completed cover many areas and require substantial work to be completed at the same time;
- d. the executives and management, in particular, the CEO of CRL, have the commitment to deliver on the Remediation Plan;
- e. Bossi has left the CEO – Crown Perth role with the result that it is vacant and without knowing who will fill that position, no assessment can be made as to whether the new CEO – Crown Perth will have the commitment to deliver on the Remediation Plan;
- f. the directors have formed the view that the executives and management are competent to deliver on the Remediation Plan;
- g. the directors demonstrate a commitment to making sure the boards take an active role in leadership, particularly on cultural transformation; and
- h. there is a degree of external monitoring of progress in implementing the Remediation Plan.

Composition of the CRL Board

480 As has been addressed above, during and following the Bergin Inquiry there has been a change to the composition of the CRL board. The following resignations occurred:

- a. in October 2019, Geoffrey Dixon resigned;
- b. in October 2020, Alexander resigned; and
- c. in February 2021, Andrew Demetriou, Poynton, Barton, Michael Johnston (**Johnston**), Guy Jalland (**Jalland**) and Harold Mitchell resigned.

481 During the course of 2021, the following additional resignations occurred:

- a. in April 2021, Professor John Horvath resigned;
- b. in August 2021, Coonan resigned; and
- c. in October 2021, Korsanos resigned.

- 482** Following those resignations, the following directors have been appointed to the CRL board:
- in March 2021, Morrison;
 - in August 2021, Carter;
 - in October 2021, McCann;
 - in November 2021, Switkowski; and
 - in January 2022, Ward.
- 483** The only director who remains on the CRL board who was appointed prior to the Bergin Inquiry is Halton, and she was appointed as a director of CRL in 2018.
- 484** The current directors of CRL have the following skills and experience:
- Morrison had experience in the gambling and gaming sectors through the 1990s and 2000s in multiple organisations in senior executive roles;⁶⁵⁴
 - Carter is an experienced non-executive director with extensive experience in turnaround processes for business, including as to culture reform.⁶⁵⁵ He had prior involvement in the gaming sector, having been a director of Skycity Entertainment Group from 2010 to March 2021.⁶⁵⁶ He also has a broad understanding of AML/CTF risks and the management of those risks,⁶⁵⁷ and has experience on a number of audit and risk committees;⁶⁵⁸
 - McCann has experience as a senior executive in a public company having held senior leadership roles at ABN Amro and Bankers Trust.⁶⁵⁹ In those roles he had 'significant exposure' to risk management practices and governance in large ASX listed companies.⁶⁶⁰ Prior to joining CRL, he has had no specific professional experience related to gambling, gaming or the management of AML/CTF;⁶⁶¹
 - Switkowski is an experienced company director and chair.⁶⁶² He has also had prior experience in the gaming sector, having held a directorship in Tabcorp.⁶⁶³ Through senior executive and director roles, he has 'substantial experience' in risk management and governance,⁶⁶⁴ and in cultural change projects.⁶⁶⁵ He has also had roles which have exposed him to AML/CTF compliance issues;⁶⁶⁶
 - Ward has lengthy experience in risk management, including AML/CTF, having been the independent chair of four Australian Prudential Regulatory Authority-regulated companies and General Counsel of National Australia Bank;⁶⁶⁷ and
 - Halton has held senior roles in the Australian Public Service, and has a number of directorship roles, including having been a director of CRL since 2018. Through those roles, Halton has experience in risk management, some AML/CTF exposure, and experience in gaming, including harm minimisation.⁶⁶⁸
- 485** Carter and Ward have had no relationship with CPH, Packer, or companies associated with Packer.⁶⁶⁹ Morrison, Carter, Switkowski, Ward, McCann and Halton have had no communication with CPH, Packer or companies or people associated with Packer during 2021.⁶⁷⁰
- 486** Morrison stated he has no current relationship with Packer or companies or people associated with Packer and he disclosed to the PCRC previous associations in the early 1990s and in 2000.⁶⁷¹ Switkowski stated he had contact with Packer and those associated with him in the course of arms-length business dealings, but that his last contact was in 2009, and he has no relationship with Packer which may impact the discharge of his role as chair of CRL.⁶⁷² Halton stated that, in her previous roles with the Australian Public Service, she met Packer on a small number of occasions and had communications with Jalland and Johnston prior to them departing as directors of CRL.⁶⁷³ McCann stated he had prior dealings with Packer and associated people when he was the CEO and Managing Director of Lendlease and that his communications ended in 2018.⁶⁷⁴

487 Given the above, the PCRC concludes:

- a. save for Halton, the directors who were governing CRL during the period considered by the Bergin Inquiry have resigned;
- b. no adverse findings were made in the Bergin Report in relation to Halton;
- c. new directors have been appointed;
- d. there has been a renewal of the CRL board since the matters considered by the Bergin Inquiry, with all of the directors except for Halton appointed in 2021;
- e. all of the non-executive directors of CRL are independent as that term is defined in the ASX Corporate Governance Principles and Recommendations;
- f. the CRL board is comprised of a majority of non-executive directors as McCann is currently the sole executive director;
- g. the directors have a high level of senior executive and directorship experience, which has exposed them to, and provided them with experience in, a number of key areas relevant to the business of CRL, including corporate governance, regulatory engagement, risk management, AML/CTF compliance, gaming management, business transformation and cultural change;
- h. the current directors of CRL have had no communications with Packer or his associated companies or people in recent times, and appear to be free of any influence in that regard;
- i. some of the directors of CRL have experience in the gaming and gambling sectors, which will add to the broad skill set of the CRL board; and
- j. the PCRC has no reason to question the leadership capabilities or the competence of the reconstituted CRL board.

Composition of the BL Board

488 As is discussed above, the current BL board consists of Carter (as chair), Fewster, McCann and Switkowski. Carter, Fewster and Switkowski are non-executive directors, although two of them are directors of CRL.

489 Carter, McCann and Switkowski's experience is set out above. Fewster has experience as a senior executive, at COO and CEO levels.⁶⁷⁵ In these roles, she has led large teams of people and change programs. She has also held a number of non-executive director roles.⁶⁷⁶ Prior to her appointment to the BL board, she had no gaming experience, other than some exposure to problem gambling training, and no experience with AML/CTF.⁶⁷⁷

490 Given the above, the PCRC concludes:

- a. except for Fewster (whose conduct did not arise to be considered by the Bergin Inquiry) none of the current directors of BL were directors during the matters the subject of the Bergin Inquiry;
- b. the new directors were appointed in 2021 and 2022, after the events the subject of the Bergin Inquiry;
- c. the BL board consists of one executive director and three non-executive directors but only has one member who is independent from CRL; and
- d. the BL board has members with experience in the key areas of risk management, AML/CTF compliance, gaming and change management.

491 The PCRC addresses the composition of the BL board in the last section of this chapter.

Director training

- 492** The directors of CRL and BL have received mandatory AML/CTF training. Blackburn has also met with Fewster to discuss the 'Financial Crime and Compliance Board Pack'.⁶⁷⁸
- 493** The directors have also undertaken training on other issues via online modules, training materials and briefings from management.⁶⁷⁹ The scope of that training covers anti-bribery and corruption, responsible service of gaming, casino awareness, risk management frameworks and the operations of Perth Casino.⁶⁸⁰
- 494** Crown anticipates that the induction program for any new director of BL would be tailored to include specific information about the corporate structure of the Burswood entities, including relevant provisions of the Trust Deed. Further, the BL board charter requires non-executive directors to familiarise themselves with key documents, including the State Agreement, CC Act, Directions, BL constitution and the Trust Deed.
- 495** In August 2021, the People, Nomination and Remuneration Committee approved a three-year formal non-executive director training and development program.⁶⁸¹ None of the current directors gave evidence that they had yet received the training the subject of this program. Kroll requires the Barangaroo Licensee to update its director training program to include risk compliance and control, active management, performance monitoring, and holding management to account.⁶⁸²
- 496** Given the above, the PCRC concludes that:
- a. training on AML/CTF has been provided to the current directors of CRL and BL;
 - b. some training and induction has been provided to the current directors of CRL and BL on a range of topics;
 - c. a formal training and development program has been developed for the non-executive directors; and
 - d. the training and development program is subject to further change and is in the process of being implemented.

Senior management composition

- 497** There have been a number of changes made to the composition of the executive and senior management team in relation to CRL and BL. Felstead, Preston and Barton have left Crown, though Barton is a party to a consultancy agreement to provide services to Crown.⁶⁸³ Bossi held the position of CEO – Crown Perth⁶⁸⁴ until 20 January 2022 and has now ceased occupying that role and, at the time of writing, recruitment for a new CEO for Crown Perth Resort has commenced. McGregor remains as CFO of CRL, with a reporting line from the CFO – Australian Resorts, John Salomone (**Salomone**).⁶⁸⁵ McGregor has been part of Crown for many years, commencing employment with Crown Perth Resort in 2005 (then the Burswood Entertainment Complex).⁶⁸⁶ Salomone is also a long-term Crown employee.
- 498** Shannon Blake has been appointed the interim COO-Gaming – Crown Perth.
- 499** McCann said he made an assessment of the senior management team, and this assessment will be ongoing.⁶⁸⁷ He said when he joined CRL, he had 17 direct reports, and he now has nine direct reports.⁶⁸⁸ He said there was likely to be change in the future and he anticipated this would stabilise in the next six months.⁶⁸⁹
- 500** The Crown Perth Resort's Business Operating Team or the Crown Perth Resort 'Executive Team' contains the following new appointments:⁶⁹⁰
- a. McCann as CEO and Managing Director of CRL;

- b. Betty Ivanoff as General Counsel of CRL;
- c. Ottner as Group General Manager – Internal Audit;
- d. Blackburn as Chief Risk Officer;
- e. various financial crime roles;⁶⁹¹
- f. Weston as Chief People and Culture Officer; and
- g. Weeks as Executive General Manager – Transformation and Regulatory Response.

501 A number of these roles are group or CRL roles, not based in Perth.⁶⁹²

502 The personnel in the following roles based in Perth have been with the organisation for some time, including in the period before the Bergin Inquiry:⁶⁹³

- a. COO – Gaming;
- b. Executive General Manager – Legal Services;
- c. General Manager – Executive Services Legal;
- d. COO – F&B and Entertainment;
- e. Executive General Manager – Crown Hotels Perth;
- f. General Manager – Security and Surveillance;
- g. Executive General Manager – Gaming Machines;
- h. Director of Casino Operations – Gaming Machines;
- i. Director of Premium Gaming – Gaming Machines;
- j. Executive General Manager – Table Games; and
- k. Group General Manager – Crown Theatres.

503 Given the above, the PCRC concludes:

- a. many of the executives and senior management who perform services or roles which relate to Crown Perth Resort’s operations:
 - i. do not have a reporting line to the role of CEO – Crown Perth;
 - ii. report to other group roles and, ultimately, to CRL roles; and
 - iii. are not based in Perth;
- b. the new roles which have been created and the new personnel in the executive and senior management for Crown Perth Resort’s operations (that is, the ‘renewal’) are in the CRL and group levels, not Crown Perth Resort roles, and are not based in Perth; and
- c. the executives and management who are based at Crown Perth Resort, and some senior executives, such as McGregor and Salomone, have been with Crown since before the Bergin Inquiry, and have not been ‘renewed’.

504 Earlier in this chapter, the voluminous responsibilities of Felstead and Preston were discussed, and comments were made as to whether the scope of their responsibilities were appropriate. As CRO, Blackburn leads the group functions of financial crime, compliance, responsible gaming and risk management for each of Crown’s properties.⁶⁹⁴ This is a significant workload. The PCRC notes that Crown has engaged an external consultant to provide support in relation to risk (Gleeson), and the role of Group General Manager – Responsible Gaming has not been filled. Resourcing in the areas of financial crime, compliance, responsible gaming and risk management should be an ongoing focus for Crown, and the assignment of responsibilities to senior management should be considered in that light.

Centralisation

- 505** Crown has maintained in their Remediation Plan that consideration is being given to a centralised governance structure which is being reassessed following the RCCOL Report and the outcomes of the PCRC's inquiry.⁶⁹⁵
- 506** However, there has been a gradual shift over time to increased centralisation of functions.
- 507** The dotted reporting lines still exist in the Crown Perth Resort's Business Operating Team, where senior executives informally report to or have 'engagement' with the role of CEO – Crown Perth, yet their direct reporting line is to a Melbourne-based group role.⁶⁹⁶
- 508** There are also committees, such as the Responsible Gaming Management Committee at Crown Perth Resort, which overlaps with the responsibility and oversight of the responsible gaming management roles which are at group level.⁶⁹⁷
- 509** McCann understands that the BL board should be able to direct a group role without regard to approval from the CRL board,⁶⁹⁸ and the group roles are accountable and responsible to the BL board with respect to aspects relating to Crown Perth Resort.⁶⁹⁹ The reports that are provided to the BL board by group roles are also provided to the CRL board.⁷⁰⁰ McCann said that directions given to management of Perth Casino will be subject to the overall governance by the BL board.⁷⁰¹ However, he said there is no formal document which sets this out.⁷⁰²
- 510** The practical reality prior to August 2021 was that over recent years, the respective boards' activities were different to that understanding. The 2021 Board Improvements demonstrate that some group functions report to the BL board.⁷⁰³
- 511** It is noted that the BL board charter provides that centralised management of key functions does not abrogate the responsibility of the BL board to monitor and exercise oversight in relation to these matters.⁷⁰⁴ Crown describes its 2021 Board Improvements as a substantial improvement to the historical 'report and note' approach.⁷⁰⁵
- 512** Given the above, the PCRC concludes:
- a. in terms of management, there are different direct and indirect (or dotted) reporting lines, levels of engagement and responsibilities to manage the performance of personnel;
 - b. there is some overlap between management responsibilities and the responsibilities of management committees;
 - c. there has been no formal centralisation of governance despite a practical centralisation of governance at the CRL board level; and
 - d. there is no formal document clearly setting out the reporting lines, the demarcation of management responsibilities, or governance oversight of Perth Casino.
- 513** Crown accepts that there has been no formal centralisation of governance.⁷⁰⁶ Issues concerning reporting lines and demarcations of responsibilities, including governance oversight, of the different layers of management are addressed later in this chapter.

Proposed changes to BL constitution

- 514** At a meeting of the CRL board held on 17 October 2021, consideration was given to a draft board charter for BL and draft amendments to its constitution.⁷⁰⁷ This draft board charter was approved and adopted by the BL board at its 10 December 2021 meeting, subject to CRL approval.⁷⁰⁸
- 515** The draft constitution for BL proposes to introduce a new art 15.6. The proposed article would introduce 'reserved powers' whereby the BL board could not take action on certain

matters without the approval of CRL, as sole shareholder. Currently, the matters that would require shareholder approval are left blank in the draft version provided to the PCRC.

- 516** Carter said that the proposed reserved powers clause may cover material issues.⁷⁰⁹ Carter said that examples of reserved powers may include major capital expenditure, purchase of assets, enterprise-wide workforce agreements, and a decision to resume junkets in Perth or cancel major programs.⁷¹⁰
- 517** At the time of her evidence, Halton said that there has not been any discussion on the scope of the reserved powers.⁷¹¹ Halton indicated that matters may include disposing or mortgaging property, entering into or amending industrial agreements and formal arrangements with the State.⁷¹²
- 518** The proposed clause expressly preserves the operation of the head office requirement,⁷¹³ and if there is any inconsistency, the head office requirement prevails.
- 519** There is nothing objectionable, in principle, with the notion of amending the constitution to introduce a restraint on the powers of the directors of a subsidiary company. However, the concept of 'control' may extend not only to the ability to bring about action, but also to the ability to prevent action. That is, negative control. The PCRC concludes, therefore, there is the potential for negative shareholder control to shift the locus of the 'management or control' of decisions falling within the subject matter of the reserved powers from BL to CRL.
- 520** Second, there is a proposal to introduce an article in the following terms:
- 15.13 At any time when the Company is a wholly owned subsidiary of another body corporate (the Holding Company) each Director is authorised to act in the best interests of the Holding Company and in doing so will be taken to be acting in good faith and in the best interests of the Company.
- 521** If the BL constitution contained the proposed art 15.13, a director of BL would be taken to act in good faith in the best interests of BL if the director acts in good faith in the best interests of CRL.⁷¹⁴
- 522** The evidence of the current directors of CRL was to the effect that a provision like art 15.13 was part of a normal modern corporate structure. The directors were also reluctant to accept that any conflict between the interests of BL and CRL could arise.
- 523** Generally speaking, the interests of a parent company and its subsidiary are likely to coincide or at least be compatible. However, BL is subject to the head office requirement, which has already been discussed. There are also peculiarities within the Crown group occasioned by obligations created under the agreement concerning CML.
- 524** Clause 22(1) of the Melbourne Casino Agreement provides: ⁷¹⁵
- 22.1 The following are conditions of this document:
- ...
- (r) the Holding Company Group, if it pursues anywhere in Australia a business similar to that of the Company, will use its best endeavours to ensure that such business is conducted in a manner:
- (i) which is beneficial both to that business and to the Company and which promotes tourism, employment and economic development generally in the State of Victoria; and
- (ii) which is not detrimental to the Company's interests;
- (ra) the Company:
- must ensure that the Holding Company Group locates the headquarters of its gaming business in Melbourne;

will endeavour to maintain the Melbourne Casino as the dominant Commission Based Player casino in Australia; and

will ensure that the Holding Company Group maintains the Melbourne Casino as the flagship casino of the Holding Company Group's gaming business in Australia, provided however that the obligations of the Company under this Clause 22.1(ra) may be terminated by the Company by giving at least one (1) month's notice in writing to the Commission whereupon the obligations of the Company under this Clause 22.1(ra) shall cease.

- 525** All the witnesses considered there to be no realistic prospect of any conflict arising from the Melbourne Casino flagship provisions in cl 22.1(ra), in substance, because of the comparative size of Melbourne and Perth. The likelihood of Perth ever challenging Melbourne as a destination was considered too remote.⁷¹⁶ The PCRC observes that although there is potential for a conflict of interest to arise, the risk of actual conflict is remote and that it does not emerge as a practical consideration.
- 526** In the case of cl 22.1(r), the position is not as clear. On the face of that provision, CML has an obligation to ensure that CRL uses its best endeavours to ensure that the business of the Burswood entities is conducted in a manner which, amongst other things, promotes tourism, employment and economic development generally in the State of Victoria and which is not detrimental to CML's interests. On its face, the provision could impact on competition between Perth Casino and Melbourne Casino for patronage and thus be detrimental to Western Australia.
- 527** Crown's position is that the businesses of Crown Perth Resort and Crown Melbourne Resort can be operated consistently to promote tourism, employment and economic development in both Victoria and Western Australia. This may be so, but the language of cl 22.1(r) is broad and the potential is there for CRL, in order to comply with those obligations, to conduct its business in a manner that favours the interests of CML over the interests of the Burswood entities so as to ensure that CML is not in breach of its obligations under the Melbourne Casino Agreement. This would place the BL board in a difficult situation.
- 528** The development of a board charter is a positive step and will assist to provide clarity in relation to the reporting lines and responsibility for the operations of Perth Casino. However, the proposed amendments to art 15.13 of the BL constitution should be approached with caution.

Risk management

- 529** The remediation measures to Crown's risk management framework and systems are set out earlier in this chapter. These changes were considered by the RCCOL.
- 530** Deans is a risk and strategy consultant and a retired Chief Risk Officer with over 32 years' experience in risk management and financial services.⁷¹⁷ Deans prepared an expert report for the solicitors assisting the RCCOL.⁷¹⁸
- 531** Deans made a number of observations in his report to the RCCOL in relation to the risk governance framework including:
- a. the subsidiary boards feature in some of the documents Deans reviewed, which he assumed to be for the purpose of assigning the subsidiary boards certain risk management responsibilities, but Deans considered there was not clarity on the role of the subsidiary boards;⁷¹⁹
 - b. the role of the CRL Audit and Corporate Governance Committee did not appear to align with a number of recommendations in the ASX Corporate Governance Principles and Recommendations;⁷²⁰

- c. the roles and responsibilities of the CML Audit Committee and the relationship of this committee to the CRL Audit and Corporate Governance Committee should be clarified;⁷²¹ and
- d. the role, function and reporting lines of the internal audit function required clarification and improvement, and the CRL Audit and Corporate Governance Committee should exercise greater oversight of the internal audit function.⁷²²

532 In relation to the risk management frameworks, which included the risk management strategy, CRL risk management policy, risk matrix and corporate risk profiles, Deans also observed that a number of recommendations made by Deloitte in 2019 in relation to the risk management strategy had not been implemented, including that greater clarity be provided in relation to Crown's risk appetite and reporting of risks against the risk appetite.⁷²³

533 In relation to risk management reporting, Deans made a number of observations including:

- a. there was substantial reporting of business and risk matters generally to the CML Executive Risk and Compliance Committee and the CRL RMC, however there was no consistent or structured reporting of risks outside the risk appetite and there was no agreed and documented governance or management processes to review any plans to bring these risks back within appetite;⁷²⁴
- b. the risk report presented to the CRL RMC is expressed at too high a level and has insufficient granularity in the quantitative metrics and reporting triggers;⁷²⁵
- c. CRL should review its approach to the identification and assessment of risks, for both risk appetite and risk reporting, to ensure that it is looking at all risks in the operation of its businesses, not just those arising from either material business decisions or in the seven impact categories listed in the risk management strategy;⁷²⁶
- d. greater clarity is needed in the areas of risk appetite, the qualitative metrics including triggers, reporting and escalation;⁷²⁷ and
- e. key risk indicators require assigned limits and triggers to be effective.⁷²⁸

534 Deans concluded that there were documented frameworks and practices in place at Crown that could enable it to identify, assess, manage, report and (if possible) mitigate risks.⁷²⁹ However, he could not conclude that Crown's risk management frameworks and systems were effective and robust due to design and reporting weaknesses in the risk management frameworks and Crown needed to demonstrate the effective implementation of the requirements of the frameworks in the areas of risk appetite, risk reporting incorporating agreed key risk indicators, operation of the three lines of defence, and oversight by the CRL RMC and CRL Audit and Corporate Governance Committee.⁷³⁰

535 Deans made 22 recommendations for changes to the risk management framework (**Deans Recommendations**).⁷³¹ Halton said Crown is 'in the process of implementing all of [Deans'] helpful recommendations' and that she would like to have Deans come and talk to the CRL RMC and the board (presumably of CRL) in relation to his observations.⁷³²

536 Deans also prepared an expert report in the PCRC to update his position from the report he prepared in the RCCOL.⁷³³ In this report, Deans was instructed to review materials provided to him in relation to Crown's response to some of the Deans Recommendations and comment on whether or not that response, if it were to be implemented by Crown, would result in an effective and robust risk management framework or system.⁷³⁴ In his report, Deans made the following observations in relation to the status of the Deans Recommendations made in the RCCOL:

- a. nine recommendations had been implemented,⁷³⁵ although he was not able to comment on whether Crown had sufficiently and adequately adopted one of these recommendations;⁷³⁶

- b. Crown intended to adopt, but had not yet implemented, 13 recommendations;⁷³⁷ and
 - c. of the 13 not yet implemented, there was a risk that if four of those recommendations were not implemented adequately that it is possible that it will render Crown's risk management framework and system ineffective.⁷³⁸
- 537** Deans opined that the following matters which remained to be undertaken, developed or approved were critical to demonstrating that Crown has a risk management framework that is capable of being robust and effective, namely:⁷³⁹
- a. the finalisation of the position description of the Group General Manager – Internal Audit to clearly define roles and responsibilities in order to ensure the independence and mandate of the internal audit function is clear (recommendation 16);⁷⁴⁰
 - b. the development of a more granular risk appetite statement (recommendation 17);
 - c. a review of the risk matrix (recommendation 18); and
 - d. the setting out of specific roles and responsibilities of the subsidiary boards in relation to risk management (recommendation 19).
- 538** In Deans' opinion those matters were critical to demonstrating that Crown has a risk management system that is capable of being robust and effective.
- 539** Crown in its submissions⁷⁴¹ has stated that recommendation 16 has been completed but the change await endorsement by the CRL RMC which was to occur in early February 2022. The required changes for recommendations 17, 18 and 19 have been made and also await endorsement by the CRL RMC in early February 2022. Further enhancements of the risk management system and the risk appetite statement are planned as part of the Risk Uplift Plan and will be completed in June 2022. The PCRC has not seen endorsement of the changes, or the final changes made and approved to the risk appetite statement, the review of the risk matrix or the documents setting out the specific roles and responsibilities of the subsidiary boards in the risk management framework. Accordingly, the PCRC has not been able to assess whether these recommendations have been fully implemented.
- 540** The RCCOL concluded that CML's risk management framework, systems and processes would benefit from:⁷⁴²
- a. a root cause analysis into the failures outlined in the Bergin Report and the RCCOL;
 - b. implementing the Deans Recommendations;
 - c. external reviews of the robustness and effectiveness of the risk management frameworks, systems and processes, and their appropriateness to CML as a casino operator; and
 - d. the chair of the CRL RMC should be personally responsible for overseeing Crown's implementation of the Deans Recommendations and external review.
- 541** The RCCOL also suggested that the risk documents be rewritten in plain English. The PCRC sees this as desirable and, in all probability, it will flow through to the Burswood entities as the RCCOL recommendations are implemented.

Risk Uplift Plan

- 542** Crown has a further plan to improve its risk management capabilities and framework, which is known as the Risk Uplift Plan. Crown has retained Gleeson, the former CRO of a major bank's consumer division, to assist with the development and delivery of the Risk Uplift Plan.⁷⁴³ The Risk Uplift Plan is to be delivered over three periods, with the last period ending in December 2022.⁷⁴⁴
- 543** It appears that the Risk Uplift Plan was designed to address various requirements from the Kroll monitorship.⁷⁴⁵

- 544** The draft Risk Uplift Plan, dated November 2021,⁷⁴⁶ was considered and endorsed by the CRL RMC on 17 November 2021.⁷⁴⁷ The Risk Uplift Plan encompasses four separate initiatives, which are described as:⁷⁴⁸
- a. risk governance and operating model: focussed on implementing an effective three lines of defence, clarifying governance responsibilities for risk and audit management, and designing and implementing a fit-for-purpose risk management operating model at Crown;
 - b. risk frameworks: focussed on updating the risk management strategy and risk appetite statement as well as defining the 'Controls Assurance Program';
 - c. risk capability and accountability: for assessing and uplifting risk management capabilities and accountability, and the links to performance management and remuneration frameworks; and
 - d. risk framework in operation: for 'specific risk activities requested by external reviews' and to 'operationalise key elements of the risk management framework enhanced through the Risk Uplift Plan such as the Controls Assurance Program'.
- 545** The Risk Uplift Plan does not refer to Deans' expert reports or the Deans Recommendations.
- 546** From a review of the Risk Uplift Plan, the PCRC concludes the Risk Uplift Plan proposes to address a number of the recommendations identified by Deans as critical in his report to the PCRC. For example, the Risk Uplift Plan includes a review of the risk appetite statement, risk management strategy and a review of the subsidiary board charters to clearly define risk management responsibilities.⁷⁴⁹
- 547** The Risk Uplift Plan indicates that the review and update of the risk management strategy, risk appetite statement and risk and compliance culture framework will address outstanding Deloitte recommendations⁷⁵⁰ from its 2019 report.⁷⁵¹ Crown has prepared a draft stand-alone risk appetite statement, to be put to the CRL RMC in February 2022.⁷⁵²
- 548** There is also to be an independent external review of the risk management framework and system in July 2022, and there is to be an 'implementation of accepted recommendations'.⁷⁵³
- 549** A key issue identified in the Bergin Report, and also in the RCCOL Report, relates to the escalation of risks to board level and in particular risks outside the risk appetite. Halton said escalation needed to happen in a way that the board has assurance of.⁷⁵⁴ It is proposed as part of the Risk Uplift Plan to update the risk appetite statement and accountabilities. Halton said the work on escalation triggers is underway.⁷⁵⁵ Halton also said the risk management framework will need to be fit for purpose for each of the subsidiary boards.⁷⁵⁶ Halton said that the 'challenge is getting this into a reasonable framework so that we can break it down across the properties so then you can actually get that level of granularity'.⁷⁵⁷ It is unclear from the Risk Uplift Plan how these matters are being specifically addressed.
- 550** The PCRC concludes that:
- a. Crown has a plan to enhance its approach to risk management;
 - b. Crown intends to implement all of the Deans Recommendations and the recommendations in the Deloitte report;
 - c. at the time of writing, it is not possible for the PCRC to conclude whether Crown has in fact implemented all of the Deans Recommendations whilst the Risk Uplift Plan is being developed and implemented;
 - d. if Crown does not fully implement recommendations 16 to 19 of the Deans Recommendations, there is a risk that its risk management framework and systems will not be effective and robust;

- e. the adoption of the Deans Recommendations and the matters in the Deloitte report in the Risk Uplift Plan are favourable developments; and
- f. the proposed update of the risk appetite, and the review and update of charters are also favourable developments.

551 The PCRC recommends that all of the Deans recommendations be adopted and implemented by Crown. If for any reason a recommendation is not to be implemented, Crown should explain why in any update of the Remediation Plan provided to the regulator.

Internal audit

552 Ottner commenced in the role of Group General Manager – Internal Audit in May 2021. Ottner has experience in both internal audit and risk management.⁷⁵⁸ Since commencing at Crown, Ottner has undertaken a review of the internal audit function as part of the ‘Audit Uplift Initiative’.⁷⁵⁹ Ottner has already been involved in a number of changes to internal audit at Crown, including arranging for an external review of the risk management framework (scheduled for mid-2022).⁷⁶⁰

553 Ottner stated that an ‘Internal Audit Strategy’ is in development,⁷⁶¹ and said that this will be presented to the CRL Audit and Corporate Governance Committee and the BL board.⁷⁶² Ottner stated that it is her intention to make further changes and enhancements to internal audit as part of the ongoing internal audit strategy.⁷⁶³

554 Ottner said there is a mechanism in place for the internal audit function to identify emerging business risks, which are included at the front of all papers she prepares for the various boards and committees.⁷⁶⁴

555 In her role, Ottner has a direct reporting line to the chair of the CRL Audit and Corporate Governance Committee and a dotted reporting line to the BL board in respect of matters for Crown Perth Resort.⁷⁶⁵ Ottner attends and presents at BL board meetings.⁷⁶⁶ Ottner reports administratively to the CFO of CRL.⁷⁶⁷

556 Ottner said she has chosen to use an external ‘co-source’ firm with the necessary expertise to undertake internal audits in relation to AML/CTF as she requires flexibility in terms of which AML/CTF skills and expertise are required while the AML/CTF Program is being matured.⁷⁶⁸

557 Ottner said she would use a co-source partner to perform AML audits while she gains comfort in the knowledge and approach of the internal audit team, with an intention that some audits will be done by the in-house team and some by the co-source.⁷⁶⁹

558 Ottner stated that internal audit is currently adequately resourced.⁷⁷⁰

559 At the time Ottner gave evidence, only one of the five Perth internal audit roles was filled.⁷⁷¹ Ottner said that recruitment was ongoing, but if she is unable to fill the Perth internal audit positions, she may rely on a co-source provider.⁷⁷² Ottner said she was investigating whether co-source expertise was available in Perth and that one of the key selection criteria is the availability of at least some of the team, particularly the people on the ground doing the testing, to be located in Perth.⁷⁷³ Since Ottner gave evidence, Ernst & Young is being engaged as a co-source provider.

560 The PCRC concludes that:

- a. Ottner, in the time since her appointment in May 2021 has made significant improvements to the internal audit function;
- b. Crown will use internal and external people to undertake internal audits at Crown Perth Resort;

- c. in the area of AML/CTF, the audits will be outsourced until Ottner gains comfort in the knowledge and approach of the internal audit team;
- d. the level of resourcing of internal audits on the ground at Crown Perth Resort will need to be closely monitored by Ottner and the boards; and
- e. Ottner is competent to lead the review and improvement of the internal audit function.

Culture

Crown values

- 561** In June 2019, the CRL board resolved to adopt a purpose statement and set of values.⁷⁷⁴ In 2021, with the assistance of Deloitte, Crown developed a revised purpose statement and set of values.⁷⁷⁵ At CRL's 2021 annual general meeting, the revised statement was presented as 'together, we create exceptional experiences with respect and care for our communities' and the revised values are to act with integrity, to work together, to care and to strive for excellence.⁷⁷⁶
- 562** The purpose and values were launched by leaders in the business, and embedded in critical programs, including the performance management framework.⁷⁷⁷
- 563** The program for the embedment of the new Crown purpose and values is ongoing.

Deloitte culture review

- 564** In November 2020, CRL engaged Deloitte to conduct an assessment of the organisational culture at Crown.⁷⁷⁸ The project was undertaken in four phases.
- 565** Deloitte produced the following reports:
- a. 'Crown Culture Review – Current State Culture – Final Report' (**Deloitte Final Report**);⁷⁷⁹
 - b. 'Culture at Crown Survey – Survey Results – Demographic Detail' (**Crown Survey Demographics**);⁷⁸⁰
 - c. Crown's Draft Ethical Compass and Aspirational Culture;⁷⁸¹ and
 - d. Draft Culture Change Roadmap.⁷⁸²
- 566** Pursuant to a separate engagement entered into in August 2021, Deloitte produced to Crown:
- a. a final culture measurement framework;⁷⁸³
 - b. a detailed project plan;⁷⁸⁴ and
 - c. a change management strategy.⁷⁸⁵

Deloitte Final Report

- 567** The Deloitte Final Report was the product of an organisational culture review, rather than a risk culture review.⁷⁸⁶ The review which supported the Deloitte Final Report was designed to understand how Crown's then values were 'lived' throughout the business.⁷⁸⁷ It had a limited analysis of Crown's risk culture.⁷⁸⁸
- 568** Victoria Whitaker (**Whitaker**), the principal partner involved in the culture review, explained the difference between an organisational culture review and a risk culture review as follows:⁷⁸⁹

...an organisational culture review, we're really trying to understand the behaviours and mindsets that are shared within the organisation in order

to understand the extent to which they are driving and helping pursue organisational strategy across the organisation. We've taken the frame of using the values of the organisation and the behaviours that were articulated by Crown as the framework by which to assess that.

A risk culture review is a review where you are looking at the extent to which mindsets and behaviours are contributing to effective risk management within the organisation. So it is a subset of an organisational culture.

- 569** Whitaker said Crown has accepted Deloitte's recommendation that a risk culture review be undertaken, and this could take three to six months.⁷⁹⁰ Whitaker said the existing work undertaken by Deloitte would be a 'contributing dimension to assisting and strengthening of the risk management practices, and ultimately the risk culture',⁷⁹¹ and Crown 'could get the ball rolling' on risk culture from that work.⁷⁹²
- 570** Crown's values were amended after Deloitte commenced the organisational culture review such that the values assessed against the organisational culture review are different to the current Crown values. Whitaker said that, notwithstanding the fact that Crown amended its purpose statement and values, the findings in the Deloitte Final Report were still relevant.⁷⁹³
- 571** Data was collected between March and July 2021, which included an all staff survey, interviews with the board, executive leadership and external stakeholders, focus groups with a cross-section of employees across the Melbourne, Perth and Sydney properties, document and business data analysis.⁷⁹⁴ Approximately 60% of Crown staff participated in the survey, resulting in a less than 1% margin of error at 95% confidence.⁷⁹⁵ Whitaker said this means one can have a great deal of confidence that the results would, effectively, be the same if all staff had participated.⁷⁹⁶
- 572** The Deloitte Final Report made the following findings in relation to compliance culture:
- a. there is an awareness of the importance of compliance, but this is not yet driving consistent behaviour;⁷⁹⁷
 - b. there is a perception of the ongoing conflict between appeasing customers, driving profit, and adhering to policies and procedures;⁷⁹⁸
 - c. policies and processes were seen to be overly complex, poorly written, or lacking applicability;⁷⁹⁹
 - d. staff did not always know where to access policies to do their job;⁸⁰⁰ and
 - e. there was weak support for the value 'we do the right thing' being lived in the organisation, with barriers to compliance including:⁸⁰¹
 - i. staff believe it is necessary to bend the rules and work around policies and procedures to get their job done and this is driven by the perception of 'customer centricity and a profit mandate';
 - ii. a perception that the policy frameworks were weak and difficult to implement and that there was a reactive approach to risk management;
 - iii. half of staff were not confident to challenge each other if the right thing was not being done due to fear of consequences or complacency; and
 - iv. some managers were perceived to misuse their authority by being dismissive or demanding.
- 573** Deloitte identified the following barriers to an effective risk culture:⁸⁰²
- a. the need to remove impediments to challenging others to do the right thing;
 - b. the feeling amongst staff of not being empowered or involved in decisions that affect them;

- c. unacceptable risk taking is not penalised;
- d. a need for improvement in communication and role modelling, including sharing mistakes and lessons learned;
- e. unclear accountabilities;
- f. a culture of learning and continuous improvement is not viewed as supported;
- g. a lack of 'outside in' thinking;
- h. risk literacy needs to be further strengthened across the first line of defence;⁸⁰³
- i. poor relationships with managers;
- j. poor policy frameworks; and
- k. inconsistent performance management.

574 Whitaker agreed that the observations on risk and compliance were negative and there was 'a lot of room for improvement'.⁸⁰⁴ Whitaker identified the key difficulties as being:

- a. the complexity of the policy environment; and
- b. the drive from management to make decisions that pursue profit and customer satisfaction.⁸⁰⁵

575 In relation to leadership, the Deloitte Final Report identified some issues with leadership:

- a. less than half of Crown's people perceived the board to be living Crown's values and just over half perceived their senior managers to be living the Crown values;⁸⁰⁶
- b. one in three did not agree that Crown had the customers' best interests at heart;⁸⁰⁷
- c. managers were viewed as the first point of escalation which influences many aspects of how staff experience the culture;⁸⁰⁸
- d. half of staff did not hold a positive perception of the relationship they have with their managers, which Deloitte attributed to the following perceptions leading to low confidence in speaking up and challenging others:⁸⁰⁹
 - i. inconsistent reward and performance management and a perceived lack of coaching and feedback;
 - ii. Royal Commissions and adverse media reporting and an absence of board presence in the business; and
 - iii. instability at the board and executive level;
- e. staff mostly perceive that the people they work with are supportive, friendly and honest, but there were perceptions that peers do not respond well to constructive criticism;⁸¹⁰
- f. the overly hierarchical culture limits two-way flow of information;⁸¹¹
- g. overly simplifying the jobs of team members, and ignoring the complexity of the decisions they face, disempowers team members and results in a fear of speaking up;⁸¹² and
- h. a lack of diversity in leadership.⁸¹³

576 The Deloitte Final Report also reported the siloing across business units and properties which can be attributed to:⁸¹⁴

- a. poor communication;
- b. lack of shared objectives;

- c. underlying structural and systems deficiencies; and
 - d. perceptions of inconsistent performance management and reward.
- 577** Whitaker said that the more significant areas of risk or barriers identified from the work undertaken by Deloitte were:⁸¹⁵
- a. better communication across the business and reducing the siloed effect;
 - b. leadership; and
 - c. psychological safety.
- 578** In the Deloitte Final Report, it notes:⁸¹⁶
- This review has been conducted during a period where several significant factors may have influenced how staff at Crown have responded in the review. The Royal Commission, other inquiries and associated media reporting, several shutdowns due to COVID-19, potential take over bids from other companies, labour shortages in Australia and changes at senior levels in the business may have impacted staff perceptions during the course of this review.
- 579** The PCRC considers that regardless of these limitations, the work conducted by Deloitte and the observations in the Deloitte Final Report are important contributions to the remediation of Crown, and the directors and senior management of the Crown entities should give careful consideration and due regard to Deloitte's observations in continuing along the path to remediation.

Arzadon views

- 580** Elizabeth Arzadon (**Arzadon**) is an expert on corporate culture and its influence on conduct and risk outcomes.⁸¹⁷ Arzadon prepared a report for the RCCOL opining on CML's relationship with the VCGLR, how Crown's culture could be changed, and how long it would take for change to take effect.⁸¹⁸ Arzadon's report to the RCCOL was prepared with a focus on Crown's relationship with its Victorian regulator and what that relationship said about Crown's culture more broadly.
- 581** Arzadon also prepared a report for the PCRC.⁸¹⁹ Arzadon was asked to review the Deloitte Final Report, survey data, interview transcripts and focus group summaries collected and analysed by Deloitte (**Source Data**) and provide a written report setting out her comments and observations.⁸²⁰
- 582** Arzadon performed an analysis of the Deloitte Final Report, Crown Survey Demographics and Source Data by applying Deloitte's risk culture framework which identifies whether there are factors which help or hinder effective risk management and conduct.⁸²¹ Arzadon concluded that there was evidence of serious deficiencies and that a complete transformation was required which would involve removing the formal and informal mechanisms that currently reinforce existing behavioural norms, and replacing them with new mechanisms to reinforce new, desired behaviours.⁸²² Whitaker agreed with the conclusion that a complete transformation was required.⁸²³
- 583** Arzadon relied on research by Hald, Gillespie and Reader,⁸²⁴ and analysed whether the data she reviewed suggested there are traits or factors present in the data which directly cause risk management failures (which should be immediate concerns) (**Causal Factors**) and traits or factors which make self-correction less likely (which are longer term concerns) (**Corrective Factors**). Arzadon mapped the Causal Factors and Corrective Factors against the Deloitte risk culture framework and concluded that, with one exception, all of the Causal Factors are evident. This suggests that Crown will remain at risk of behavioural non-compliance unless and until it addresses a range of culture issues.⁸²⁵ Those Causal Factors were identified as management, senior leadership, policies, risk appetite, and

communication. These factors are being addressed in the Remediation Plan, although should remain a focus for Crown.

- 584** Arzadon observed that leaders have an impact on culture. She stated the influence of leaders takes place at multiple levels and senior leaders' influence is focused on high level direction, whereas management and supervisors play a more direct role in what occurs on a day-to-day basis. Arzadon concluded that the Crown Survey Demographics and Source Data highlighted a number of areas where leaders may not currently be demonstrating a readiness to lead change effectively and that serious leadership weaknesses exist not only at the top, but also at middle management and supervisor level.⁸²⁶ She said the immediate first step would be to address the potential gap in the organisation's leadership capability to role model, inspire, support and empower the cultural change.
- 585** Arzadon analysed the differences between business units at Crown Perth Resort and concluded that three business units (Surveillance, VIP Gaming, and Legal and Regulatory) displayed especially high-risk cultural characteristics.⁸²⁷ Arzadon identified the inherent tension in these business units between delivering an outstanding customer experience and meeting compliance obligations. Arzadon concluded that in light of the high-risk cultural characteristics of these business units, that immediate intervention may be warranted.⁸²⁸ Arzadon recommended a more detailed analysis of the culture within these business units,⁸²⁹ and Whitaker agreed.⁸³⁰
- 586** Crown has submitted that the Arzadon opinions should be given little weight by the PCRC. The PCRC rejects that submission. The PCRC considers that the Arzadon opinions provide additional insights from an expert in the field of culture, and the directors and senior management of the Crown entities should give due consideration to those opinions, in addition to the Deloitte observations, in its path to remediation.

Culture reform

- 587** Crown has accepted and acknowledged the cultural deficiencies which existed and which were identified in the Bergin Report, the RCCOL Report and in the Deloitte Final Report.⁸³¹
- 588** A large number of documents have been prepared by Crown and Deloitte concerning cultural change which use words such as 'Culture Reform Program',⁸³² 'Culture Change Program',⁸³³ 'culture reform plan',⁸³⁴ 'Cultural Transformation Plan',⁸³⁵ 'Culture Change Roadmap',⁸³⁶ and 'Culture Workstream Plan'.⁸³⁷
- 589** Crown corresponds with Kroll about a 'Cultural Transformation Plan' that was purportedly finalised in September 2021.⁸³⁸ The PCRC has not identified any evidence of this plan being put to the CRL board or approved by the CRL board.
- 590** There is reference in October 2021 in separate presentations to a 'Culture Reform Program'⁸³⁹ and a 'Culture Change Program',⁸⁴⁰ with one of those presentations referring to both a 'cultural reform program' and a 'Culture Change Program'.⁸⁴¹
- 591** Whitaker said that she understands that Crown are implementing the Deloitte Draft Culture Change Roadmap with some modification.⁸⁴²
- 592** From the documents produced to the PCRC it is not clear whether the culture reform plan has been formally adopted by the boards of the Crown group. In December 2021, an update on the culture reform plan was provided to the BL board.⁸⁴³
- 593** In October 2021, the CRL board approved certain activities for a board culture reform plan.⁸⁴⁴ Crown submits that the culture reform plan will be changed as it works through the program.
- 594** Whatever the 'Culture Reform Program' is, it is under the direction of McCann and CRL's Chief People and Culture Officer, Weston.⁸⁴⁵

- 595** The Deloitte Draft Culture Roadmap is set out in three waves, with nine workstreams and a completion date of December 2023. Whitaker said that, due to COVID-19 lockdowns, the timeframe may be three to four years for this roadmap to be completed.⁸⁴⁶ Crown is intending to conduct a further culture survey in mid-2022.⁸⁴⁷
- 596** Whitaker said the challenges to implementing the Deloitte Draft Culture Roadmap within Crown are:
- a. change fatigue, being that there is a lot of change occurring and the ability of people to absorb what is happening needs to be monitored;⁸⁴⁸
 - b. recruiting sufficient staff;⁸⁴⁹ and
 - c. co-ordinating the approach to change.⁸⁵⁰
- 597** Whitaker also said there needed to be a period of stability in the leadership group of Crown to enable changes to be effective.⁸⁵¹
- 598** In January 2022, Crown identified to the PCRC the reform processes for addressing the barriers to cultural change.⁸⁵² The PCRC notes these matters but is not in a position to determine the effectiveness of the reform processes outlined to address those barriers.
- 599** The RCCOL raised two concerns. First, Crown must review its strategic intent to align the purpose of compliance and conduct with revenue generation.⁸⁵³ Secondly, Crown's cultural reform program will need to be closely monitored for years to come.⁸⁵⁴ The RCCOL concluded 'nonetheless, it is acknowledged that the culture of an organisation can change for the better. How long that will take, and how successful it will be, are unknowns'.⁸⁵⁵
- 600** Crown recognises in its formal risk documentation the importance of culture to risk. As part of the risk management framework it will also be monitoring and effecting cultural change under the CRL Risk and Compliance Culture Framework.
- 601** It is frequently said that culture change depends on the 'tone from the top', and that leadership is critical.⁸⁵⁶ Leadership is not just from the boards. The new chair of CRL acknowledged that transformation may be driven by middle management.⁸⁵⁷
- 602** Senior figures at Crown acknowledged that Crown is in the process of driving culture change and acknowledged that it is an area requiring focus and commitment.⁸⁵⁸ The new chair recognises that cultural change is required to make the Remediation Plan effective.⁸⁵⁹
- 603** In April 2020, CML entered into a research services agreement with the University of Queensland to assist with the review and modernisation of Crown's performance management framework.⁸⁶⁰ In May 2021, CRL engaged Mercer Consulting to review and provide recommendations in relation to Crown's remuneration framework.⁸⁶¹
- 604** A review of Crown's remuneration framework is part of the Draft Culture Change Roadmap⁸⁶² and appears on Crown's organisational culture change program plan.⁸⁶³ In December 2021, Crown amended its short and long-term incentive policies to align them with Crown's purpose and values, and put in place Key Performance Objectives (**KPOs**) for leaders which relate to risk management, remediation, corporate governance and adherence to Crown's purpose and values. The PCRC has not analysed those policies and KPOs.
- 605** Halton stated that following the review by Mercer Consulting, Crown is developing a remuneration structure which will introduce values-based gatekeeper provisions and mandatory compliance and risk KPOs for the purposes of assessing entitlements to incentive-based remuneration.⁸⁶⁴
- 606** Real and meaningful change in culture has to take place in the following environment:
- a. the findings from the culture survey undertaken by Deloitte, to the extent they relate

to risk culture, contain both positive and negative aspects but, looked at in an overall sense, shed a negative light on Crown's culture;

- b. there needs to be a complete transformation involving the removal of formal and informal mechanisms that reinforce current behavioural norms, and the introduction of new mechanisms to reinforce desired behaviours;
- c. there are immediate causative factors which need to be addressed by Crown;
- d. Crown is implementing a program to address its culture, but this has many workstreams and may not be completed for another three to four years;
- e. there are barriers to cultural change at Crown which will need to be overcome, including:
 - i. silos between business units;
 - ii. leadership; and
 - iii. the psychological safety of staff.

607 Senior leaders at Crown acknowledge that culture change is an area of key focus. They expressed a commitment to drive change and said that leadership has a will and resolve to reform the culture of the organisation, but the translation of these sentiments to action and to outcomes will not be easy. Amendments to incentives policies and the addition of KPOs relating to risk management, remediation, corporate governance and adherence to values and purpose are welcome developments but much more needs to be done.

608 The leaders of Crown will need to maintain their focus and momentum to ensure that true cultural change occurs across the organisation, and at all levels. This may be a process that will take years, but at this stage Crown shows a commitment to undertake a detailed roadmap to change. A continuing and concerted effort to identify and address barriers to cultural change at all levels of the organisation is critical.

Issues for future consideration

609 It will be apparent from what is said in this chapter that the material adduced in this inquiry raises concerns about many matters affecting governance. This includes things such as the complexity of the hybrid trust and corporate structure, board composition, blurred reporting lines, centralisation of functions and the head office requirement. They are discussed in this section.

610 The PCRC sees these issues as being relevant to its terms of reference in many ways. Some of these issues bear on suitability (ToR 1-4) and (or) on the pathway questions raised in ToR 5. As the hybrid trust and corporate structure is recognised in the State Agreement it is part of the regulatory framework. Accordingly, issues related to the structure can also be addressed as enhancements to the regulatory framework and thus within ToR 11. As a general statement, all of the matters raised in this section can be seen as 'incidental' as that word is used in ToR 7.

611 The PCRC takes the view that each of these matters needs to be addressed. However, it is cognisant of the limitations (in some areas) of the enquiries it has been able to make in the time available to it, and that the knowledge base, in some areas is incomplete. In those circumstances, it is desirable to avoid being too prescriptive or specific about the detail in recommendations for change. This ameliorates the risk of unintended consequences. This explains why some of the recommendations in this section are expressed at a reasonably high level of generality.

The structure of the Burswood entities

- 612** The complexity of the hybrid trust and corporate structure, and the capacity for that complexity to impact on good governance and risk management, are live issues. In particular:
- a. the lack of clarity and precision in the division of responsibilities within the Crown Perth concept between BNL and BRML for the conduct of the business operations of Perth Casino and the governance and oversight responsibilities of BL that has contributed to the organisation being vulnerable to risk;
 - b. the lack of clarity and precision in the roles and responsibilities of those who govern and manage the entities and blurred reporting lines that affect accountability;
 - c. whether the Crown Perth concept complies with the obligations of BNL and BRML under the Trust Deed; and
 - d. whether the practical and organic application of the structure, and the way that the centralised services model has been implemented, complies with the head office requirement.
- 613** The PCRC recognises that the structure is, at least in part, inherited. However, it is entrenched by the State Agreement and the trust relationships between the entities, carrying with them rights, responsibilities and obligations, ought not be disregarded. The consequences are potentially serious as it could be characterised as a breach of the State Agreement. The same can be said about non-compliance with the head office requirement, a matter that is likely to be a continuing consideration in any form of shared services group model while that provision is in place.
- 614** The PCRC also recognises that changes to legal and beneficial ownership of assets (including trust assets) and corporate reorganisation can have revenue and other consequences that must be weighed in determining the efficacy of what is proposed. Nonetheless, the PCRC is satisfied that the uncertainties within the structural framework and the consequences of departures from trust obligations and (or) the head office requirement are of such materiality that some attention is required.
- 615** There is a need for:
- a. real definition in the role of BRML: does it actually 'conduct the business' of Perth Casino (for that matter the business of Crown Perth Resort) and does it actually 'manage' the assets of the trust, as it is required to do under the Trust Deed;
 - b. clarity as to the obligation of BNL, as Trustee and the primary 'Casino Operator' (as envisaged in the Directions under s 24 of the CC Act) and how it interacts with BRML in the conduct of the business of Perth Casino; and
 - c. clarity as to the role BL, as an 'Approved Company', plays in the practical and organic operations of Perth Casino and how it exercises governance and oversight.
- 616** This is quintessentially a matter for the Burswood entities and CRL (in consultation with the GWC and the Minister) to consider. Whatever is done, it must be compatible with an efficient and effective regulatory system.
- 617** One alternative would be to collapse the trust structure and implement a more conventional holding company (or intermediate holding company) and operating subsidiary arrangement. It is accepted that there may be revenue or other considerations that militate against such a change.
- 618** The PCRC proffers an alternative that it believes merits consideration. BNL could, with clarity and precision, be recognised as the Casino Operator and the entity that both conducts and manages the business and has ultimate governance responsibility for the operations of

Perth Casino (and Crown Perth Resort). If felt appropriate, BRML could remain as principal employer of staff with service arrangements through to BNL. BL could continue to hold the units in the BPT and remain as the intermediate holding company of BNL and BRML.

- 619** This would not disturb either the legal or beneficial ownership of trust assets and would not interfere with existing employment arrangements. It would have the advantage of centering both operational and governance responsibilities in the entity that holds the casino licence and that, accordingly, owes the primary obligations to the State and the community. If the mandatory articles, currently applying to the Approved Company, were transferred to BNL, the protections would be enhanced and there would be greater clarity in the relationship between the regulator and the entity to be regulated. This would represent an enhancement to the regulatory framework.
- 620** While not a formal recommendation, the PCRC recommends that the Burswood entities and CRL, in conjunction with the GWC and the Minister, give consideration to adopting a trust and (or) corporate structure that has more clarity than the current arrangement concerning operational and governance responsibilities, roles and accountability. The involvement of the GWC and the Minister is desirable as change will almost inevitably affect the regulatory regime and require amendments to the Trust Deed and the State Agreement, for which approval would be necessary.

The structure of the board of directors

- 621** In this section, reference is made to the board of directors of BL, but the comments would apply equally to any company that, under a restructure, has primary responsibility for the operation and governance of Perth Casino.
- 622** A considerable amount of work faces the board of BL as it settles into a more active risk management and governance role, oversees and contributes to the implementation of the remediation plans as they affect Perth Casino, and embeds the changes that are necessary to ensure public trust and confidence in the operations.

Composition of the BL board

- 623** The PCRC notes the views expressed by the current BL directors, and in the submissions on the number of directors on the BL board, and whether there should be a majority of non-executive directors.
- 624** McCann was open to the idea of increasing the size of the BL board, and recognised that if it is to have its own board committees, that may be difficult to do with only three directors.⁸⁶⁵ Carter also acknowledged that additional directors for board committees would be advantageous.⁸⁶⁶
- 625** Crown accepts that with further members of the BL board, the use of board committees becomes viable and is an item for action in the Crown Perth Resort remediation plan.⁸⁶⁷
- 626** Presently there are four directors of BL. They have a significant workload and three of them have CRL commitments. As discussed below, the PCRC takes the view that BL should have one or more board committees. While it is for the directors themselves to assess their requirements, a case for augmenting the ranks of the present board is compelling.
- 627** The RCCOL recommended that:
- a. the board of CML comprise a majority of independent directors including independent of CRL;⁸⁶⁸
 - b. that the board not delegate functions other than to a board committee or an individual director;⁸⁶⁹ and

- c. that senior management not report to or take instructions from any person other than the board or an officer of the casino operator.⁸⁷⁰
- 628** These recommendations appear to be based on the force and effect of the Melbourne Casino Agreement understood in its historical context. Those considerations do not necessarily apply to the Western Australian environment, even taking into account the head office requirement.
- 629** The PCRC takes the view that given the workload and the need for board committees, the board of BL should be increased in size from the current complement of four, comprise a majority of non-executive directors, and include at least two persons who are independent of CRL.
- 630** The rationale for the appointment of a majority of non-executive directors and some independent directors is to facilitate accountability of management to the board and the operations of the board committee system.
- 631** The PCRC takes the view that it is not advisable to impose a condition that a majority of directors be Western Australian residents. This is so for three main reasons. First, it may exclude candidates with the best skill set to ensure governance oversight of casino risks. Secondly, it is not uncommon for people to relocate between States for business or personal reasons. A residency qualification may artificially disqualify a well-qualified person from continuing to serve on the board simply because of change of abode. Thirdly, modern commerce operates in a situation where information is more readily transmissible, more and more business is transacted virtually and geography matters less.
- 632** On the other hand, Perth Casino operates in a Western Australian environment and the expectations of the community and regulatory considerations have to be taken into account. While it is accepted that residency is not the only way this can be achieved, in developing a skills matrix for the board, attention should be given to ensuring that input as to the local environment is addressed in substance.
- 633** Further, it is necessary for the regulator to be able to regulate the governing board of Perth Casino and for the Government to be able to ensure due payment of tax and other fees owing to it and State instrumentalities by the licensee. If the ultimate ownership of the Burswood entities is transferred to an entity whose primary place of business is overseas and whose directors live overseas, these issues may result in the desirability of some residency requirements for board members. In this respect, the PCRC draws attention to the matters contained in Schedule E arts 3.14 and 3.15 of the State Agreement.
- 634** The PCRC recommends that the BL board be reconstituted to:
- a. increase its size from the current complement of four;
 - b. comprise a majority of non-executive directors; and
 - c. include at least two persons who are independent of CRL.

Board committees

- 635** The importance of board committees is discussed in Appendix E: Corporate Governance Theory.
- 636** Of particular importance is that the board must take ownership of the critical risk management issues with which the business is faced and that management understand the board's expectations concerning, and role in relation to, those questions. Board committees are a way of facilitating those objectives. It is generally understood that board committees operate most effectively if they are chaired by, and have input from, independent and non-executive directors.

- 637** The PCRC recommends that the BL board establish board committees. The number of committees and the subject area responsibilities may change over time. However, in light of issues identified in this inquiry and the work that will be required to embed mooted remediation measures, there should be a board risk committee (that should deal with audit, risk and compliance), and a responsible gaming committee. Both committees should be chaired by non-executive, preferably independent, directors.
- 638** The PCRC also recommends that, as a consequence of the preceding recommendation, consideration be given to whether it is desirable to amend Schedule E of the State Agreement to include board committees in arts 3.18 and 3.20 of BL’s constitution.

Reporting lines between the boards

- 639** A lack of reporting between BNL and BRML on the one hand, and BL on the other, and the implications of blurred or non-existent reporting lines, was canvassed during the PCRC’s inquiry. Uncertainty about roles and divisions of responsibilities between the Burswood entities and the reporting lines to and from CRL were also canvassed. The discussion below is of general relevance to the governance arrangements and has particular application while the current tri-partied trust and corporate arrangement remains in place.
- 640** While not necessarily accepting the difficulties raised by the PCRC, Crown submitted that the BL board could be kept apprised of the activities of subsidiary boards by several means:⁸⁷¹
- a. including minutes and circular resolutions of the boards of the subsidiaries in the board packs for BL board meetings;
 - b. having a degree (but not necessarily complete) commonality in board membership, so there is a director of BL who is ‘in the room’ for board decisions of related entities and able to report to the BL board;
 - c. formal delegations of governance responsibility from BNL and BRML to the BL board as contemplated by cl 5.3 of the BL board charter which will ensure that the BL directors to whom these delegations have been made understand they have direct responsibility to oversee the governance and operations of the related entities;
 - d. formal decisions of the boards of BNL and BRML being made subject to review by the BL board; and
 - e. at least to the extent required under the Trust Deed, the actions of BNL should be the subject of express, written directions from BRML (which are endorsed by the BL board).
- 641** Crown contends that, provided the above mechanisms are in place, the provision of minutes and circular resolutions to the BL board should simply be a means of enabling the BL directors to verify that actions previously approved by the BL board (or decisions in which they have participated as a director or delegate of the related entity) have been formally implemented by the relevant entity.⁸⁷²
- 642** The PCRC accepts that these arrangements, if implemented, would be an improvement on the current situation. However much more would need to be done to ensure that the governance arrangements of and between the three Burswood entities are clear and effective.
- 643** Crown does not accept that it is necessary or appropriate for the BL board, as a subsidiary board, to be apprised of the activities of the board of its parent company, CRL.⁸⁷³ This is true to a certain extent but it does not take into account two things. First, there will inevitably be matters arising at CRL board level that have a direct or indirect impact on the operations of Perth Casino. Secondly, the fortunes of the Burswood entities are connected with those

of other group companies by reason of deeds of cross guarantee in the Crown group. This may not be a practical problem while the BL board counts among its membership, persons who are either CRL executives or CRL directors. Nonetheless, there should be a formal mechanism by which the BL board receives reports of relevant issues arising at the CRL board.

- 644** Board charters make a valuable contribution to defining roles and divisions of responsibility. The adoption by BL of a board charter on 10 December 2021 was a positive development but the general review of the relationship between the entities that is contemplated in this section will provide an opportunity for a reconsideration of the charter's content.
- 645** The PCRC recommends that the roles and division of responsibilities between the Burswood entities be clarified and that:
- a. formal reporting mechanisms between the Burswood entities and between CRL and BL be clarified, documented and implemented;
 - b. reporting lines by senior management and management committees of Crown Perth Resort to CRL, BL and committees of those boards be clarified, documented and implemented;
 - c. reporting lines by group managers of shared services to BL and to committees of BL be clarified, documented and implemented;
 - d. the BL board charter as adopted on 10 December 2021 be reconsidered in light of the matters raised in this Final Report; and
 - e. board charters be developed and adopted for BNL and BRML.

Shareholding cap in CRL

- 646** The term 'shareholding cap' is a shorthand way of describing an upper limit on the number of shares that an individual can hold. Schedule B cl 1(b) of the State Agreement and article 3.7A of the BL constitution are to the effect that an individual cannot own shares in BL if as a result of that ownership, the individual would have a relevant interest in shares that represent more than 10% of the voting shares in BL. The phrase 'relevant interest' has the meaning ascribed to it in the Corporations Act.⁸⁷⁴ There is an exception: the GWC can grant probity approval to a person to acquire shares in excess of the 10% limit.
- 647** The requirement under the State Agreement was formerly a cap of 5% without regulatory approval,⁸⁷⁵ which was increased to 10% in 1997.⁸⁷⁶
- 648** The Bergin Inquiry made a recommendation that a shareholding cap in CRL of 10% be imposed without regulatory approval.
- 649** The RCCOL made a recommendation that the shareholding cap be 5%.⁸⁷⁷
- 650** The PCRC did not take evidence, lay or expert, as to the effect of a cap or the impact that any particular level might have on the market or on regulatory efficacy. However, it did invite submissions from interested parties on whether a recommendation like the one made by the RCCOL should be made.
- 651** CPH submitted that there is no need for the PCRC to impose any shareholder cap, but if a shareholding cap were to be imposed, a 20% limit is appropriate.⁸⁷⁸
- 652** The GWC contends that simple limits on equity ownership may not reflect the realities of control or influence that may be exercised through relationships and economic interests. The GWC also acknowledges that the proposed takeover offer of all of the share capital in CRL indicates the potential for a complex acquisition structure with complex ownership interests.⁸⁷⁹

653 This is very much a policy question. Due to the limited nature of the enquiries it has made, the PCRC believes it would not be appropriate to make any recommendation to vary the shareholder cap from that which has applied for the last 25 years. However, as casino regulators have some commonality of interests and collaborate on probity matters, this is an instance where consistency between jurisdictions is desirable.

Centralised or shared services model

654 Since 2013 there has been a gradual shift to a more centralised structure for management functions at Perth Casino.

655 Crown has indicated in its Remediation Plan that it is considering a centralised governance structure for the group, but this reform will be reassessed following the RCCOL, the outcomes of the PCRC, and regulatory engagement.

656 It is not clear how the RCCOL recommendations, namely that senior management not be permitted to report to, or take instructions from, anyone other than the board of CML or an officer of CML, will affect the centralisation of management and (or) governance functions.

Centralised management functions

657 The BL board charter,⁸⁸⁰ which was approved by the BL board at its 10 December 2021 meeting,⁸⁸¹ provides for an ‘enterprise approach’ or ‘centralised management approach’ across CRL’s casino operations. This is said to involve a number of functions, including risk and compliance, AML/CTF, responsible gaming, information technology, and culture. The charter provides this approach ‘can ensure uniformity and leverage the specific expertise and broad perspective of CRL’.⁸⁸² It further adds that the enterprise approach does not abrogate the responsibility of the BL board to monitor and exercise oversight in relation to those matters.

658 Some of the current BL directors gave evidence to the effect that centralised functions were common in corporate groups and that there are benefits to this approach, including through economies of scale, efficiencies, funding, attaining large scale and high-quality operations, and alignment across different operations.⁸⁸³

659 The directors appreciated that local conditions, experience and regulations needed to be taken into account when applying centralised functions.⁸⁸⁴ Switkowski said there would be aspects of the individual business that repose in the local structure, and the subsidiaries would have a ‘strong local flavour’.⁸⁸⁵ Switkowski also stated the centralised management of areas does not abrogate the responsibility of the local board, such as BL.⁸⁸⁶

660 The PCRC accepts that there are benefits and efficiencies to some centralisation of functions in a corporate group. Those benefits are likely to be critical to the implementation and success of the Remediation Plan.

661 An alternative model to purely centralised functions, is a shared services model. At its most basic, a shared services model is where a separate subsidiary company or business unit within an organisation operates as a common internal service business, providing services to the other subsidiary companies or business units who operate and make strategic decisions about the external or customer side of the business. Common functions which are part of the internalised services usually include marketing, human resources, information technology, finance, procurement and logistics. When a shared services model is adopted, a service level agreement is usually entered into which specifies the required services, the cost, performance measures, and how performance will be monitored and reported back to the business.

662 A shared services model has a number of the benefits of centralisation, such as economies of scale, cost savings, data collection and analysis, and consistency across those services.

However, in the shared services model there is no central command and control as would exist in a centralisation model. Control remains with the operational subsidiary or business unit.

- 663** The PCRC appreciates that in areas such as AML/CTF, which are governed by Commonwealth legislation, it would be more appropriate that a consistent approach is adopted in all Australian businesses. But, there may be other areas, for instance responsible gaming, where a decentralised local function may be preferred due to the differences in local conditions or regulatory regimes.
- 664** There are also governance challenges to centralised functions, which are discussed in Appendix E: Corporate Governance Theory.
- 665** Specifically in relation to Crown and the Burswood entities, the challenges which would need to be carefully managed include:
- a. ensuring there is a clear allocation of responsibilities and accountability of management to specific boards in the Crown structure;
 - b. ensuring risk appetites and approaches to risk are appropriate for the local environment;
 - c. obtaining information and ensuring that information is reported and monitored by the appropriate governance entities on a timely basis;
 - d. ensuring local conditions and circumstances are adequately addressed; and
 - e. ensuring compliance with local regulatory regimes.
- 666** It is questionable whether Crown's centralised model has delivered any of the above results to Perth Casino. This is why changes should be made.

Centralised governance

- 667** In relation to the centralisation of governance, the BL board charter provides that the BL board:⁸⁸⁷
- a. is to 'act in a manner that is consultative, cooperative and harmonious with CRL, but subject to overriding legal obligations, duties and responsibilities applicable to BL and its directors';
 - b. is to report to the CRL board, and consider and approve matters set by CRL or approved by CRL;
 - c. must obtain approval from the CRL board for any amendment to the BL board charter;
 - d. may consider, approve and adopt policies or recommendations set by the CRL board or management which are intended to apply to the Burswood entities; and
 - e. consider policies and recommendations in the specific circumstances, business conditions and regulatory framework relevant to Crown Perth Resort by applying independent judgment.
- 668** It is not clear which categories of policies and recommendations would be submitted to the BL board for consideration, nor who would make the decision as to which policies and recommendations would need to be submitted. Nor is it clear how the BL board would make changes to a policy or recommendation that it disagreed with (or components of it) and how that would be resolved. Some of the directors gave evidence that in practice no conflicts have occurred between the position of CRL and the BL board,⁸⁸⁸ but there remains a potential for differences to be encountered, given the different regulatory environments.

669 When the draft BL board charter was first being considered, it was accompanied by a draft proposal for changes to the BL constitution, including for CRL to have reserved powers and allowing for the BL directors to act in the best interests of CRL. This is addressed earlier in this chapter.

Conclusion on centralisation

670 Crown contends that it is possible for a subsidiary company to realise the benefits of centralising some services, without central management and control, or command and control being ceded. BL should be seen as engaging functions from CRL under a shared services model, rather than abdicating responsibility for those functions. The critical feature should be to ensure the delegations are clear, implemented and overseen in a manner consistent with the delegations, and monitored for their ongoing applicability.⁸⁸⁹

671 The PCRC has little difficulty with that as a general proposition. However, it cannot be divorced from the need for compliance with the regulatory regime, which currently includes the head office requirement. Further, it has to be seen in the light of the general requirement for an effective system of governance and oversight of risk management by BL of Perth Casino. It is a question of how the system is implemented and how it actually operates.

672 One of the rationales for the ongoing existence of the head office requirement is to facilitate the regulatory function. The centralisation of functions must be implemented in a way that permits this to occur and it could be done by adopting a shared services model with a shared services protocol in place.

673 It will be necessary to consider a wide range of governance and management issues in settling on a system that is best suited to oversight of the Perth Casino operations. They include:

- a. consideration by the boards of the Burswood entities to each of the centralised functions and whether they are suited to the local conditions;
- b. that the boards are ultimately responsible for monitoring the performance of functions;
- c. when a policy is being developed at a central level, the boards of the Burswood entities should be involved in their formulation to ensure that adequate consideration is given to local conditions and whether changes or adaptations need to be made to take account of those local conditions;
- d. that, once approved, the policies (as assessed and amended by the Burswood entities) become policies of the Burswood entities;
- e. that there be adequate supervision and oversight of implementation of the policies at a local level;
- f. that there be adequate governance and oversight of risks at Crown Perth Resort; and
- g. that the Burswood entities' boards and their policies should facilitate the embedding of cultural change, in particular risk culture, across the entire organisation.

674 This is the essence of a shared services model that could permit Crown Perth Resort to enjoy the benefits of centralised functions without ceding central management and control to the parent company. There may be other models which could achieve similar results. The important factor is the retention of autonomy.

675 The PCRC recommends that CRL and the Burswood entities jointly establish a protocol, in consultation with the GWC where necessary, to ensure that the practical implementation of a shared services model is consistent with the governance responsibilities of the Burswood entities, addresses needs that are specific or peculiar to Perth Casino and is in accord with the head office requirement in the BL constitution.

Head office requirement

- 676** Discussion concerning the head office requirement appears earlier in this chapter. There is a question whether the head office requirement in its current form serves the purpose for which it was apparently intended.
- 677** A casino licence is a privilege granted by the State Government to a commercial operator for the benefit of the community of Western Australia. The casino operates in a Western Australian environment. The special nature of the licence creates a relationship between the operator and the Western Australian community that raises particular considerations. The needs and expectations of the community are part of the complex matrix under which the casino operations fall to be governed and administered. This requires an appreciation on the part of the operator of those needs and expectations and a connection that will facilitate the conduct of the operations with the interests of the community in mind. What is said below has to be understood against that background and should not be read as detracting from the importance of a local connection and local input into the casino operator's governance and management.
- 678** The regulator also operates in a local environment and an efficient and effective regulatory system is facilitated by similar considerations.
- 679** Interpreting the phrase 'where central management and control are exercised' is difficult. This has been addressed in the substantive discussion earlier in this chapter. The focus of attention in this section is whether retention of the requirement in its current form is necessary or desirable and whether there may be alternative ways in which the objective can be achieved.
- 680** There are two factors that arise in relation to the practical and organic operations of Perth Casino and the Burswood entities that bear upon this issue. First, when the provision was initially introduced, BL was a listed public company operating in its own right, with no operating businesses other than the Casino and Resort at the Burswood complex and with a multitude of shareholders. Preservation of the head office (using that term in a colloquial, rather than the technical, sense) has to be understood in that context.
- 681** Secondly, the 2003 amendments to the State Agreement created the potential for this to change, which is what happened when probity approval was obtained for the PBL takeover in 2004. From that time, BL was a wholly owned subsidiary of a parent company that had similar interests in other States and countries. It ought to have been apparent that, in accordance with common commercial practices, some change in management and control through the sharing of services under a different governance structure (where a parent company has particular responsibilities) was possible, perhaps even likely.
- 682** The head office requirement seems to be connected with the concept of a 'Western Australian status' for the company but the rationale is not readily apparent. It may have been purely parochial or it might be connected with the preservation of economic benefit for the State or securing employment for the local community. It is difficult to justify an argument based purely on parochialism.
- 683** Questions of economic benefit to the State are clearly of importance as they serve the needs and expectations of the Western Australian community. It is not easy to see how a geographic condition about central management and control (whatever that may mean) of a private entrepreneurial concern that has an economic objective in things such as return on investment is critical, one way or the other, in securing an economic benefit for the State. As was recognised in the Parliamentary debates in 2003, the provision did not guarantee that the majority of investors would be domiciled in the State, which might otherwise have been an argument for a State economic benefit.
- 684** Crown Perth Resort employs about 5,500 people. The great majority of them are employed

by BRML at, and in the operations of, the businesses situated at the Burswood complex.

685 This leaves the issue of regulation. Access by the regulator to the people and processes through whom the business is operated is a necessary component of an effective regulatory structure. The regulator has expansive powers for access to information and people that are not dependent on the head office requirement. For example, powers to:

- a. request and receive information and to attend meetings under cl 9, cl 20(1) and cl 20(2) of the State Agreement,⁸⁹⁰ and art 3.18, art 3.19 and art 3.20 of BL's constitution;⁸⁹¹
- b. investigate under s 21A and s 25A of the CC Act,⁸⁹² and s 26 and s 27 of the *Gaming and Wagering Commission Act 1987* (WA);⁸⁹³ and
- c. inspect under dir 5 of the Directions.⁸⁹⁴

686 Having a connection to Western Australia through a management and governance nexus directly to the local operation may well facilitate access by the regulator to decision-makers and managers of the operations. However, the question is whether resort to a concept of 'central management and control' (whatever that may mean) contributes to the achievement of those ends. It is important to facilitate interaction between the regulator and the entity in a way that provides direct oversight by the regulator of the responsible officers and entities, through audit and inspection processes. Some of this occurs due to the physical location of the casino premises. In addition, it is a requirement of the CC Act that all books relating to the accounts of the gaming operations and the management of Perth Casino be kept at the Perth Casino premises.⁸⁹⁵ Audit and inspection is facilitated accordingly.

687 As the GWC has observed in its submissions, requiring governance (for which word the PCRC would substitute the phrase central management and control) to be localised in Western Australia may not be necessary if a rationalisation of the corporate and trust structure is effected that results in greater clarity and accountability of entities and officers through the de-duplication of functional roles. If the recommendation made earlier about reconsideration of the structure is faithfully carried through, the geographic limitation in the head office requirement may not be necessary.

688 In relation to the issue of probity approval, the GWC submitted that residency of Australia, rather than a geographical connection to Western Australia was the advantageous factor. This is understandable. In this respect, particular considerations may arise if the ultimate ownership of the Burswood entities were to be transferred to a foreign entity.

689 The needs and expectations of the Western Australian community and the facilitation of an effective regulatory framework involve policy questions that are peculiarly within the province of the Western Australian government.

690 The PCRC recommends that the Burswood entities and CRL in conjunction with GWC and the Minister, consider:

- a. whether the head office requirement as currently framed, is a necessary or desirable mechanism to achieve the community and regulatory objectives for which it is apparently intended; and
- b. whether there are alternative means to achieve those objectives.

Endnotes

- 1 BL holds all the shares in Burswood Hotel Pty Ltd, Burswood Property Holdings Pty Ltd and Burswood Catering and Entertainment Pty Ltd. These entities are not relevant to this inquiry.
- 2 Letter from Allens to the PCRC (21 June 2021) [PCRC.0004.0003.0001_R].
- 3 *Corporations Act 2001* (Cth) [PUB.0016.0001.4320] s 9, s 46, s 47, s 49, s 50AA.
- 4 The BML trust is not relevant to the subject matter of this inquiry.
- 5 Trust Deed, 20 February 1985 [CRW.700.007.0059_R]; Trust Deed, 18 April 1985 [CRW.351.019.0438_R] cl 11 – cl 27.
- 6 Consolidated State Agreement [PCRC.0006.0001.0001]; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283].
- 7 Consolidated State Agreement [PCRC.0006.0001.0001] cl 2; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 2, s 3A.
- 8 Consolidated State Agreement [PCRC.0006.0001.0001] cl 17(1)(d); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 17(1)(d).
- 9 Consolidated State Agreement [PCRC.0006.0001.0001] cl 17(1)(h); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 17(1)(h).
- 10 Consolidated State Agreement [PCRC.0006.0001.0001] cl 15(d); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 15(d).
- 11 Consolidated State Agreement [PCRC.0006.0001.0001] cl 15(c); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 15(c).
- 12 Consolidated State Agreement [PCRC.0006.0001.0001] cl 17(1)(e); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 17(1)(e).
- 13 Consolidated State Agreement [PCRC.0006.0001.0001] cl 17(1)(eb); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 4, s 10(a).
- 14 Consolidated State Agreement [PCRC.0006.0001.0001] cl 2; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 4, s 3(2).
- 15 Consolidated State Agreement [PCRC.0006.0001.0001] cl 2; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 2.
- 16 Western Australia, Parliamentary Debates, Legislative Council, Second Reading, 19 June 1997 (Mr Evans, Member for North Metropolitan) [PUB.0033.0003.0456] 4372.
- 17 Western Australia, Parliamentary Debates, Legislative Assembly, Second Reading, 20 August 1997 (Mr Cowan, Member for Merredin) [PUB.0033.0003.0083] 5099 – 5100.
- 18 Deed of Change of Trustee, 7 October 1997 [CRW.707.018.0256_R].
- 19 Twelfth Supplemental Deed [CRW.700.007.0205_R] 2.
- 20 BL, annual report 1997/98 [PUB.0021.0001.0105] 7.
- 21 BPT, annual report 1996/97 [PUB.0021.0001.0662] 31.
- 22 BL, annual report 1997/98 [PUB.0021.0001.0105] 38.
- 23 Consolidated State Agreement [PCRC.0006.0001.0001] cl 17, cl 17A; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 4.
- 24 When the CBIA Act was originally enacted, cl 17(2)(g) provided that no person could hold more than 5% of the total number of units or options on issue. There were two exceptions. The first was the Founders, Dempster and Genting, who each received about 27% of the units, with the remaining 46% being issued to the public. The second exception permitted the Minister to approve a person acquiring more than 5% and also to exempt any existing or future holding of units or options by a specified person from the provisions of the cap for a specified period.
- 25 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 10.
- 26 Western Australia, Parliamentary Debates, Legislative Assembly, 13 August 2003 (Mr Barnett, Member for Cottesloe) [PUB.0033.0003.0270] 9885 – 9886.
- 27 Western Australia, Parliamentary Debates, Legislative Assembly, 13 August 2003 (Mr Ripper, Member for Belmont) [PUB.0033.0003.0270] 9886 – 9887.
- 28 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9.

- 29 Consolidated State Agreement [PCRC.0006.0001.0001] cl 17(4); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9, sch E.
- 30 Consolidated State Agreement, [PCRC.0006.0001.0001] cl 19, cl 20(1), cl 20(2); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 19, cl 20(1), cl 20(2).
- 31 Consolidated State Agreement, [PCRC.0006.0001.0001] sch E arts 3.18, 3.19, 3.20; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9 sch E arts 3.18, 3.19, 3.20.
- 32 Consolidated State Agreement, [PCRC.0006.0001.0001] cl 17A(2)(a); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9, s 7.
- 33 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 13(1).
- 34 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 14(7).
- 35 Consolidated State Agreement, [PCRC.0006.0001.0001] sch E arts 3.7, 3.7A; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch E arts 3.7, 3.7A.
- 36 Consolidated State Agreement, [PCRC.0006.0001.0001] sch E art 3.13; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch E art 3.13.
- 37 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 17.
- 38 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 19B.
- 39 PBL, 'PBL announces split into separate listed gaming and media companies' (ASX Media Release, 8 May 2007) [PUB.0022.0012.0001].
- 40 Thirteenth Supplemental Deed, 30 April 2007 [CRW.700.003.0151_R].
- 41 Current and historical business name extract [PUB.0015.0009.0001].
- 42 GWC, minutes (31 July 2012 meeting) [GWC.0002.0016.0068_R] 3; CRL, agenda paper (17 August 2012 meeting) [CRW.510.111.4587_R] 5; CRL, ASX announcement (1 August 2012 meeting) [PUB.0022.0003.0010].
- 43 BL, agenda paper (8 February 2013 meeting) [CRW.702.001.0964_R] 4 – 34; BL, agenda paper (17 October 2013 meeting) [CRW.702.001.1477_R] 7 – 32; BL, agenda paper (4 April 2014 meeting) [CRW.702.001.1922_R] 7 – 38; BL, agenda paper (8 December 2014 meeting) [CRW.702.001.2504_R] 8 – 51; BL, agenda paper (11 February 2016 meeting) [CRW.703.001.0410] 9 – 30; BL, agenda paper (5 May 2016 meeting) [CRW.703.001.0655_R] 9 – 32; BL, agenda paper (16 February 2017 meeting) [CRW.703.001.1277_R] 8 – 30; BL, agenda paper (14 June 2018 meeting) [CRW.702.001.3954_R] 11 – 35; BL, agenda paper (22 November 2018 meeting) [CRW.703.001.1713_R] 11 – 33; BL, agenda paper (15 February 2019 meeting) [CRW.703.001.2156_R] 11 – 33; BL, agenda paper (31 May 2019 meeting) [CRW.703.001.2529_R] 9 – 31; BL, agenda paper (12 June 2020 meeting) [CRW.703.001.2988_R] 15 – 40; BL, agenda paper (3 December 2020 meeting) [CRW.703.001.3846_R] 18 – 45; BL, agenda paper (16 April 2021 meeting) [CRW.701.002.1393_R] 13.
- 44 BL, consolidated budget (30 June 2010) [CRW.702.002.3513]; BL, consolidated budget (5 May 2011) [CRW.702.002.3443]; BL, consolidated budget (16 May 2012) [CRW.702.002.3545]; BL, Financial Plan and Budget 2016-2019 [CRW.702.001.7125].
- 45 BL, annual report (1998) [PUB.0021.0001.0105] 38.
- 46 Letter from Hulme to Connolly (10 February 2017) [CRW.709.132.6189_R]; Letter from Bossi to Connolly (17 August 2018) [GWC.0002.0016.0241_R].
- 47 Letter from Hulme to Connolly (10 February 2017) [CRW.709.132.6189_R]; Letter from Bossi to Connolly (17 August 2018) [GWC.0002.0016.0241_R].
- 48 Bossi, transcript [TRA.0001.0001.0001] 2032.
- 49 Letter from Allens to the PCRC (21 June 2021) [PCRC.0004.0003.0001_R].
- 50 Bossi, transcript [TRA.0001.0001.0001] 1925 1926; Organisation chart (2017) [CRW.700.002.0285]; Organisation Chart (2018) [CRW.700.002.0289]; Organisation Chart (2019) [CRW.700.002.0284]; Organisation Chart (2020) [CRW.700.002.0290].
- 51 BL, constitution [PUB.0026.0002.0001]; BNL, constitution [CRW.513.005.0770]; BRML, articles of association [CRW.700.003.0372_R].
- 52 BL, draft minutes (10 December 2021 meeting) [CRW.701.011.7004] 10; Memorandum from Durham and Ivanoff to CRL board, 15 October 2021 [CRW.701.009.5375].
- 53 McCann, transcript [TRA.0001.0001.0001] 5252.
- 54 BL, constitution [PUB.0026.0002.0001] cl 15.1; BRML, Articles of Association [CRW.700.003.0372_R] cl 18; BNL, constitution [CRW.513.005.0770] cl 12.1.
- 55 BL, constitution [PUB.0026.0002.0001] cl 15; BRML, Articles of Association [CRW.700.003.0372_R] cl 19; BNL, constitution [CRW.513.005.0770] cl 12.

56 BL, constitution [PUB.0026.0002.0001] cl 16.16 – cl 16.18; BRML, Articles of Association [CRW.700.003.0372_R] cl 19.12; BNL, constitution [CRW.513.005.0770] cl 13.16.

57 Letter from Allens to PCRC (5 July 2021) [PCRC.0004.0005.0001].

58 Melbourne Casino Agreement, [PUB.0016.0018.0001] cl 22.1(t), (u), and sch 5.

59 Email from Meade to Chan (23 April 2021) [CRW.701.002.0421_R] attaching [CRW.701.002.0423].

60 BRML, Articles of Association [CRW.700.003.0372_R] cl 19.2; BNL, constitution [CRW.513.005.0770] cl 13.11.

61 Poynton, witness statement [WIT.0009.0002.0001_R] [26]; Poynton, transcript [TRA.0001.0001.0001] 1400; Roberts, witness statement [TAR.0001.0001.0001_R] [6]; Packer, transcript [TRA.0001.0001.0001] 5407.

62 Packer, transcript [TRA.0001.0001.0001] 5407.

63 Roberts, witness statement [TAR.0001.0001.0001_R] [5]; Poynton, witness statement [WIT.0009.0002.0001_R] [26].

64 Packer, witness statement [WIT.0018.0001.0018_R] 25; Alexander, transcript [TRA.0001.0001.0001] 2840, 2895.

65 Roberts, witness statement [TAR.0001.0001.0001_R] [7].

66 Roberts, witness statement [TAR.0001.0001.0001_R] [8].

67 CRL, constitution [CRW.512.045.1270]; CRL, board charter [CRL.627.001.0021]; CRL, board charter [CRL.622.001.0039]; CRL board charter [INQ.010.003.0149]; CRL, board charter [INQ.010.004.0539].

68 CRL, constitution [CRW.512.045.1270] cl 5.7 – cl 5.14.

69 CRL, constitution [CRW.512.045.1270] cl 5.15.

70 CRL, board charter [INQ.010.004.0539].

71 CRL, board charter [INQ.010.004.0539] cl 1.

72 CRL, board charter [INQ.010.004.0539] cl 3.1.

73 CRL, board charter [INQ.010.004.0539] cl 3.1.

74 CRL, board charter [INQ.010.004.0539] cl 3.1.

75 CRL, code of conduct for directors [CRL.590.001.0067].

76 CRL, audit and corporate governance committee charter (February 2014) [CRL.717.001.0007]; CRL, audit and corporate governance committee charter (February 2018) [CRL.717.001.0019]; CRL, audit and corporate governance committee charter (February 2019) [CRL.717.001.0031]; CRL, audit and corporate governance committee charter (February 2021) [CRW.512.009.2525]; CRL, audit and corporate governance committee charter (August 2021) [CRW.701.005.9470]; CRL, nomination and remuneration committee charter (February 2014) [CRL.717.001.0091]; CRL, people, remuneration and nomination committee charter (February 2018) [CRL.717.001.0096]; CRL, people, remuneration and nomination committee charter (February 2020) [CRL.717.001.0117]; CRL, people, remuneration and nomination committee charter (February 2021) [CRW.512.010.0345]; CRL, corporate social responsibility committee charter (May 2014) [CRL.717.001.0042]; CRL, corporate social responsibility committee charter (February 2019) [CRL.717.001.0052]; CRL, corporate social responsibility committee charter (August 2019) [CRL.717.001.0057]; CRL, occupational health and safety committee charter (February 2019) [CRW.512.016.0001]; CRL, risk management committee charter (December 2009) [CRW.507.008.0688]; CRL, risk management committee charter (February 2014) [CRL.717.001.0146]; CRL, risk management committee charter (February 2018) [CRL.717.001.0156]; CRL, risk management committee charter (February 2019) [CRL.717.001.0161]; CRL, risk management committee charter (June 2019) [CRL.717.001.0133]; CRL, risk management committee charter (February 2020) [CRL.668.001.0041]; CRL, risk management committee charter (March 2021) [CRW.512.043.0077]; CRL, responsible gaming committee charter (February 2014) [CRW.507.010.1004]; CRL, responsible gaming committee charter (February 2020) [CRW.512.016.0006]; CRL, finance committee charter (February 2014) [CRL.717.001.0079]; CRL, finance committee charter (February 2018) [CRL.717.001.0067]; CRL, finance committee charter (February 2019) [CRL.717.001.0073]; CRL, investment committee charter (December 2009) [CRW.507.010.0937].

77 CRL, annual report 2021 [PUB.0013.0001.1837] 36.

78 James Packer, Michael Johnston, Ashok Jacob, Robert Rankin, Guy Jalland, and, for a period, John Poynton.

79 Alexander, witness statement [WIT.0013.0001.0001_R] [18].

80 CRL, annual report 2008 [PUB.0013.0001.0001] 56 – 59; CRL, annual report 2012 [PUB.0013.0001.0541] 44 – 48; CRL, annual report 2014 [PUB.0013.0001.0825] 49 – 52; CRL, annual report 2020 [PUB.0013.0001.1685] 50–55.

81 CRL, annual report 2012 [PUB.0013.0001.0541] 44 – 48; CRL, annual report 2020 [PUB.0013.0001.1685] 50 – 55.

82 CRL, minutes (18 August 2020 meeting) [CRL.689.001.0005_R] 13.

83 BNL, circulating resolution (15 July 2013) [CRW.703.001.4763_R]; BNL, circulating resolution (15 July 2013) [CRW.703.001.4594_R]; BNL, circulating resolution (5 May 2017) [CRW.703.001.4635_R].

84 BRML, minutes (29 October 2012 meeting) [CRW.701.002.1552_R].

85 BNL, minutes (29 October 2012 meeting) [CRW.703.001.4477_R]; BNL, minutes (4 July 2013 meeting) [CRW.505.002.0345_R]; BNL, minutes (29 October 2013 meeting) [CRW.505.002.0305_R]; BNL, minutes (29 May 2014 meeting) [CRW.505.002.0315_R]; BNL, minutes (12 August 2014 meeting) [CRW.703.001.4969_R]; BNL, minutes (11 December 2014 meeting) [CRW.703.001.4462_R]; BNL, minutes (12 August 2015 meeting) [CRW.505.002.0239_R]; BNL, minutes (16 December 2015 meeting) [CRW.505.002.0139_R]; BNL, minutes (22 November 2016 meeting) [CRW.505.002.0233_R]; BNL, minutes (14 December 2016 meeting) [CRW.505.002.0137_R]; BNL, minutes (21 June 2017 meeting) [CRW.703.001.4612_R]; BNL, minutes (21 June 2017 meeting) [CRW.703.001.4583_R]; BNL, minutes (20 June 2018 meeting) [CRW.703.001.4822_R]; BNL, minutes (16 June 2020 meeting) [CRW.703.001.4865_R]; BNL, minutes (22 August 2021 meeting) [CRW.701.005.9421_R]; BRML, minutes (29 October 2008 meeting) [CRW.701.002.1565_R]; BRML, minutes (29 October 2012 meeting) [CRW.701.002.1552_R]; BRML, minutes (12 August 2014 meeting) [CRW.701.002.1567_R]; BRML, minutes (21 June 2017 meeting) [CRW.701.002.1561_R]; BRML, minutes (11 December 2018 meeting) [CRW.701.002.1545_R]; BRML, minutes (12 December 2019 meeting) [CRW.701.002.1551_R].

86 BRML, minutes (11 December 2014 meeting) [CRW.701.002.1569_R].

87 BNL, minutes (20 July 2006 meeting) [CRW.707.026.0689_R].

88 BNL, minutes (2 May 2018 meeting) [CRW.505.002.0265_R]; BNL, minutes (31 May 2019 meeting) [CRW.703.001.4744_R]; BNL, minutes (3 November 2020 meeting) [CRW.708.014.9095].

89 PCRC, BL board meetings in the years 2009-2020 [PCRC.0007.0001.0001]; Poynton, transcript [TRA.0001.0001.0001] 1434.

90 PCRC, BL board meetings in the years 2009-2020 [PCRC.0007.0001.0001]; Poynton, transcript [TRA.0001.0001.0001] 1434.

91 BL, minutes (11 December 2009 meeting) [CRW.702.001.0270]; BL, minutes (18 October 2011 meeting) [CRW.702.002.6137_R]; BL, minutes (13 August 2013 meeting) [CRW.702.001.1321_R]; BL, minutes (17 October 2013 meeting) [CRW.702.001.1476_R].

92 Poynton, transcript [TRA.0001.0001.0001] 1434.

93 Poynton, transcript [TRA.0001.0001.0001] 1435, 1524; Alexander, transcript [TRA.0001.0001.0001] 2851; Roberts, transcript [TRA.0001.0001.0001] 1647.

94 Alexander, transcript [TRA.0001.0001.0001] 2849.

95 Preston, transcript [TRA.0001.0001.0001] 1735; McGregor, transcript [TRA.0001.0001.0001] 2537; Roberts, transcript [TRA.0001.0001.0001] 1637.

96 *Corporations Act 2001* (Cth) [PUB.0016.0001.4320] s 251A(6).

97 BL, minutes (1 August 2017) [CRL.627.001.0498_R] 1.

98 *ASIC v Hellicar* [2012] HCA 17 [PUB.0033.0034.0029] [195] (Heydon J).

99 BL, minutes (9 August 2012 meeting) [CRW.702.001.0916_R]; BL, minutes (17 October 2012 meeting) [CRW.702.001.0934_R]; BL, minutes (12 December 2012 meeting) [CRW.702.001.0948_R] 1; BL, minutes (8 February 2013 meeting) [CRW.702.001.0963_R]; BL, minutes (4 July 2013 meeting) [CRW.702.001.1134_R]; BL, minutes (13 August 2013 meeting) [CRW.702.001.1321_R]; BL, minutes (17 October 2013 meeting) [CRW.702.001.1476_R]; BL, minutes (12 December 2013 meeting) [CRW.702.001.1610_R]; BL, minutes (14 February 2014 meeting) [CRL.627.001.0598_R]; BL, minutes (4 April 2014 meeting) [CRL.627.001.0600_R] 2.

100 BL, minutes (21 November 2007 meeting) [CRW.700.022.0154] 1.

101 BL, minutes (15 February 2019 meeting) [CRL.627.001.0566_R] 2, 3; BL, minutes (31 May 2019 meeting) [CRL.627.001.0545_R] 3; BL, minutes (8 August 2019 meeting) [CRL.627.001.0550_R] 5, 6; BL minutes (12 June 2020 meeting) [CRL.642.001.0059_R] 3, 4, 6; BL, minutes (13 August 2020 meeting) [CRW.702.001.5829_R] 3, 7; BL, minutes (3 December 2020 meeting) [CRW.702.001.0382] 5.

102 BL, minutes (15 June 2018 meeting) [CRL.627.001.0537_R] 5.

103 BL, minutes (15 October 2014 meeting) [CRL.627.001.0605_R] 2-3; BL, minutes (29 May 2015 meeting) [CRL.627.001.0617_R] 4, 5; BL, minutes (7 August 2015 meeting) [CRL.627.001.0622_R] 4; BL, minutes (11 August 2016 meeting) [CRL.627.001.0578_R] 4; BL, minutes (14 December 2016 meeting) [CRL.627.001.0587_R] 4; BL, minutes (14 June 2017 meeting) [CRL.627.001.0503_R] 4; BL, minutes (1 August 2017 meeting) [CRL.627.001.0498_R] 4; BL, minutes (9 February 2018 meeting) [CRL.627.001.0516_R]; BL, minutes (22 November 2018 meeting) [CRL.627.001.0529_R].

104 Often identified in the minutes as the Key Management Issues report.

105 Preston, transcript [TRA.0001.0001.0001] 1735.

- 106 BL, minutes (15 October 2014 meeting) [CRL.627.001.0605_R] 2-3; BL, minutes (29 May 2015 meeting) [CRL.627.001.0617_R] 4, 5; BL, minutes (7 August 2015 meeting) [CRL.627.001.0622_R] 4; BL, minutes (11 August 2016 meeting) [CRL.627.001.0578_R] 4; BL, minutes (14 December 2016 meeting) [CRL.627.001.0587_R] 4; BL, minutes (14 June 2017 meeting) [CRL.627.001.0503_R] 4; BL, minutes (1 August 2017 meeting) [CRL.627.001.0498_R] 4.
- 107 Preston, transcript [TRA.0001.0001.0001] 1736.
- 108 BL, minutes (6 February 2008 meeting) [CRW.700.056.7939_R] 2; BL, minutes (11 February 2010 meeting) [CRW.702.002.6125_R] 1; BL, minutes (13 May 2010 meeting) [CRW.702.002.6127_R] 1; BL, minutes (10 February 2011 meeting) [CRW.702.002.6122_R] 1.
- 109 CRL, circulating resolution [CRW.507.011.8433_R]; CRL, circulating resolution [CRW.507.011.8437_R]; CRL, circulating resolution [CRW.507.011.8435_R].
- 110 CRL, minutes (25 May 2016 meeting) [CRL.512.002.0028_R] 5; CRL, minutes (20 June 2018 meeting) [CRL.506.006.5485_R] 7, 8; CRL, minutes (12 June 2019 meeting) [CRL.503.001.0005_R] 3, 4.
- 111 BL, minutes (4 July 2013 meeting) [CRW.702.001.1134_R]; BL, minutes (29 May 2015 meeting) [CRL.627.001.0617_R]; BL, minutes (27 July 2018 meeting) [CRL.627.001.0522_R] 3, 4; BL, minutes (8 August 2019 meeting) [CRL.627.001.0550_R]; BL, minutes (13 August 2020 meeting) [CRW.702.001.5829_R] 4.
- 112 Poynton, transcript [TRA.0001.0001.0001] 1430; Alexander, transcript [TRA.0001.0001.0001] 2824.
- 113 BL, minutes (31 May 2019 meeting) [CRL.627.001.0545_R] 5; BL, draft minutes (3 December 2020 meeting) [CRW.702.001.0382] 8.
- 114 BL, minutes (5 December 2019 meeting) [CRL.627.001.0560_R] 5; BL, minutes (12 June 2020 meeting) [CRL.642.001.0059_R] 4 – 6; BL, draft minutes (3 December 2020 meeting) [CRW.702.001.0382] 7.
- 115 Bossi, witness statement [CRW.998.002.1117_R] [20]; Bossi, transcript [TRA.0001.0001.0001] 2028.
- 116 Email from Fewster to Poynton, Coonan and Harris (18 February 2021) [FEW.0002.0001.0014_R] 2; Fewster, transcript [TRA.0001.0001.0001] 1546, 1547.
- 117 Company Search, BL [PUB.0015.0008.0110].
- 118 Fewster, witness statement [FEW.0003.0001.0001_R] 2.
- 119 Fewster, witness statement [FEW.0003.0001.0001_R] 2.
- 120 Fewster, witness statement [FEW.0003.0001.0001_R] 7; BL, draft minutes (10 December 2021 meeting) [CRW.701.011.7004]; BL, agenda paper (10 December 2021 meeting) [CRW.700.108.0001_R] 21.
- 121 BL, agenda paper (17 June 2021 meeting) [CRW.701.004.0376_R] 221.
- 122 Fewster, witness statement [FEW.0003.0001.0001_R] 3, 4.
- 123 Fewster, witness statement [FEW.0003.0001.0001_R] 4.
- 124 Fewster, witness statement [FEW.0001.0001.0306_R] 2, 7, 10.
- 125 BL, agenda pack (23 August 2021 meeting) [CRW.701.005.9004_R]; BL, agenda pack (10 December 2021 meeting) [CRW.700.108.0001_R].
- 126 BL, agenda pack (23 August 2021 meeting) [CRW.701.005.9004_R]; BL, agenda pack (10 December 2021 meeting) [CRW.700.108.0001_R].
- 127 BL, minutes (23 August 2021 meeting) [CRW.701.011.6237_R] 2, 6, 8; BL, draft minutes (10 December 2021 meeting) [CRW.701.011.7004] 5 – 6.
- 128 BL, draft minutes (10 December 2021) [CRW.701.011.7004] 6.
- 129 CRL, minutes (15 September 2011 meeting) [CRW.507.011.4652]; CRL, minutes (11 September 2018 meeting) [CRL.506.006.5481_R].
- 130 CRL, minutes (26 April 2020 meeting) [CRW.507.005.1294_R]; CRL, minutes (10 May 2020 meeting) [CRW.507.005.1297_R]; CRL, minutes (24 May 2020 meeting) [CRW.507.005.1452_R]; CRL, minutes (7 June 2020 meeting) [CRW.507.005.1463_R].
- 131 CRL, minutes (24 February 2010 meeting) [CRW.507.011.5447_R]; CRL, minutes (30 November 2010 meeting) [CRW.507.011.5533_R]; CRL, minutes (29 October 2012 meeting) [CRW.507.011.5519_R]; CRL, minutes (15 October 2014 meeting) [CRL.512.001.5763_R]; CRL, minutes (19 October 2016 meeting) [CRL.512.002.0058_R]; CRL, minutes (14 December 2016 meeting) [CRL.512.002.2615_R]; CRL, minutes (31 October 2018 meeting) [CRL.506.006.5500_R].
- 132 CRL, minutes (24 February 2010 meeting) [CRW.507.011.5447_R] 1-3; CRL, minutes (24 August 2010 meeting) [CRW.507.011.5453_R] 4; CRL, minutes (22 February 2011 meeting) [CRW.507.011.5054_R]; CRL, minutes (23 August 2011 meeting) [CRW.507.011.5425_R]; CRL, minutes (18 September 2013 meeting)

- [CRL.512.001.3660_R] 2, 3; CRL, minutes (29 October 2013 meeting) [CRL.512.001.3903_R] 5; CRL, minutes (7 March 2018 meeting) [CRL.506.006.5479_R].
- 133 CRL, minutes (24 August 2010 meeting) [CRW.507.011.5453_R] 3; CRL, minutes (22 February 2011 meeting) [CRW.507.011.5054_R] 3; CRL, minutes (23 August 2011 meeting) [CRW.507.011.5425_R] 3, 4; CRL, minutes (21 August 2013 meeting) [CRL.512.001.3543_R] 3; CRL, minutes (16 August 2016 meeting) [CRL.512.002.0042_R] 3, 4.
- 134 CRL, minutes (24 February 2010 meeting) [CRW.507.011.5447_R] 4; CRL, minutes (21 August 2013 meeting) [CRL.512.001.3543_R] 2, 3; CRL, minutes (20 August 2019 meeting) [CRL.515.001.0001_R] 4.
- 135 CRL, minutes (8 August 2012 meeting) [CRW.507.011.5107_R] 3 – 9; CRL, minutes (18 February 2015 meeting) [CRL.512.001.6421_R] 2, 3; CRL, minutes (16 March 2015 meeting) [CRL.512.001.6719_R]; CRL, minutes (13 April 2016 meeting) [CRL.512.002.0014_R] 9, 10; CRL, minutes (21 February 2018 meeting) [CRL.506.006.5537_R] 3 – 5; CRL, minutes (11 December 2018 meeting) [CRL.506.006.5468_R] 7.
- 136 Costin, transcript [TRA.0001.0001.0001], 4226, 4227; CRL, minutes (24 February 2010 meeting) [CRW.507.011.5447_R] 5; CRL minutes (22 April 2010 meeting) [CRW.507.011.5375_R] 2; CRL, minutes (25 October 2010 meeting) [CRW.507.011.5473_R] 3; CRL, minutes (27 June 2011 meeting) [CRW.507.011.5496_R] 4, 5; CRL, minutes (23 August 2011 meeting) [CRW.507.011.5425_R] 6, 7; CRL, minutes (12 December 2011 meeting) [CRW.507.011.5172_R] 4, 6; CRL, minutes (22 February 2012 meeting) [CRW.507.011.5350_R] 5 – 7; CRL, minutes (22 May 2012 meeting) [CRW.507.011.5383_R] 5-10; CRL, minutes (19 September 2012 meeting) [CRW.507.011.5248] 7 – 9; CRL, minutes (29 October 2013 meeting) [CRL.512.001.3903_R] 5 – 7; CRL, minutes (12 August 2015 meeting) [CRL.512.001.7497_R] 9 – 11; CRL, minutes (21 February 2018 meeting) [CRL.506.006.5537_R] 5; CRL, minutes (2 April 2020 meeting) [CRW.507.005.1057_R].
- 137 CRL, minutes (22 April 2010 meeting) [CRW.507.011.5375_R] 2; CRL, minutes (22 June 2010 meeting) [CRW.507.011.5405_R] 3; CRL, minutes (3 May 2011 meeting) [CRW.507.011.5066_R] 3; CRL, minutes (27 June 2011 meeting) [CRW.507.011.5496_R] 4, 5; CRL, minutes (22 May 2012 meeting) [CRW.507.011.5383_R] 4; CRL, minutes (22 May 2015 meeting) [CRL.512.001.7101_R] 3 – 5; CRL, minutes (25 May 2016 meeting) [CRL.512.002.0028_R] 2 – 5; CRL, minutes (20 June 2018 meeting) [CRL.506.006.5485_R] 7, 8; CRL, minutes (12 June 2019 meeting) [CRL.503.001.0005_R] 3, 4.
- 138 CRL, minutes (22 June 2010 meeting) [CRW.507.011.5405_R] 3; CRL, minutes (24 August 2010 meeting) [CRW.507.011.5453_R] 4; CRL, minutes (25 October 2010 meeting) [CRW.507.011.5473_R] 2; CRL, minutes (30 November 2010 meeting) [CRW.507.011.5533_R] 2, 3; CRL, minutes (23 August 2011 meeting) [CRW.507.011.5425_R] 5; CRL, minutes (10 December 2013 meeting) [CRL.512.001.4071_R] 3; CRL, minutes (7 August 2014 meeting) [CRL.512.001.5263_R] 6,7; CRL, minutes (24 February 2016 meeting) [CRL.512.002.0005_R] 6, 7; CRL, minutes (19 February 2019 meeting) [CRL.506.006.5552_R] 10.
- 139 CRL, minutes (12 December 2011 meeting) [CRW.507.011.5172_R] 2; CRL, minutes (22 May 2012 meeting) [CRW.507.011.5383_R] 2; CRL, minutes (19 September 2012 meeting) [CRW.507.011.5248] 5; CRL, minutes (29 October 2013 meeting) [CRL.512.001.3903_R] 3; CRL, minutes (10 December 2013 meeting) [CRL.512.001.4071_R] 2.
- 140 CRL, minutes (22 June 2010 meeting) [CRW.507.011.5405_R] 3, 4; CRL, minutes (16 July 2013 meeting) [CRL.512.001.3227_R] 6.
- 141 CRL, minutes (22 April 2010 meeting) [CRW.507.011.5375_R] 3, 4; CRL, minutes (27 June 2011 meeting) [CRW.507.011.5496_R] 3; CRL, minutes (18 February 2015 meeting) [CRL.512.001.6421_R] 9; CRL, minutes (24 February 2016 meeting) [CRL.512.002.0005_R] 9; CRL, minutes (21 February 2018 meeting) [CRL.506.006.5537_R] 10; CRL, minutes (19 February 2019 meeting) [CRL.506.006.5552_R] 11.
- 142 CRL, minutes (8 December 2009 meeting) [CRW.507.004.7792] 3; CRL minutes (22 April 2010 meeting) [CRW.507.011.5375_R] 3; CRL, minutes (27 June 2011 meeting) [CRW.507.011.5496_R] 4; CRL, minutes (12 December 2011 meeting) [CRW.507.011.5172_R] 4; CRL, minutes (19 September 2012 meeting) [CRW.507.011.5248] 7; CRL, minutes (21 August 2013 meeting) [CRL.512.001.3543_R] 9; CRL, minutes (29 October 2013 meeting) [CRL.512.001.3903_R] 4; CRL, minutes (30 March 2015 meeting) [CRL.512.001.6865_R] 4; CRL, minutes (12 August 2015 meeting) [CRL.512.001.7497_R] 7; CRL, minutes (16 August 2016 meeting) [CRL.512.002.0042_R] 8; CRL, minutes (11 December 2018 meeting) [CRL.506.006.5468_R] 8.
- 143 CRL, minutes (24 August 2010 meeting) [CRW.507.011.5453_R] 2; CRL, minutes (22 February 2011 meeting) [CRW.507.011.5054_R] 2; CRL, minutes (12 August 2015 meeting) [CRL.512.001.7497_R] 3.
- 144 CRL, minutes (24 February 2010 meeting) [CRW.507.011.5447_R] 1, 2; CRL, minutes (22 February 2011 meeting). [CRW.507.011.5054_R] 4, 5; CRL, minutes (27 June 2011 meeting) [CRW.507.011.5496_R] 2; CRL, minutes (12 December 2011 meeting) [CRW.507.011.5172_R] 2; CRL, minutes (29 October 2013 meeting) [CRL.512.001.3903_R] 3.
- 145 Packer, transcript [TRA.0001.0001.0001] 5405.
- 146 CRL, agenda paper (18 February 2020 meeting) [CRW.507.004.8804_R]; CRL, agenda paper (15 April 2020 meeting) [CRW.507.005.1091_R]; CRL, agenda paper (16 June 2020 meeting) [CRW.507.005.1714_R]; CRL, agenda paper (10 August 2020 meeting) [CRW.507.005.2230_R]; CRL, agenda paper (18 August 2020 meeting)

- [CRW.507.005.2902_R]; CRL, agenda paper (10 September 2020 meeting) [CRW.507.005.3962_R]; CRL, agenda paper (21 October 2020 meeting) [CRW.507.005.4667_R]; CRL, agenda paper (2 November 2020 meeting) [CRW.507.005.5199_R]; CRL, agenda paper (11 November 2020 meeting) [CRW.507.005.5427]; CRL, agenda paper (19 November 2020 meeting) [CRW.507.005.5444_R]; CRL, agenda paper (9 December 2020 meeting) [CRW.507.005.7457_R]; CRL, agenda paper (21 December 2020 meeting) [CRW.507.005.7836_R].
- 147 CRL, minutes (16 June 2020 meeting) [CRW.507.005.2056_R] 5; CRL, minutes (18 August 2020 meeting) [CRW.400.002.5246_R] 5, 6.
- 148 CRL Audit and Corporate Governance Committee, minutes (18 August 2009 meeting) [CRW.507.004.6225] 2, 3; CRL Audit and Corporate Governance Committee, minutes (17 February 2010 meeting) [CRW.507.002.4759] 1-2; CRL Audit and Corporate Governance Committee, minutes (17 August 2010 meeting) [CRW.507.004.6191] 2; CRL Audit and Corporate Governance Committee, minutes (14 February 2013 meeting) [CRW.507.002.4734] 3-4; CRL Audit and Corporate Governance Committee, minutes (15 August 2013 meeting) [CRW.507.004.6198] 4; CRL Audit and Corporate Governance Committee, minutes (11 February 2015 meeting) [CRW.507.003.0183_R] 3; CRL Audit and Corporate Governance Committee, minutes (12 August 2020 meeting) [CRW.510.032.0407_R] 3 – 5.
- 149 CRL Nomination and Remuneration Committee, minutes (25 October 2010 meeting) [CRW.507.011.5622_R] 1; CRL Nomination and Remuneration Committee, minutes (6 February 2015 meeting) [CRW.507.011.5635_R] 1; CRL Nomination and Remuneration Committee, minutes (23 April 2018 meeting) [CRW.507.011.5671_R] 1.
- 150 CRL Nomination and Remuneration Committee, minutes (10 September 2010 meeting) [CRW.507.011.4636_R] 1; CRL Nomination and Remuneration Committee, minutes (23 August 2011 meeting) [CRW.507.011.5608_R] 1; CRL Nomination and Remuneration Committee, minutes (17 September 2012 meeting) [CRW.507.011.5588] 2; CRL Nomination and Remuneration Committee, minutes (13 September 2013 meeting) [CRW.507.011.5571_R] 1.
- 151 CRL Nomination and Remuneration Committee, minutes (10 September 2010 meeting) [CRW.507.011.4636_R] 1; CRL Nomination and Remuneration Committee, minutes (15 August 2016 meeting) [CRW.507.011.4637_R] 2; CRL Nomination and Remuneration Committee, minutes (12 June 2018 meeting) [CRW.507.011.5664_R] 3; CRL Nomination and Remuneration Committee, minutes (22 January 2020 meeting) [CRW.510.032.0003_R] 1; CRL Nomination and Remuneration Committee, minutes (7 August 2020 meeting) [CRW.510.032.0019_R] 3, 4.
- 152 CRL Nomination and Remuneration Committee, minutes (30 January 2015 meeting) [CRW.507.011.5624_R] 1; CRL Nomination and Remuneration Committee, minutes (9 January 2017 meeting) [CRW.507.011.4632_R] 1; CRL People, Remuneration and Nomination Committee, minutes (11 March 2020 meeting) [CRW.510.032.0013_R] 1.
- 153 Coonan, witness statement [CRW.998.002.0445_R] [76]; Preston, witness statement [JRP.0001.0001.0006_R] [45].
- 154 Those directors were Packer (who was the executive chair of CRL, chair of BL and a director of CML), Alexander (who was the executive deputy chair of CRL, deputy chair of BL, and a director of CML), Craigie (who was the CEO of CRL and an executive director of CRL, BL, BNL, BRML and CML), Felstead (who was the CEO – Crown Perth, and an executive director of BL, BNL, BRML and CML) and Barton (who, from 2010, was the CFO of CRL and an executive director of BL, BNL and CML).
- 155 Packer, witness statement [WIT.0018.0001.0018_R] [48]; Packer, transcript [TRA.0001.0001.0001] 5405.
- 156 Roberts, witness statement [TAR.0001.0001.0001_R] [21].
- 157 BL, agenda paper (4 July 2013 meeting) [CRW.702.001.1136_R] 73.
- 158 BL, agenda paper (4 July 2013 meeting) [CRW.702.001.1136_R] 73.
- 159 BL, agenda paper (4 July 2013 meeting) [CRW.702.001.1136_R] 96 – 104; CML, minutes (7 August 2014 meeting) [CRL.627.001.0400_R] 2.
- 160 Crown Perth Resort, Executive team (2013) [CRW.008.007.8282] 2.
- 161 Felstead, witness statement [WIT.0011.0002.0001_R] [15]; Bossi, witness statement [CRW.998.002.1117_R] [15].
- 162 McGregor, transcript [TRA.0001.0001.0001] 2447; Bossi, witness statement [CRW.998.002.1117_R] [15].
- 163 Felstead, transcript [TRA.0001.0001.0001] 2103.
- 164 CRL, 'Management Restructure' (ASX Media Release, 2 August 2013) [CRW.709.135.2550].
- 165 CRL, 'Management Restructure' (ASX Media Release, 2 August 2013) [CRW.709.135.2550]; Felstead, witness statement [WIT.0011.0002.0001_R] [12](d).
- 166 Felstead, transcript [TRA.0001.0001.0001] 2104.
- 167 Felstead, witness statement [WIT.0011.0002.0001_R] [15]; Felstead, transcript [TRA.0001.0001.0001] 2100.
- 168 Felstead, transcript [TRA.0001.0001.0001] 2112.
- 169 Felstead, witness statement [WIT.0011.0002.0001_R] [16].
- 170 Letter from Preston to Connolly (6 September 2013) [CRW.708.005.9020_R] 2, 3.

171 CRL, Delegations Policy [CRW.709.023.3576]; BNL, Delegations Policy [CRW.709.023.3586]; BL, minutes (31 May 2019 meeting) [CRL.627.001.0545_R] 5; BNL, minutes (31 May 2019 meeting) [CRW.703.001.4744_R] 2.

172 BL, minutes (21 November 2007 meeting) [CRW.700.022.0154]; Poynton, witness statement [WIT.0009.0002.0001_R] [103].

173 CRL, minutes (20 October 2015 meeting) [CRL.512.001.7919_R] 1, 2; CRL, minutes (11 December 2014 meeting) [CRL.512.001.5964_R] 4; CRL, minutes (10 December 2013 meeting) [CRL.512.001.4071_R] 2; BL, minutes (12 December 2013 meeting) [CRW.702.001.1610_R] 1; BL, minutes (29 May 2015 meeting) [CRL.627.001.0617_R] 1 – 3; BL, minutes (14 December 2016 meeting) [CRL.627.001.0494_R] 1 – 3.

174 Felstead, personnel profile [WIT.0011.0001.0069] 2; Australian Resorts Organisational Charts as at 1 August 2013 [CRL.752.001.0018]; Letter from Preston to Connolly (6 September 2013) [CRW.708.005.9020_R].

175 Table, Felstead roles in Crown (5 August 2021) [PCRC.0010.0002.0001].

176 McGregor, transcript [TRA.0001.0001.0001] 2464; Coonan, transcript [TRA.0001.0001.0001] 2584.

177 McGregor, witness statement [CRW.998.002.0219_R] [10]; Letter from Felstead to Connolly (25 August 2014) [CRW.709.145.4477_R].

178 McGregor, witness statement [CRW.998.002.0219_R] [20].

179 BL, minutes (9 December 2014 meeting) [CRW.702.001.0311] 3; BL, minutes (30 November 2017 meeting) [CRL.627.001.0510_R] 5; BL, minutes (9 February 2018 meeting) [CRL.627.001.0516_R] 4; BL, minutes (15 February 2019 meeting) [CRL.627.001.0566_R] 2, 5; BL, minutes (31 May 2019 meeting) [CRL.627.001.0545_R] 4; BL, minutes (8 August 2019 meeting) [CRL.627.001.0550_R] 1, 9; BL, minutes (5 December 2019 meeting) [CRL.627.001.0560_R] 5; BL, minutes (12 March 2020 meeting) [CRL.627.001.0591_R] 3, 6; BL, minutes (12 June 2020 meeting) [CRL.642.001.0059_R] 1, 3.

180 Preston, witness statement [JRP.0001.0001.0006_R] [11]; Letter from Felstead to Connolly (9 March 2017) [CRW.708.006.1504_R].

181 Preston, witness statement [JRP.0001.0001.0006_R] [14]; Preston, transcript [TRA.0001.0001.0001] 1689.

182 Preston, transcript [TRA.0001.0001.0001] 1701.

183 Preston, transcript [TRA.0001.0001.0001] 1701.

184 Preston, transcript [TRA.0001.0001.0001] 1703.

185 Poynton, witness statement [WIT.0009.0002.0001_R] [24].

186 Roberts, transcript [TRA.0001.0001.0001] 1633.

187 The only clear delegation in this period was in November 2007 from the BL board to Felstead as Chief Executive Officer – Crown Perth, delegating the authority to make and approve changes to the AML/CTF Program. BL, minutes (21 November 2007 meeting) [CRW.700.022.0154] 2.

188 BL, minutes (31 May 2019 meeting) [CRL.627.001.0545_R] 5; BNL, minutes (31 May 2019 meeting) [CRW.703.001.4744_R] 2; BL, minutes (5 December 2019 meeting) [CRL.627.001.0560_R] 5; BNL, minutes (3 November 2020 meeting) [CRW.708.014.9095] 2

189 Organisation chart (2017) [CRW.700.002.0285]; Organisation Chart (2018) [CRW.700.002.0289]; Organisation Chart (2019) [CRW.700.002.0284]; Organisation Chart (2020) [CRW.700.002.0290].

190 Organisation chart (2017) [CRW.700.002.0285]. Those roles are Chief Legal Officer – Australian Resorts, Chief Financial Officer, Chief Marketing Officer, Group Health Safety Wellbeing Manager, Group General Manager – Crown Theatres, Group General Manager – Marketing Finance and Planning, Group General Manager – Responsible Gaming, Group General Manager – Regulatory and Compliance, Chief Information Officer, Group General Manager – Procurement and Supply.

191 Organisation Chart (2018) [CRW.700.002.0289].

192 Those roles were Chief Executive Officer – Australian Resorts, Chief Legal Officer – Australian Resorts, Chief Financial Officer – Australian Resorts, Chief Marketing Officer, Group General Manager – Responsible Gaming, Group General Manager – Regulatory and Compliance, Group General Manager – Risk and Audit, Group General Manager – AML, Group Health Safety and Wellbeing Manager, Group General Manager – Crown Theatres, Group General Manager – Marketing, Finance and Planning, Group General Manager – Procurement and Supply, Chief Information Officer and Group Head of Digital. Organisation Chart (2019) [CRW.700.002.0284].

193 VCGLR Sixth Review of the Casino Operator and Licence [PUB.0004.0009.0001] 56.

194 BL, agenda paper (4 July 2013 meeting) [CRW.702.001.1136_R] 73.

195 Felstead, witness statement [WIT.0011.0002.0001_R] [12(c)], [14]; Preston, witness statement [JRP.0001.0001.0006_R] [5].

196 CRL, minutes (9 December 2020 meeting) [CRW.518.004.6777_R] 11.

- 197 CRL, minutes (9 December 2020 meeting) [CRW.518.004.6777_R] 11.
- 198 Bossi, transcript [TRA.0001.0001.0001] 5073, 5074.
- 199 Bossi, transcript [TRA.0001.0001.0001] 1930.
- 200 CRL, minutes (9 December 2020 meeting) [CRW.518.004.6777_R] 11.
- 201 CRL, minutes (9 December 2020 meeting) [CRW.518.004.6777_R] 11.
- 202 Those additional roles include Chief People and Culture Officer, Group General Manager Product, Strategy and Innovation - Gaming Machines, Group General Manager Product, Strategy and Innovation - Table Games, Group General Manager – Risk, Group General Manager – Internal Audit, Group General Manager – Financial Crime – Advisory, Group General Manager – Governance, Group General Manager – Regulatory Strategy, Group General Manager – IT Operations, Group General Manager – Public Relations, Group General Manager – Loyalty and Rewards, Chief Operating Officer Crown Digital and Global Head of Tax; Organisation Chart (October 2021) [CRW.701.009.5021_R].
- 203 McGregor, transcript [TRA.0001.0001.0001] 2550; Crown Perth Business Operating Team 20 October 2021 [CRW.701.009.5021_R].
- 204 McGregor, witness statement [CRW.998.002.0219_R] [61].
- 205 Preston, witness statement [JRP.0001.0001.0006_R] [14]; Preston, transcript [TRA.0001.0001.0001] 1689.
- 206 Preston, transcript [TRA.0001.0001.0001] 1869 – 1870.
- 207 McCann, witness statement [CRW.998.002.1047_R] [37].
- 208 BL, annual report (2003) [PUB.0021.0002.0001] 18, 19.
- 209 Strategic risk management plan (May 2005) [CRW.700.056.5242] 20 – 23.
- 210 Strategic risk management plan (May 2005) [CRW.700.056.5242] 25, 26.
- 211 BL, minutes (11 February 2005 meeting) [CRW.707.026.0643_R]; Burswood, litigation and compliance report [CRW.700.056.4938].
- 212 Strategic risk management plan (May 2005) 6 – 18.
- 213 CRL, risk management policy (2008) [CRL.522.001.1322].
- 214 CRL, risk management policy (2008) [CRL.522.001.1322] 3.
- 215 CRL, risk management policy (2008) [CRL.522.001.1322] 4.
- 216 CRL, risk management policy (2008) [CRL.522.001.1322] 3.
- 217 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 158 [276a].
- 218 Crown Limited, RMC charter (December 2009) [CRW.507.008.0688]; CRL, RMC charter (February 2014) [CRL.717.001.0146]; CRL, RMC charter (August 2016) [CRL.522.001.1315]; CRL, RMC charter (February 2018) [CRL.717.001.0156].
- 219 Enterprise risk management policy (July 2008) [CRW.708.015.4071].
- 220 Enterprise risk management policy (2013) [CRW.539.005.1791_R] 1, 4.
- 221 Enterprise risk management policy (July 2008) [CRW.708.015.4071].
- 222 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 159 [277].
- 223 Enterprise risk management policy (July 2008) [CRW.708.015.4071]; Enterprise risk management policy (2013) [CRW.539.005.1791_R] [4].
- 224 Enterprise risk management policy (July 2008) [CRW.708.015.4071] 2; Enterprise risk management policy (2013) [CRW.539.005.1791_R] 1.
- 225 Letter from Allens to PCRC (5 July 2021) [PCRC.0004.0005.0001].
- 226 Letter from Allens to PCRC (5 July 2021) [PCRC.0004.0005.0001].
- 227 Perth ERCC, charter (2008) [CRW.700.019.1358]; Perth ERCC, charter (2010) [CRW.700.023.0324]; Perth ERCC, charter (2013) [CRW.505.001.1184]; Perth ERCC, charter (2016) [CRW.505.001.1182], Perth ERCC, charter (2019) [CRW.505.001.1180]; Perth ERCC, charter (2020) [CRW.505.001.1178]; Perth ERCC, charter (2021) [CRW.700.094.0323].
- 228 Perth ERCC, charter (2008) [CRW.700.019.1358]; Perth ERCC, charter (2010) [CRW.700.023.0324]; Perth ERCC, charter (2013) [CRW.505.001.1184]; Perth ERCC, charter (2016) [CRW.505.001.1182], Perth ERCC, charter (2019) [CRW.505.001.1180]; Perth ERCC, charter (2020) [CRW.505.001.1178]; Perth ERCC, charter (2021) [CRW.700.094.0323].
- 229 Perth ERCC, charter (2008) [CRW.700.019.1358]; Perth ERCC, charter (2010) [CRW.700.023.0324].

- 230 Perth ERCC, charter (2008) [CRW.700.019.1358]; Perth ERCC, charter (2010) [CRW.700.023.0324].
- 231 BEC, Strategic Risk Management Plan (November 2008) [CRW.700.056.8412]; BEC, Strategic Risk Management Plan (November 2009) [CRW.700.022.0726].
- 232 Bossi, transcript [TRA.0001.0001.0001] 1932.
- 233 Preston, transcript [TRA.0001.0001.0001] 1718; BL, ERCC minutes (10 August 2020 meeting) [CRW.701.001.4248_R].
- 234 Perth ERCC, minutes (31 July 2012 meeting) [CRW.702.002.5081]; Perth ERCC, minutes (7 May 2013 meeting) [CRW.701.001.0240]; Perth ERCC, minutes (26 November 2013 meeting) [CRW.701.001.0542]; Perth ERCC, minutes (23 November 2015 meeting) [CRL.639.001.0163_R]; Perth ERCC, minutes (22 April 2016 meeting) [CRL.639.001.0183_R]; Perth ERCC, minutes (29 July 2016 meeting) [CRL.639.001.0191_R]; Perth ERCC, minutes (30 November 2016 meeting) [CRL.639.001.0199_R]; Perth ERCC, minutes (2 February 2017 meeting) [CRL.639.001.0216_R]; Perth ERCC, minutes (17 November 2017 meeting) [CRL.639.001.0235_R]; Perth ERCC, minutes (13 July 2018 meeting) [CRL.639.001.0249_R]; Felstead, witness statement [WIT.0011.0002.0001_R] [44]; Preston, transcript [TRA.0001.0001.0001] 1718, 1719.
- 235 Roberts, transcript [TRA.0001.0001.0001] 1680.
- 236 Perth ERCC, minutes (31 July 2012 meeting) [CRW.702.002.5081]; Perth ERCC, minutes (4 December 2012 meeting) [CRW.702.002.5851_R]; Perth ERCC, minutes (7 May 2013 meeting) [CRW.701.001.0240]; Perth ERCC, minutes (4 February 2014 meeting) [CRL.639.001.0288_R]; Perth ERCC, minutes (2 October 2014 meeting) [CRL.639.001.0303_R]; Perth ERCC, minutes (3 February 2015 meeting) [CRL.639.001.0324_R]; Perth ERCC, minutes (19 May 2015 meeting) [CRL.639.001.0334_R].
- 237 Perth ERCC, agenda paper (7 May 2013 meeting) [CRW.701.001.0104_R] 1; Perth ERCC, agenda paper (8 October 2013 meeting) [CRW.701.001.0356_R] 1; Perth ERCC, agenda paper (4 February 2014 meeting) [CRW.701.001.0548_R] 1; Perth ERCC, agenda paper (25 November 2014 meeting) [CRW.701.001.1181] 1; Perth ERCC, agenda paper (19 May 2015 meeting) [CRW.701.001.1181] 1; Perth ERCC, agenda paper (22 April 2016 meeting) [CRW.701.001.1920_R] 1; Perth ERCC, agenda paper (2 February 2017 meeting) [CRW.701.001.2290_R] 1; Perth ERCC, agenda paper (18 July 2017 meeting) [CRW.701.001.2290_R] 1; Felstead, witness statement [WIT.0011.0002.0001_R] [45].
- 238 Felstead, witness statement [WIT.0011.0002.0001_R] [28]; Preston, witness statement [JRP.0001.0001.0006_R] [212], [215], [216].
- 239 Perth ERCC, agenda paper (19 April 2011 meeting) Item 5 [CRW.700.019.1694]; Perth ERCC, agenda paper (19 April 2011 meeting) Item 10 [CRW.700.019.1768]; Perth ERCC, agenda paper (2 August 2011 meeting) [CRW.700.019.1819]; [CRW.700.019.1953]; Perth ERCC, agenda paper (4 October 2011 meeting) Item 10 [CRW.700.019.1960_R]; Perth ERCC, minutes (20 January 2012 meeting) Item 10 [CRW.700.019.2076_R]; Perth ERCC, agenda paper (22 February 2012 meeting) Item 10 [CRW.700.019.2176]; Perth ERCC, agenda paper (11 April 2012 meeting) Item 10 [CRW.700.019.2179]; Perth ERCC, agenda paper (3 May 2012 meeting) Item 5 [CRW.700.019.2210]; Perth ERCC, agenda paper (30 July 2012 meeting) Item 10 [CRW.700.019.2433].
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- 305 Neilson, witness statement [WIT.0014.0002.0001_R] [71].
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- 307 Neilson, witness statement [WIT.0014.0002.0001_R] [71]. CRL RMC, agenda paper (May 2012 meeting) [CRW.507.006.6511_R]; CRL RMC, agenda paper (November 2012 meeting) [CRW.507.006.7927_R]; CRL RMC, agenda paper (May 2013 meeting) [CRW.507.006.6541]; CRL RMC, agenda paper (November 2013 meeting) [CRW.507.006.2611_R]; CRL RMC, agenda paper (May 2014 meeting) [CRW.507.006.7133_R]; CRL RMC, agenda paper (November 2014 meeting) [CRW.507.006.5232_R]; CRL RMC, agenda paper (May 2015 meeting) [CRW.507.011.8804_R]; CRL RMC, agenda paper (June 2016 meeting) [CRW.507.010.5006_R] 10; CRL RMC, agenda paper (November 2016 meeting) [CRW.507.010.4817_R] 11; CRL RMC, agenda paper (June 2017 meeting) [CRW.507.010.4912_R] 14; CRL RMC, agenda paper (November 2017 meeting) [CRW.507.010.4765_R] 13. CRL RMC, agenda paper (May 2012 meeting) [CRW.507.006.7299_R]; CRL RMC, agenda paper (May 2013 meeting) [CRW.507.006.7225]; CRL RMC, agenda paper (May 2014 meeting) [CRW.507.006.2437]; CRL RMC, agenda paper (May 2015 meeting) [CRW.507.012.0924]; CRL RMC, agenda paper (June 2016 meeting) [CRW.507.010.5006_R] 62; CRL RMC, agenda paper (June 2017 meeting) [CRW.507.010.4912_R] 66. CRL RMC, agenda paper (May 2012 meeting) [CRW.507.006.7163_R]; CRL RMC, agenda paper (May 2013 meeting) [CRW.507.006.7382]; CRL RMC, agenda (May 2014 meeting) [CRW.507.006.7406]; CRL RMC, agenda paper (May 2015 meeting) [CRW.507.006.7354]; CRL RMC, agenda paper (June 2016 meeting) [CRW.507.010.5006_R] 31; CRL RMC, agenda paper (June 2017 meeting) [CRW.507.010.4912_R] 34.
- 308 Neilson, witness statement [WIT.0014.0002.0001_R] [71].
- 309 Neilson, transcript [TRA.0001.0001.0001] 4357.
- 310 CRL RMC, minutes (May 2012 meeting) [CRW.507.011.4633_R]; CRL RMC, minutes (November 2012 meeting) [CRW.507.011.4602_R]; CRL RMC, minutes (May 2013 meeting) [CRW.507.011.5604]; CRL RMC, minutes (November 2013 meeting) [CRW.507.011.5566_R]; CRL RMC, minutes (May 2014 meeting) [CRW.507.011.4884_R]; CRL RMC, minutes (November 2014 meeting) [CRW.507.011.5618_R]; CRL RMC, minutes (May 2015 meeting) [CRW.507.011.4589_R]; CRL RMC, minutes (November 2015 meeting) [CRW.507.011.4586_R]; CRL RMC, minutes (June 2016 meeting) [CRW.507.011.4624_R]; CRL RMC, minutes (November 2016 meeting) [CRW.507.011.4606_R]; CRL RMC, minutes (January 2017 meeting) [CRW.507.011.4610_R]; CRL RMC, minutes (June 2017 meeting) [CRW.507.011.4612_R]; CRL RMC, minutes (November 2017 meeting) [CRW.507.011.4659_R].

311 Preston, witness statement [JRP.0001.0001.0006_R] [24].

312 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 162 [288].

313 Neilson, transcript [TRA.0001.0001.0001] 4348.

314 Felstead, transcript [TRA.0001.0001.0001] 2115.

315 Neilson, witness statement [WIT.0014.0002.0001_R] [75]; Neilson, transcript [TRA.0001.0001.0001] 4359.

316 CRL, minutes (21 June 2012 meeting) [CRW.507.011.5306_R] 4, 5.

317 Felstead, transcript [TRA.0001.0001.0001] 2116.

318 Roberts, transcript [TRA.0001.0001.0001] 1640. Felstead, witness statement [WIT.0011.0002.0001_R] [48]; Neilson, witness statement [WIT.0014.0002.0001_R] [67]; Preston, witness statement [JRP.0001.0001.0006_R] [83] – [92].

319 Roberts, transcript [TRA.0001.0001.0001] 1640; Felstead, witness statement [WIT.0011.0002.0001_R] [48]. Felstead, transcript [TRA.0001.0001.0001] 2116; Barton, witness statement [WIT.0012.0001.0001_R] [101];

320 Preston, witness statement [JRP.0001.0001.0006_R] [87]; Preston transcript [TRA.0001.0001.0001] 1727.

321 Preston, transcript [TRA.0001.0001.0001] 1728.

322 Felstead, witness statement [WIT.0011.0002.0001_R] [71]; Roberts, transcript [TRA.0001.0001.0001] 1640.

323 Felstead, witness statement [WIT.0011.0002.0001_R] [71]; Alexander, witness statement [WIT.0013.0001.0001_R] [59].

324 Organisation Chart (October 2021) [CRW.701.009.5021_R].

325 CRL, risk management strategy (June 2019) [DEL.001.001.0209]; CRL, chief risk officer position description (January 2021) [CRW.512.087.0076]; CRL, remediation plan (31 October 2021) [CRW.700.104.6748_R] item 26.

326 Halton, witness statement [CRW.998.002.0897_R] [24]; McCann, transcript [TRA.0001.0001.0001] 5250.

327 CRL, Remediation Plan (December 2021) [CRW.701.011.5919_R].

328 CRL, Remediation Plan (December 2021) [CRW.701.011.5919_R].

329 CRL, agenda paper (10 August 2020 meeting) [CRW.507.005.2230_R] 6; CRL, minutes (10 August 2020 meeting) [CRW.507.005.2226_R] 3; CRL, agenda paper (17 February 2021 meeting) [CRW.507.006.1070_R] 83; Internal audit charter (August 2021) [CRW.700.095.0024].

330 Internal audit charter (August 2021) [CRW.700.095.0024].

331 Ottner, transcript [TRA.0001.0001.0001] 5214.

332 CRL, Audit and Corporate Governance Committee Charter [CRW.701.005.9470].

333 Internal audit charter (August 2021) [CRW.700.095.0024].

334 Ottner, witness statement [CRW.998.002.1074_R] [16].

335 Internal audit charter (August 2021) [CRW.700.095.0024].

336 CRL, risk management policy (August 2018) [CRL.627.001.0005]; CRL, risk management policy (February 2020) [CRL.668.001.0046]; CRL, risk management policy (March 2021) [CRW.512.043.0051].

337 CRL, risk management strategy (April 2021) [CRW.709.162.0908].

338 CRL, risk and compliance culture framework (March 2021) [CRW.564.001.6513].

339 CRL, Remediation Plan (December 2021) [CRW.701.011.5919_R].

340 CRL, risk management policy (August 2018) [CRL.627.001.0005]. CRL, risk management policy (February 2020) [CRL.668.001.0046]; CRL, risk management policy (March 2021) [CRW.512.043.0051].

341 CRL, Remediation Plan (December 2021) [CRW.701.011.5919_R].

342 CRL, Remediation Plan (December 2021) [CRW.701.011.5919_R].

343 An explanation of lines of defence in risk management is contained in Appendix: E.

344 CRL, minutes (12 June 2019 meeting) [CRL.503.001.0005_R] 9.

345 CRL, mapping training to Crown Resorts risks [CRW.701.011.7607].

346 CRL, risk management strategy (April 2021) [CRW.709.162.0908] 14.

347 CRL, risk management committee charter (June 2019) [CRL.717.001.0133]; CRL, risk management committee charter (February 2020) [CRL.668.001.0041]; CRL, risk management committee charter (March 2021) [CRW.512.043.0077].

348 Crown Limited, risk management committee charter (December 2009) [CRW.507.008.0688]; CRL, risk management committee charter (February 2014) [CRL.717.001.0146]; CRL, risk management committee charter

(August 2016) [CRL.522.001.1315]; CRL, risk management committee charter (February 2018) [CRL.717.001.0156]; CRL, risk management committee charter (June 2018) [CRL.717.001.0128].

349 CRL, risk management committee charter (December 2021) [CRW.701.011.6687].

350 Bossi, transcript [TRA.0001.0001.0001] 1932.

351 Halton, transcript [TRA.0001.0001.0001] 5554.

352 Halton, transcript [TRA.0001.0001.0001] 5572.

353 Halton, transcript [TRA.0001.0001.0001] 5573.

354 ERCC charter (July 2021) [CRW.700.094.0323].

355 Bossi, transcript [TRA.0001.0001.0001] 5060, 5061.

356 Bossi, transcript [TRA.0001.0001.0001] 5045.

357 Perth ERCC, charter (July 2021) [CRW.700.094.0323] 3.

358 CRL, risk management policy (March 2021) [CRW.512.043.0051].

359 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 166 [304].

360 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 166 [305].

361 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 167 [307].

362 Blackburn, transcript [TRA.0001.0001.0001] 6057.

363 CRL, Financial Crime Oversight Committee charter (December 2021) [CRW.701.012.0755].

364 Packer transcript, [TRA.0001.0001.0001] 5423.

365 Packer, witness statement [WIT.0018.0001.0018_R] [18], [39].

366 Packer, transcript [TRA.0001.0001.0001] 5402, 5403.

367 Packer, transcript [TRA.0001.0001.0001] 5403.

368 Packer, transcript [TRA.0001.0001.0001] 5403.

369 Packer, witness statement [WIT.0018.0001.0018_R] [39], [40].

370 Packer, transcript [TRA.0001.0001.0001] 5425 – 5426.

371 Alexander, transcript [TRA.0001.0001.0001] 2890, 2891.

372 Alexander, witness statement [WIT.0013.0001.0001_R] [45].

373 Alexander, transcript [TRA.0001.0001.0001] 2842.

374 Alexander, transcript [TRA.0001.0001.0001] 2838, 2839.

375 Alexander, transcript [TRA.0001.0001.0001] 2839.

376 Alexander, transcript [TRA.0001.0001.0001] 2837.

377 Alexander, transcript [TRA.0001.0001.0001] 2834, 2835.

378 Alexander, witness statement [WIT.0013.0001.0001_R] [45].

379 Roberts, transcript [TRA.0001.0001.0001] 1619.

380 Roberts, transcript [TRA.0001.0001.0001] 1621, 1623.

381 Roberts, transcript [TRA.0001.0001.0001] 1678.

382 Roberts, witness statement [TAR.0001.0001.0001_R] 7; Roberts, transcript [TRA.0001.0001.0001] 1631, 1635.

383 Roberts, transcript [TRA.0001.0001.0001] 1632.

384 Roberts, transcript [TRA.0001.0001.0001] 1633, 1634.

385 Roberts, witness statement [TAR.0001.0001.0001_R] 7; Roberts, transcript [TRA.0001.0001.0001] 1678.

386 Felstead, witness statement [WIT.0011.0002.0001_R] [6].

387 Felstead, witness statement [WIT.0011.0002.0001_R] [53].

388 Felstead, witness statement [WIT.0011.0002.0001_R] [50], [76].

389 Felstead, transcript [TRA.0001.0001.0001] 2113, 2114.

390 Felstead, witness statement [WIT.0011.0002.0001_R] [50].

391 Felstead, transcript [TRA.0001.0001.0001] 2186.

392 Barton, transcript [TRA.0001.0001.0001] 2413.

393 Barton, witness statement [WIT.0012.0001.0001_R] [57].

394 Barton, witness statement [WIT.0012.0001.0001_R] [58]; Barton, transcript [TRA.0001.0001.0001] 2329.

395 Barton, witness statement [WIT.0012.0001.0001_R] [59].

396 Barton, transcript [TRA.0001.0001.0001] 2335.

397 Barton, witness statement [WIT.0012.0001.0001_R] [59]; Barton, transcript [TRA.0001.0001.0001] 2336, 2337.

398 Poynton, transcript [TRA.0001.0001.0001] 1403.

399 Poynton, transcript [TRA.0001.0001.0001] 1403.

400 Poynton, transcript [TRA.0001.0001.0001] 1407.

401 Poynton, transcript [TRA.0001.0001.0001] 1406, 1407, 1411.

402 Poynton, transcript [TRA.0001.0001.0001] 1406.

403 Poynton, transcript [TRA.0001.0001.0001] 1407, 1410 – 1413, 1422.

404 Poynton, transcript [TRA.0001.0001.0001] 1407, 1413.

405 Poynton, transcript [TRA.0001.0001.0001] 1407.

406 Poynton, transcript [TRA.0001.0001.0001] 1410, 1416, 1419.

407 Poynton, transcript [TRA.0001.0001.0001] 1422, 1427.

408 Poynton, transcript [TRA.0001.0001.0001] 1407.

409 Poynton, transcript [TRA.0001.0001.0001] 1410.

410 Fewster, transcript [TRA.0001.0001.0001] 1536.

411 Fewster, witness statement [FEW.0001.0001.0306_R] [9].

412 Fewster, witness statement [FEW.0001.0001.0306_R] [15].

413 Fewster, transcript [TRA.0001.0001.0001] 1566.

414 Fewster, witness statement [FEW.0001.0001.0306_R] [15].

415 Fewster, witness statement [FEW.0001.0001.0306_R] [10].

416 Fewster, transcript [TRA.0001.0001.0001] 1565.

417 Fewster, Submission to PCRC (20 January 2022) [PCRC.0036.0012.0001] [6], [7].

418 Coonan, transcript [TRA.0001.0001.0001] 2609, 2610.

419 Coonan, witness statement [CRW.998.002.0445_R] [73]; Coonan, transcript [TRA.0001.0001.0001] 2568, 2610.

420 Coonan, transcript [TRA.0001.0001.0001] 2566, 2635, 2636.

421 Coonan, transcript [TRA.0001.0001.0001] 2570.

422 Coonan, transcript [TRA.0001.0001.0001] 2568.

423 Coonan, transcript [TRA.0001.0001.0001] 2567, 2568.

424 Coonan, transcript [TRA.0001.0001.0001] 2608.

425 Poynton, transcript [TRA.0001.0001.0001] 1402; Alexander, witness statement [WIT.0013.0001.0001_R] [38]; Alexander transcript [TRA.0001.0001.0001] 2819; Fewster, transcript [TRA.0001.0001.0001] 1534; Roberts, witness statement [TAR.0001.0001.0001_R] [28].

426 Barton, transcript [TRA.0001.0001.0001] 2427.

427 Roberts, transcript [TRA.0001.0001.0001] 1620.

428 Poynton, transcript [TRA.0001.0001.0001] 1404.

429 Fewster, transcript [TRA.0001.0001.0001] 1541.

430 Packer, transcript [TRA.0001.0001.0001] 5421, 5422.

431 Alexander, transcript [TRA.0001.0001.0001] 2847.

432 Packer, transcript [TRA.0001.0001.0001] 5401, 5402.

433 Alexander, transcript [TRA.0001.0001.0001] 2894.

434 Alexander, transcript [TRA.0001.0001.0001] 2896.

435 BL, constitution [CRW.708.016.7866] cl 15.1, defined in cl 1.1 of the BL constitution as a person holding office as a director of the Company [BL], and where appropriate includes an alternate director.

436 BNL, constitution [CRW.513.005.0770] cl 12.1.

437 BRML, Articles of Association [CRW.700.003.0372_R] cl 18.
438 CRL, constitution [PUB.0026.0003.0001] cl 5.6(a).
439 Crown Limited, Board Charter (February 2011) [CRL.622.001.0035] cl 3.1; CRL, Board Charter (August 2014) [CRL.622.001.0039]; CRL, Board Charter (February 2018) [CRL.590.001.0061].
440 Crown Limited, Board Charter (February 2011) [CRL.622.001.0035]; CRL, Board Charter (August 2014) [CRL.622.001.0039]; CRL, Board Charter (February 2018) [CRL.590.001.0061].
441 Poynton, transcript [TRA.0001.0001.0001] 1411.
442 Poynton, transcript [TRA.0001.0001.0001] 1411.
443 Packer, transcript [TRA.0001.0001.0001] 5415.
444 Coonan, transcript [TRA.0001.0001.0001] 2572.
445 Alexander, transcript [TRA.0001.0001.0001] 2843.
446 Packer, transcript [TRA.0001.0001.0001] 5415.
447 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 254 [197] – [198].
448 BL, draft minutes (10 December 2021 meeting) [CRW.701.011.7004].
449 Poynton, transcript [TRA.0001.0001.0001] 1431.
450 Packer, witness statement [WIT.0018.0001.0018_R] [19].
451 Packer, transcript [TRA.0001.0001.0001] 5400.
452 Packer, witness statement [WIT.0018.0001.0018_R] [19].
453 Packer, transcript [TRA.0001.0001.0001] 5401.
454 Packer, witness statement [WIT.0018.0001.0018_R] [19]; Packer, transcript [TRA.0001.0001.0001] 5402.
455 Packer, witness statement [WIT.0018.0001.0018_R] [19].
456 Packer, witness statement [WIT.0018.0001.0018_R] [19].
457 Packer, transcript [TRA.0001.0001.0001] 5402.
458 Packer, transcript [TRA.0001.0001.0001] 5401, 5402.
459 BL, minutes (13 August 2013 meeting) [CRW.702.001.1321_R]; BL, minutes (11 August 2016 meeting) [CRL.627.001.0578_R].
460 Packer, transcript [TRA.0001.0001.0001] 5430, 5455.
461 BL, minutes (11 August 2016 meeting) [CRL.627.001.0578_R] 1.
462 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 242 [142].
463 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 254 [200].
464 Packer, transcript [TRA.0001.0001.0001] 5431.
465 Packer, transcript [TRA.0001.0001.0001] 5455.
466 Preston, witness statement [JRP.0001.0001.0006_R] [43].
467 CRL, 'Management Restructure' (ASX Media Release, 2 August 2013) [CRW.709.135.2550].
468 Felstead, witness statement [WIT.0011.0002.0001_R] [15]; Felstead, transcript [TRA.0001.0001.0001] 2100.
469 Felstead, witness statement [WIT.0011.0002.0001_R] [16].
470 Felstead, witness statement [WIT.0011.0002.0001_R] [21].
471 Felstead, transcript [TRA.0001.0001.0001] 2109, 2110.
472 Felstead, transcript [TRA.0001.0001.0001] 2113.
473 Roberts, transcript [TRA.0001.0001.0001] 1633.
474 Alexander, transcript [TRA.0001.0001.0001] 2830, 2832.
475 Packer, transcript [TRA.0001.0001.0001] 5413.
476 Packer, transcript [TRA.0001.0001.0001] 5414.
477 Poynton, transcript [TRA.0001.0001.0001] 1414.
478 Poynton, transcript [TRA.0001.0001.0001] 1415.
479 Poynton, transcript [TRA.0001.0001.0001] 1415.
480 Bossi, transcript [TRA.0001.0001.0001] 1923.

481 Bossi, transcript [TRA.0001.0001.0001] 1923.

482 Bossi, witness statement [CRW.998.002.1117_R] [58].

483 Bossi, transcript [TRA.0001.0001.0001] 1922.

484 Bossi, witness statement [CRW.998.002.1117_R] [21].

485 Bossi, transcript [TRA.0001.0001.0001] 1923.

486 Bossi, transcript [TRA.0001.0001.0001] 1923.

487 Preston, transcript [TRA.0001.0001.0001] 1694; Alexander, transcript [TRA.0001.0001.0001] 2331.

488 Table, Felstead roles in Crown (5 August 2021) [PCRC.0010.0002.0001].

489 Felstead, witness statement [WIT.0011.0002.0001_R] 12(d); Felstead, transcript [TRA.0001.0001.0001] 2100.

490 Preston, transcript [TRA.0001.0001.0001] 1712, 1713; Preston, witness statement [JRP.0001.0001.0006_R] [9] – [13].

491 Preston, transcript [TRA.0001.0001.0001] 1701.

492 Alexander, transcript [TRA.0001.0001.0001] 2831.

493 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 226 [76].

494 Fewster, witness statement [FEW.0003.0001.0001_R] 13.

495 Thirteenth Supplemental Deed, 30 April 2007 [CRW.700.003.0151_R].

496 McCann, transcript [TRA.0001.0001.0001] 5305.

497 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) [PUB.0008.0007.0001] r 4.

498 GWC, minutes (23 November 2004 meeting) [GWC.0007.0011.0218] 82.

499 Letter from Hulme to Connolly (10 February 2017) [CRW.709.132.6189_R]; Letter from Bossi to Connolly (17 August 2018) [GWC.0002.0016.0241_R].

500 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 24.

501 For example: *Burswood Casino – Directions* (24 June 2014) [CRW.008.001.6915_R]; *Burswood Casino – Directions* (25 November 2014) [CRW.707.010.0005_R]; *Burswood Casino – Directions* (26 October 2016) [CRW.708.007.5825_R]; *Burswood Casino – Directions* (25 July 2017) [CRW.707.010.0311_R]; *Burswood Casino – Directions* (March 2018) [CRW.709.082.2110_R]; *Burswood Casino – Directions* (23 October 2018) [CRW.707.010.0801_R]; *Burswood Casino – Directions* (23 February 2021) [CRW.707.010.0403_R].

502 BL, board charter [CRW.701.011.6704].

503 Twelfth Supplemental Deed, 10 October 1997 [CRW.700.007.0205_R] cl 20.1.

504 Twelfth Supplemental Deed, 10 October 1997 [CRW.700.007.0205_R] cl 20.2.

505 *Napier v Light* (1974) 119 SJ 166.

506 Ninth Supplemental Trust Deed, 5 January 1996 [CRW.700.007.0025_R].

507 Twelfth Supplemental Deed, 10 October 1997 [CRW.700.007.0205_R] 26 – 27 (deleted cl 2A).

508 Known as the rule in *Saunders v Vautier* (1841) Cr & Ph 240.

509 *Re Michael; ex parte WMC Resources Ltd* [2003] WASCA 574 [PUB.0033.0043.0001] [26].

510 Consolidated State Agreement [PCRC.0006.0001.0001] sch B and E; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 4 sch B, sch 9 sch E; BL, constitution [PUB.0026.0002.0001] art 3.12.

511 Consolidated State Agreement [PCRC.0006.0001.0001] sch E cl 19, cl 20; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9 sch E cl 19, cl 20; BL, constitution [PUB.0026.0002.0001] arts 3.18, 3.19, 3.20.

512 Consolidated State Agreement [PCRC.0006.0001.0001] cl 15(c), (e); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 15(c), (e).

513 Consolidated State Agreement [PCRC.0006.0001.0001] cl 17(1)(h); *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 17(1)(h).

514 *De Beers Consolidated Mines Limited v Howe* [1906] AC 455 [PUB.0033.0034.0001] 458; *Bywater Investments Limited v Commissioner of Taxation* (Cth); *Hua Wang Bank Berhad v Commissioner of Taxation* (Cth) [2016] HCA 45 [PUB.0033.0034.0270] [115].

515 *Bywater Investments Limited v Commissioner of Taxation* (Cth); *Hua Wang Bank Berhad v Commissioner of Taxation* (Cth) [2016] HCA 45 [PUB.0033.0034.0270] [116].

516 Compare with - *Commissioner for Corporate Affairs v Bracht* [1989] VR 821 [PUB.0017.0006.0001], a case about the involvement of an insolvent person in the management of a corporation, and thus not directly on point.

517 Compare with - *Australian Securities and Investments Commission v King* [2020] HCA 4 [PUB.0017.0006.0016].

518 McCann, transcript [TRA.0001.0001.0001] 5252.

519 Crown, transcript [TRA.0001.0001.0001] 6128.

520 BL, agenda paper (10 December 2021 meeting) [CRW.700.108.0001_R] 57; BL, minutes (10 December 2021 meeting) [CRW.701.011.7004] 6.

521 Fewster, transcript [TRA.0001.0001.0001] 1580.

522 Fewster, witness statement [FEW.0003.0001.0001_R] 11.

523 Carter, transcript [TRA.0001.0001.0001] 5489; McCann, witness statement [CRW.998.002.1047_R] [28].

524 Fewster, witness statement [FEW.0003.0001.0001_R] 11.

525 For example, the group injury management policy and COVID-19 vaccination policy: BL, minutes (23 August 2021 meeting) [CRW.701.011.6237_R] 8; BL, agenda paper (10 December 2021 meeting) [CRW.700.108.0001_R] 117; BL, draft minutes (10 December 2021 meeting) [CRW.701.011.7004] 6.

526 For example, the Financial Crime and Compliance Change Program: BL, agenda paper (23 August 2021 meeting) [CRW.701.005.9004_R] 196 – 232; BL, agenda paper (10 December 2021 meeting) [CRW.700.108.0001_R] 154 – 159.

527 For example, the remediation plan and responsible gaming initiatives: BL, agenda paper (23 August 2021 meeting) [CRW.701.005.9004_R] 233 – 276; BL, minutes (23 August 2021 meeting) [CRW.701.011.6237_R] 7; BL, agenda paper (10 December 2021 meeting) [CRW.700.108.0001_R] 73 – 90; BL, draft minutes (10 December 2021 meeting) [CRW.701.011.7004] 10.

528 BL, agenda paper (10 December 2021 meeting) [CRW.700.108.0001_R] 190.

529 Bergin Report vol 1 [BGN.0001.0001.0001] 297 [312] – [314].

530 Bergin Report vol 2 [BGN.0001.0001.0334] 347 [34], 554 [70].

531 Bergin Report vol 2 [BGN.0001.0001.0334] 347 [34].

532 Bergin Report vol 2 [BGN.0001.0001.0334] 347 [34], 554 [70].

533 Bergin Report vol 2 [BGN.0001.0001.0334] 562 [112]; also conceded by Crown in its closing submissions to the Victorian Royal Commission: RCCOL, Crown's written responsive submissions [CRW.0000.0500.0001_R] 6 [A.6.], 62 [C.82(b)].

534 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [74].

535 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [72].

536 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [74].

537 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [74].

538 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [74].

539 Bergin Report vol 1 [BGN.0001.0001.0001] 134 [7].

540 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [75], 556 [77].

541 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [77].

542 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [78].

543 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [79].

544 Bergin Report vol 2 [BGN.0001.0001.0334] 557 [84], [85].

545 Bergin Report vol 1 [BGN.0001.0001.0001] 302 [25].

546 Bergin Report vol 2 [BGN.0001.0001.0334] 559 [96].

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CHAPTER 5

Regulation of Perth Casino

CHAPTER FIVE

Regulation of Perth Casino

Purpose of Chapter

- 1 The purpose of this chapter is to examine the structure and operations of the Gaming and Wagering Commission (**GWC**) within the context of the legislative framework described in Chapter Three: Overview of Regulatory Framework for Casino Gaming and the regulatory objectives identified in Chapter One: Subject Matter of Inquiry and Terms of Reference.
- 2 This chapter informs the PCRC's overall evaluation in Chapter Fourteen: Evaluation of Regulation of Perth Casino, pursuant to terms of reference (**ToR**) 9 and 10, of:
 - a. the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged by the GWC under State and Commonwealth laws;
 - b. the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities; and
 - c. the support of the GWC by the Department of Local Government, Sport and Cultural Industries or its predecessors (depending on context) (**Department**).
- 3 Part One of this chapter provides the context for the examination of the GWC. Part Two examines the composition of the GWC and members' qualifications, experience and remuneration. Part Three examines the GWC's governance and explores its practices and procedures. Part Four examines the relationship between the GWC and the Department and how it operated in practice. Part Five examines the financial arrangements for the GWC and Part Six explores three specific risks to the attainment of the objectives of casino regulation which are not explored in the subject-specific chapters of this report. Part Seven examines the statutory enforcement mechanisms available against the Perth Casino licensee.

Part One: Context for examination of the Gaming and Wagering Commission

Regulatory objectives and strategic risks in casino regulation

- 4 Unlike in other Australian States and Territories,¹ neither the *Gaming and Wagering Commission Act 1987 (WA)* (**GWC Act**), nor the *Casino Control Act 1984 (WA)* (**CC Act**) contains a general and (or) specific objects clause that expressly states the general (or specific) objectives of casino regulation.
- 5 In Chapter One: Subject Matter of Inquiry and Terms of Reference, the PCRC identified the three broad objectives of casino regulation in Western Australia. Those objectives are:
 - a. ensuring the socially responsible, lawful and efficient operation of Perth Casino and casino gaming undertaken there;
 - b. maintaining the confidence and trust of the public of Western Australia in the credibility, integrity and stability of gaming operations at Perth Casino; and
 - c. ensuring the proper assessment and due payment of monies lawfully owing to the State and its statutory authorities by reason of casino operations.

- 6 In that chapter, the PCRC identified strategic risks to the attainment of those three objectives from the organisation and conduct of the gaming operations at a licensed casino as follows:
- a. the risks associated with junkets (including money laundering and criminal infiltration);
 - b. the risk of money laundering independent of junkets;
 - c. the risk of other criminal infiltration, being the risk that organised crime (and other criminal elements) will infiltrate and use the operations of the Perth Casino for socially undesirable or illegitimate purposes;
 - d. the risk of criminal infiltration of casino operations by employees, including by organised crime;
 - e. the risk of other criminal activity on the casino premises, including the use of proceeds of crime for casino gaming;
 - f. the risk of a lack of integrity in casino gaming;
 - g. the risk of harm from casino gaming;
 - h. the risk that the casino licensee is no longer a suitable person to hold the casino licence and that its associates are no longer suitable to be associated with the operation of the casino in respect of their:
 - i. character, reputation and (or) integrity;
 - ii. competence and capacity, including financial capacity and financial stability; or
 - iii. organisational structure, governance and management system;
 - i. the risk that there is not proper assessment and due payment of casino tax owing to the State;
 - j. the risk that there is not proper assessment and due payment of the casino gaming licence fee owing to the GWC; and
 - k. the risk that there is not due and proper payment of the amount determined under the Casino (Burswood Island) Agreement (**State Agreement**)² to the Burswood Park Board.

Gaming and Wagering Commission's legislative responsibilities in relation to strategic risks

Responsibilities in respect of first two regulatory objectives

- 7 The duties imposed upon the GWC by the GWC Act in respect of gaming in Western Australia are broad. In particular, the duty of the GWC to administer the law relating to gaming and to keep under review the conduct, extent and character of gaming and keep under review the provision, use and location of gaming facilities imposes a broad responsibility upon the GWC to monitor gaming, including casino gaming at Perth Casino.³
- 8 These duties should be understood by reference to the interests of the community. That is, the GWC is to administer the law relating to gaming in the public interest and is to keep gaming, including casino gaming at Perth Casino, under review in order to ensure that gaming continues to be conducted consistently with the interests of the community.
- 9 The GWC Act confers upon the GWC the powers to carry out those duties.⁴
- 10 The breadth of the duties and powers of the GWC in administering gaming legislation in Western Australian means that the GWC is generally responsible for the first two regulatory objectives identified above, namely:

- a. ensuring the socially responsible, lawful and efficient operation of the Perth Casino and casino gaming at Perth Casino; and
 - b. maintaining the confidence and trust of the public of Western Australia in the credibility, integrity and stability of gaming operations at Perth Casino.
- 11** It follows that the GWC is responsible for addressing strategic risks (a) to (h) identified above, which are all risks to the attainment of those two regulatory objectives.

Responsibility in respect of third regulatory objective

- 12** The third regulatory objective of casino regulation in Western Australia is ensuring the assessment and due payment of monies lawfully owing to the State by reason of casino operations.
- 13** There are three strategic risks that are associated with that regulatory objective:
- a. the risk that there is not proper assessment and due payment of casino tax owing to the State;
 - b. the risk that there is not proper assessment and due payment of the casino gaming licence fee owing to the GWC; and
 - c. the risk that there is not due and proper payment of the amount determined under the State Agreement to the Burswood Park Board.
- 14** The risk that there is not proper assessment and due payment of tax revenues owing to the State has two aspects. The first aspect is the risk that tax revenues owing to the State are not accurately assessed. The second aspect is the risk that tax revenues are not paid timeously.
- 15** Section 20A(3) of the CC Act provides that the Treasurer may, for any reason they think sufficient, remit any penalty for the late payment of casino tax. This indicates that it is the Treasurer who has been assigned responsibility under the CC Act for managing the risk that there is not timely payment of casino tax.⁵
- 16** Section 20B(5) of the CC Act relevantly provides, in effect, that where the amount of casino tax properly payable cannot be ascertained by reason of a failing by the casino licensee, then the GWC may estimate the amount payable and that estimated amount will be recoverable as the amount properly payable.⁶ This suggests that the GWC is assigned responsibility under the CC Act for addressing the risk that the tax revenue owing to the State is not accurately assessed.
- 17** Consequently, the only aspect of the risk that there is not due and proper payment of tax revenue owing to the State, which is legislatively assigned to the GWC, is the risk that there is not an accurate (proper) assessment of the tax revenues owed to the State.
- 18** Under s 20A(2) of the CC Act it is the GWC that may, for any reason the GWC thinks sufficient, remit any penalty for the late payment of the casino gaming licence fee.⁷ Section 20B(5) of the CC Act relevantly provides, in effect, that where the amount of the casino gaming licence fee properly payable cannot be ascertained by reason of a failing by the casino licensee, then the GWC may estimate the amount payable and that estimated amount will be recoverable as the amount properly payable.⁸
- 19** On the basis of the above, responsibility for addressing the risk that there is not proper assessment and due payment of the casino gaming licence fee owing to the State is wholly assigned by the CC Act to the GWC.
- 20** The CC Act does not deal with the payment of the amount determined under the State Agreement to the Burswood Park Board. Clause 23(1) of the State Agreement provides, in effect, that the Perth Casino licensee will pay \$1 million annually to the Burswood Park

Board or an amount calculated by reference to casino taxable revenue, whichever is greater.⁹ The CC Act does not refer to that payment. As an obligation under a State Agreement, it falls to the State to ensure that this obligation is discharged.

- 21 The risk that there is not proper assessment and due payment of the amount determined under the State Agreement to the Burswood Park Board is not a risk that is assigned to the GWC by the legislative framework.
- 22 On the basis of the above analysis, the GWC is assigned responsibility under the legislation governing casino regulation in Western Australia for addressing each of the above risks with two exceptions. First, responsibility for risk (i) is limited to regulating the proper assessment of the casino tax owing to the State. Second, the GWC has no responsibility for regulating risk (k).
- 23 The PCRC will evaluate the appropriateness, capability and effectiveness of the GWC by reference to how it has addressed those risks.
- 24 The evaluation of how the GWC has addressed the risks of junkets, money laundering, other criminal activity, harm, and the improper assessment of casino tax are addressed in the chapters that deal with those specific subject matters. Part Six of this chapter evaluates the risk relating to the suitability of the casino licensee, the risk of a lack of integrity of casino gaming and the risk of a lack of integrity in casino operations.

Part Two: Gaming and Wagering Commission members

The current and historical composition of the Gaming and Wagering Commission

- 25 The GWC is a statutory agency which consists of a chair and between five and seven other part-time members appointed by the Minister for Racing and Gaming.¹⁰ Lanie-Maree Chopping (**Chopping**), the Director General (**DG**) of the Department, is the current *ex officio* chair by reason of s 12(1)(a) of the GWC Act, and she forms the GWC with six other members – Katie Hodson-Thomas (**Hodson-Thomas**), Jodie Meadows¹¹ (**Meadows**), Carmelina Fiorentino (**Fiorentino**), Matilda (Tillie) Prowse (**Prowse**), Steve Dobson (**Dobson**) and Michael Sarquis (**Sarquis**). Save for Sarquis, all of those members gave evidence to the PCRC.
- 26 Former members of the GWC who gave evidence to the PCRC include Professor Colleen Hayward (**Hayward**), Barry Sargeant (**Sargeant**), Helen Cogan (**Cogan**), Kevin Harrison (**Harrison**), Helen Dullard (**Dullard**), Jeffrey Carr (**Carr**), Andrew Duckworth (**Duckworth**) and Trevor Fisher (**Fisher**). The PCRC also received a voluntary submission from Robert Bovell (**Bovell**). Duncan Ord (**Ord**) a former *ex officio* chair of the GWC also gave evidence.¹²
- 27 A summary of the tenure of GWC members who gave evidence is set out below.

Current member	GWC Membership	Expiry of term
Chopping	31 May 2021 ¹³ to present (chair)	Not known
Hodson-Thomas	21 July 2011 to 23 November 2012; 1 January 2018 to present ¹⁴	31 December 2023 ¹⁵
Meadows	1 August 2018 to present ¹⁶	31 July 2022 ¹⁷
Fiorentino	1 August 2018 to present ¹⁸	31 March 2022 ¹⁹
Prowse	11 January 2021 to present ²⁰	31 December 2022 ²¹
Dobson	1 July 2020 to present ²²	20 June 2022 ²³

Current member	GWC Membership	Expiry of term
Sarquis	2 August 2021 to present ²⁴	31 July 2022 ²⁵
Former member	GWC Membership	
Hayward	2006 to 31 December 2020 ²⁶	
Cogan	2006 to December 2011; 2012 for a short period ²⁷	
Harrison	1 January 2006 to 31 December 2015 ²⁸	
Dullard	14 July 2008 to 30 June 2011 ²⁹	
Carr	29 January 2008 to 13 December 2011 ³⁰	
Duckworth	2008 to 30 June 2020 ³¹	
Fisher	27 March 2012 to 31 December 2017 ³²	
Bovell	October 2016 to 31 December 2019 ³³	
Ord	1 July 2017 to May 2021 (as chair) ³⁴	
Sargeant	1 August 2017 to 31 July 2021 (ordinary GWC member); ³⁵ 1992 to 2017 (as chair) ³⁶	

- 28 Sargeant was DG of the Department from 1992 to 30 June 2017.³⁷ In that role, Sargeant was also chair of the GWC.³⁸ He was appointed an ordinary member of the GWC on 1 August 2017 and his term expired on 31 July 2021.³⁹
- 29 Michael Connolly (**Connolly**) was the Deputy Director General (**DDG**) of the Department from June 2012 until February 2021.⁴⁰ In addition to that role, Connolly was Chief Casino Officer (**CCO**) from 3 July 2012 to 11 February 2021⁴¹ and deputy chair of the GWC from 16 July 2012 to February 2021.⁴²

Qualifications of current and former members

- 30 The position of chair of the GWC is an *ex officio* position of the Chief Executive Officer (**CEO**) (that is, DG) of the Department.⁴³ The issue of conflict which arises as a result of that structure is discussed later in this chapter.
- 31 Where the Minister appoints a departmental officer to the position of deputy chair,⁴⁴ that person has the powers and duties of a member and acts as the chair, only in the absence or incapacity of the chair.⁴⁵
- 32 The Minister is otherwise responsible for appointing GWC members. There are no published criteria for those appointments, save that s 12(2) of the GWC Act identifies the attributes of 'integrity, good repute and relevant experience'.
- 33 In general, GWC members referred in their evidence to being approached directly by the Department or someone from the Minister's office regarding potential appointment to the GWC.⁴⁶ Some members who have been appointed since 2018 referred to having registered their interest in joining a Western Australian government board or committee through the Department of Premier and Cabinet's online registration system called 'OnBoardWA',⁴⁷

- before being subsequently contacted and appointed.⁴⁸
- 34** No member appointed since 2010 has had qualifications or specific previous experience in casino regulation at the time of their appointment.⁴⁹
- 35** Some past and present members could be characterised as having had broadly relevant or related casino regulation experience. Fiorentino has experience in the gaming sector, having worked for Lotterywest.⁵⁰ Duckworth worked for the Minister for Racing and Gaming in the late 1980s and early 1990s during the early development of Perth Casino.⁵¹ Bovell had previous experience in wagering.⁵²
- 36** From 2010 onwards, the general experience and qualifications of former GWC members was diverse. For example, Hayward has tertiary qualifications in education and teaching, as well as varied board experience.⁵³ Cogan holds a Bachelor of Laws and was one of the first members of the Liquor Commission of Western Australia.⁵⁴ Harrison and Duckworth have general board and management experience⁵⁵ and, in addition to formerly working for the Minister for Racing and Gaming, Duckworth worked as a manager at the Totaliser Agency Board (**TAB**) from 1990 to 1991.⁵⁶
- 37** Dullard has governance experience and was a former council member of the Shire of Mundaring.⁵⁷ Carr was formerly the Minister for Police.⁵⁸ Fisher was formerly a farmer and had volunteered in various roles in country organisations.⁵⁹ He was also a shareholder of a small business.⁶⁰
- 38** Current members have qualifications and experience in governance and accounting. For example, Hodson-Thomas is a former Member of Parliament, has varied experience in consulting and policy development, and has training in governance.⁶¹ Meadows holds a Bachelor of Commerce (Major in Accounting and Finance) and is qualified as a chartered accountant.⁶² Fiorentino holds qualifications in business administration and as a chartered accountant.⁶³ Dobson also has qualifications in business administration and financial planning.⁶⁴ Prowse is a Graduate of the Australian Institute of Company Directors⁶⁵ and has served on a number of boards or commissions.⁶⁶
- 39** The PCRC concludes that the introduction of the 'OnBoardWA' online, self-nomination registration system has coincided with an improvement in the qualifications and experience in corporate governance of GWC members. This is a desirable development for the general improvement of the governance of casino regulation and processes of the GWC.

The Director General as chair of the Gaming and Wagering Commission

- 40** As set out above, by operation of the GWC Act, the DG of the Department is the chair of the GWC. As described later in this chapter, the Department provides a multitude of services to the GWC.
- 41** The GWC⁶⁷ and Department⁶⁸ submit that this arrangement should not continue as the chair of the GWC needs to be independent from the Department. The PCRC is also of this view as the GWC needs to objectively review the provision of the Department's GWC services. When performing the role of chair of the GWC, the DG of the Department has a conflict of interest.
- 42** The PCRC therefore finds that the statutory requirement for the DG to be the chair of the GWC is a current legislative deficiency.

Remuneration

- 43 Currently, GWC members are paid approximately \$16,600 per year (before superannuation and tax) for their service to the GWC.⁶⁹ The remuneration for GWC members is determined by the Minister, on the recommendation of the Public Sector Commissioner.⁷⁰
- 44 Some GWC members consider the remuneration in recent times to be inadequate given how much time is spent preparing for and attending GWC meetings.⁷¹ It can be expected that the establishment of the PCRC has increased members' workloads above ordinary levels. GWC members have been told that there will be consideration given to additional payment in light of the additional workload associated with the PCRC.⁷²
- 45 Setting aside the additional work attributable to the PCRC, in ordinary circumstances, members spend anywhere between two hours to two days a month preparing for meetings. Attendance at meetings is an additional two to six hours per month.⁷³
- 46 A current member gave evidence that the time needed for preparation and attendance at GWC meetings has increased because of the necessity to deal with the changing gambling landscape within the confines of legislation drafted in the 1980s, which is seemingly no longer fit for purpose. By way of example, they referred to issues such as disruptive technologies and internet gambling.⁷⁴
- 47 On the evidence before the PCRC, GWC members are spending up to 198 hours per year on matters related to their role. GWC members have important responsibilities across different areas of regulation, often involving complex issues. It is appropriate that their remuneration is commensurate with the importance of those responsibilities and the complexity of the subject matter that they regulate. A relatively low level of remuneration could make it difficult for the GWC to attract appropriately skilled and experienced new members.
- 48 The PCRC concludes that the current remuneration of PCRC members is inadequate.

Part Three: Gaming and Wagering Commission governance

Appointment of Gaming and Wagering Commission members

- 49 Historically the GWC has not been consulted about potential new appointments to the GWC or the skills which a new member ought to possess.⁷⁵
- 50 Presumably as a consequence of that, the GWC has not prepared a skills matrix for GWC members,⁷⁶ nor does the GWC have a nominations committee. The evidence of some GWC members indicates support within the GWC for the introduction of both.⁷⁷
- 51 Another current member identified a deficiency in the board papers prepared for the GWC by the Department, being that they do not include a calendar or schedule for important upcoming dates, including dates for skills matrix reviews, to enable the GWC to consider and plan in time to make recommendations to the Minister before appointments are decided.⁷⁸
- 52 That member gave evidence that, when the GWC was advised that another member's next meeting was going to be their last, they suggested that the GWC go through a skills matrix exercise so that it could put forward suggestions to the Minister as to the skills the GWC needed. They recalled that Ord advised in response that the Minister had already selected a new member.⁷⁹
- 53 Since 2009, the Public Sector Commission (**PSC**) has developed and published guidance manuals for the good governance of statutory authorities (**PSC's governance guidance**).⁸⁰

That guidance is regularly updated and is currently called the 'Governance Manual for Western Australian Boards and Committees'.⁸¹

- 54 From December 2016, and prior to the latest version, the PSC's governance guidance was published in a document called 'Board Essentials – Good Governance for Public Sector Boards and Committees'.⁸²
- 55 For some years, the PSC's governance guidance has addressed the development of a skills matrix⁸³ and identified the use of a skills matrix in its checklist for good governance of statutory authorities.⁸⁴ As early as the 2014 iteration, the guidance states:⁸⁵

Skill gaps

Boards may lack skills, knowledge or expertise to make sound decisions. Skill audits help to mitigate these risks, particularly in the selection of new members. Ideally the composition of the board should be reviewed by the corporate governance committee (if established) or the board as a whole every year.

- 56 The lack of:
- a. a GWC member skills matrix that is regularly reviewed;
 - b. a GWC nominations committee; and
 - c. advice from the GWC to the Minister about potential new member appointments, are present shortcomings in the GWC's governance arrangements.

Duration of appointments

- 57 The members of the GWC are appointed for a maximum of three years and can be reappointed after their term expires.⁸⁶
- 58 The duration of board appointments is relevant to good corporate governance. Increased board tenure allows for the retention of corporate knowledge and the development of expertise. On the other hand, it is important that the membership of a board is renewed regularly to avoid stagnation. The Premier's Circular issued on 4 November 2021 observes that, as a matter of sound governance, memberships on government boards such as the GWC ought not exceed ten years.⁸⁷
- 59 Some of the former GWC members had lengthy appointments. One member served as a GWC member for about 12 years, and another for about 14 years. Sargeant was *ex officio* chair for over two decades and then appointed as an ordinary member for a further four years.
- 60 The current members of the GWC have all been appointed in or since 2018 with the exception of one who was previously appointed for a short period in 2011 and 2012.

Induction process for new members

- 61 The current PSC's governance guidance sets out generally what an induction process for new members of a statutory board should involve. The overarching purpose of such a process is stated to ensure that new board members are aware of their roles and responsibilities, and to understand the objectives and operations of the body overseen by the board.⁸⁸ The guidance imposes a responsibility on the board chair to ensure new members receive a structured and well-designed induction, complete with an induction pack.⁸⁹ It also recommends face-to-face meetings with the chair, CEO and other key employees⁹⁰ and contains an appendix entitled '[h]ow to induct board members' which details:⁹¹
- a. what an induction ought to cover;
 - b. what an orientation pack should include; and

- c. what board members should do (for example, prospective board members should do their own research on the objectives and operations of the public sector agency overseen by the board).
- 62 The iterations of the PSC guidance in 2016 and 2018 are similarly detailed,⁹² whereas the earlier versions are less detailed, referring only to the possible role of the executive officer to facilitate the induction of a new member, not what an induction ought to entail.⁹³
- 63 No GWC member who gave evidence before the PCRC has received formal training in relation to casino regulation.⁹⁴ One member gave evidence of reliance on certain departmental officers, including Connolly, who was viewed as a casino regulation subject matter expert.⁹⁵ Current and former members referred to an induction meeting where they received various documents in relation to the role and a general verbal explanation, often from a relatively junior employee of the Department or by the CCO,⁹⁶ as to what their role entailed.⁹⁷
- 64 Evidence varied as to what materials, if any, GWC members received upon commencement.⁹⁸ Materials seem to have included:
- a. the GWC Act;⁹⁹
 - b. the PSC's governance guidance;¹⁰⁰
 - c. a GWC paper entitled 'Differentiating between Electronic Gaming Machines and Poker Machines';¹⁰¹
 - d. GWC annual reports;¹⁰²
 - e. GWC Code of Conduct;¹⁰³
 - f. hardcopy or electronic links to webpages and legislation (including a link to a summary paper entitled 'The WA Gaming Legislation');¹⁰⁴
 - g. GWC policies (such as wagering policies, community gaming policies and casino policies);¹⁰⁵ and
 - h. the WA Appendix to the 2016 Gaming Machine National Standard.¹⁰⁶
- 65 Some GWC members independently sought out additional information. For example, one current member printed out an extract from the Department's website entitled 'The Role of the Gaming and Wagering Commission of WA'.¹⁰⁷
- 66 Another said that in October 2020, they and other GWC members were provided with a one-page paper which summarised all of the powers of the GWC.¹⁰⁸ By that stage, that particular member had already been a member for three months and other members had served for much longer.
- 67 Another current member stated that they were provided with an iPad which had a number of documents relevant to their role as a member of the GWC uploaded onto it.¹⁰⁹ After their second appointment (in 2018), they received practical training in relation to electronic gaming machines (**EGMs**) and the responsible service of gambling.¹¹⁰
- 68 A former member recalled that limited information about the GWC was provided to them.¹¹¹
- 69 A current member described that they met with Connolly for about 30 minutes to discuss the role, however they were not put in touch with any other GWC members, and only met Ord (the then chair) on the morning of their first meeting where they just exchanged pleasantries.¹¹²
- 70 There is no evidence to suggest that the induction of the current members of the GWC encompassed all of the topics referred to in Appendix 5 of the most recent PSC's governance guidance, such as reporting requirements, compliance obligations and governance system, the board's decision-making processes and professional development

opportunities.¹¹³ The orientation pack for new members does not appear to have included all of the materials referred to in Appendix 5, such as budgets, a schedule of delegations, and an outline of the GWC's evaluation processes.

- 71 The PCRC infers that when the current members of the GWC commenced in their roles, only one met with the CCO and none of them met with the other key departmental officers or with the chair, as part of their induction.
- 72 Prior to 2016, the PSC's governance guidance did not provide any guidance as to the contents of an appropriate induction process. However, from 2016, the chair of the GWC has had the benefit of detailed guidance from the PSC as to their responsibility for the induction of new board members, the purpose and contents of the induction process and the recommendation that the new member has face-to-face meetings with the chair, CEO and other key employees.¹¹⁴
- 73 It is evident from the foregoing evidence that Ord, as DG between 2017 and 2021, did not induct new members in accordance with the PSC's governance guidance. The induction process for current members appears to have been left to departmental officers and was limited to basic materials about the GWC's regulatory framework. In his role of chair of the GWC, Ord did not discharge his responsibility to induct new members of the GWC in accordance with the PSC's governance guidance by ensuring that members were provided with adequate information and had a face-to-face meeting with him. Rather, Ord left the induction process to departmental officers.
- 74 It is an important aspect of good governance to ensure that new members are properly inducted to ensure that they are aware of their responsibilities in respect of governance, culture and risk management, aware of the regulatory posture and model of service delivery used by the regulator and are appropriately familiarised with the subject matter of the operations that they are to oversee.
- 75 The PCRC concludes that the induction process for current GWC members who gave evidence at the PCRC was inadequate because, substantially, it did not follow the PSC's governance guidance as to the induction process for government board members.
- 76 The inadequacy of the induction process for current GWC members has the potential to compromise the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities.
- 77 The induction process is the subject of current reform. While it has not detailed particulars, the Department says that it undertook a review in November 2021 and sought input of best practice from various sources, including the latest PSC's governance guidance.¹¹⁵ The induction program was to be considered by the GWC at its February 2022 meeting.

Accountable and ethical decision-making training

- 78 In addition to the PSC's governance guidance, the Public Sector Commissioner issues instructions from time to time. Instruction 8, which was first published on 3 July 2012, canvasses, amongst other things but relevantly, integrity training for public sector bodies.¹¹⁶
- 79 Since at least November 2014,¹¹⁷ Instruction 8 has required board chairs to provide or arrange accountable and ethical decision-making training for members of their board (**AEDM training**).
- 80 There is evidence before the PCRC that the Department facilitated AEDM training for GWC members in about February 2016.¹¹⁸ The Department concedes that thereafter AEDM training was not provided to, or facilitated for, GWC members until the second half of 2021.¹¹⁹

- 81 The PCRC finds that the Department did not adequately support the GWC in that regard.
- 82 By December 2021, all GWC members had completed online AEDM training and what has been termed 'general good governance training'.¹²⁰ The AEDM training has been peer reviewed by the PSC.¹²¹ The PCRC has not had the opportunity to assess the adequacy of the general governance training.
- 83 The Department has informed the PCRC that AEDM and general good governance online training has been incorporated into the induction program which was to be considered at the GWC's February meeting.¹²²

Ongoing training for members in casino regulation and governance

- 84 It is apparent that there was and is no formal program or system for ongoing training in casino regulation for GWC members.¹²³ The PCRC heard evidence that the GWC members relied heavily upon the knowledge and expertise of Sargeant and Connolly who¹²⁴ were generally understood to have particular knowledge in respect of casino-related matters.¹²⁵
- 85 A member gave evidence that in May 2019 the Department invited all GWC members to attend the Australasian Casino and Gaming Regulators Conference, which the member attended. The member recorded notes from the conference which she provided to the other GWC members at their meeting on 28 May 2019.¹²⁶ Sargeant, who was a GWC member at the time, said that the Department agreed to pay half of her expenses in relation to this¹²⁷ and that, generally, if a member wished to attend courses or development programs, they could seek permission to be reimbursed.¹²⁸
- 86 The PCRC heard evidence that, while a training budget for the GWC exists,¹²⁹ there is a lack of any specific casino regulation training programs in Australia.¹³⁰ However, there are evidently some international training opportunities, such as the recent virtual attendance of some GWC members at the International Association of Gaming Regulators Conference in September 2021.¹³¹
- 87 In relation to regulatory practice more generally, in November 2021, the Department invited and funded the GWC members' attendance at a two-part seminar on 'Navigating Current Challenges in Regulatory Practice' delivered by leading regulatory academic, Professor Malcolm Sparrow.¹³²
- 88 Ongoing training for board members is obviously an important aspect of good governance to ensure that their skills and expertise remain current, across the disciplines of governance, culture and risk management, as well as the subject matter of the operations they oversee.
- 89 The failure of the GWC to establish and maintain a system of formal ongoing training for members has the potential to compromise the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities.
- 90 The PCRC recommends that a continuing education program in casino regulation, governance and risk management should be established for GWC members.

Roles and responsibilities

Objects and principles clauses

- 91 None of the legislative instruments used to regulate Perth Casino contain an objects clause or a principles clause.

- 92 The purpose of an objects clause within a regulatory framework is to achieve a regulatory outcome by setting a general objective or a standard, or describing a general duty, but without specifying the means of achieving that outcome, leaving it to other bodies to interpret the meaning of the principle in a particular context.¹³³
- 93 Section 18 of the *Interpretation Act 1984* (WA) states:¹³⁴
- In the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall not be preferred to a construction that would not promote that purpose or object.
- 94 A principles clause, as opposed to an objects clause, constrains administrative decision makers to observe the statutory principles when discharging duties, performing functions, and exercising powers.
- 95 The PCRC finds that the current regulatory framework is deficient as it does not have an objects or principles clause and the inclusion of one or both of them would assist the GWC in identifying and acting in accordance with its regulatory objectives.

Statement of expectations

- 96 Since 2014, the PSC's governance guidance has recommended that, as a means of clearly delineating the roles and responsibilities of government boards and their relationship with the responsible Minister, a statement of expectation can be prepared by the Minister which articulates the Minister's expectations of a government board with regard to performance, objectives, values and broader government policies.¹³⁵
- 97 An appendix to the PSC's governance guidance provides a sample statement as guidance and suggests that detail be provided in the statement as to the Minister's expectations in respect of the role of the board, regulatory independence, compliance requirements such as legislative frameworks, short-term and long-term government policies and priorities and stakeholder engagement and management.¹³⁶
- 98 Similarly, since 2014 the PSC's governance guidance has recommended that the board respond to that statement with a statement of intent which should demonstrate its understanding of and commitment to the Minister's expectations. The guidance suggests that those statements be reviewed and reissued biennially.¹³⁷
- 99 Section 6(2) of the GWC Act provides that the Minister may give to the GWC, directions of a general character as to the exercise of its function which the GWC must give effect to. Where such a direction does not accord with the recommendations of the GWC, it may make its advice to the Minister known to the public.
- 100 As at 20 May 2021, the Department was unable to identify any document from the Minister directing the GWC under s 6(2) of the GWC Act.¹³⁸
- 101 One former member (2006 to 2020), was not aware that a statement of expectations or statement of intent existed, nor could she recall the statement being discussed.¹³⁹
- 102 A current member gave evidence to the effect that there has not been a ministerial statement of expectations with respect to the GWC during their time as a member.¹⁴⁰
- 103 On 30 June 2021, the chair of the GWC received a letter from the Minister setting out ministerial expectations for government boards and committees. Those expectations were expressed generically in relation to all government boards and committees and were not tailored to the GWC specifically.¹⁴¹ By way of example, as to the topic of government policies and objectives, the letter states as follows:¹⁴²

In addition to statutory functions, there is an expectation that the Boards and Committees will take into account wider economic benefits to the State, impacts on other Government agencies and key Government policies as part of their planning and decision-making processes.

Boards and Committees should also seek to comply with relevant general policy requirements, set out in instruments including:

- Public Sector Commissioner's Circulars;
- Premier's Circulars; and
- Treasurer's Instructions.

- 104** The letter did not contain the details referred to in the appendix to the PSC's governance guidance about the role of the GWC board, its regulatory independence, the legislative framework with which the GWC must comply, short-term and long-term government policies and priorities relevant to the GWC's regulatory function and the GWC's engagement with and management of stakeholders.
- 105** The PCRC concludes:
- a. that the Minister's letter dated 30 June 2021 was not a statement of expectations as contemplated by the PSC's governance guidance in existence at that time; and
 - b. prior to that letter and since at least 2006, a statement of expectation of any description has not been provided by the responsible Minister to the GWC.
- 106** The PCRC has recently been informed that the GWC approved a statement of intent dated 26 October 2021 which formally commits the GWC to meeting the Minister's statement of expectation dated 30 June 2021 and identifies the GWC's priorities of its strategic work plan, being governance framework, regulatory function, problem gambling and harm minimisation and continuous improvement and business intelligence.¹⁴³
- 107** A Minister's statement of expectations as contemplated by the PSC's governance guidance could assist GWC members in developing a unified and coherent understanding of the nature and extent of their role; in particular, as to the board's independence and the GWC's overall strategic direction. Any suggestion in such a statement that is in conflict with the independence of the board must be avoided. However, as neither the GWC Act nor the CC Act contains a clause that enables the GWC to readily ascertain and understand its regulatory objectives in relation to casino regulation, a Minister's statement of expectations could enhance the capability and effectiveness of the GWC.
- 108** The PCRC accepts that whether or not a statement of expectation as contemplated by the PSC's governance guidance is issued to the GWC is a matter for the responsible Minister.

Board charter

- 109** Since 2014, the PSC's governance guidance has described the role of a board charter.¹⁴⁴ In essence, it is described as a high-level document which sets out:
- a. the roles and responsibilities of the board, minister, chair and members;
 - b. the structure of the board, including size, composition, expertise and level of independence, tenure and sub-committees;
 - c. process for board meetings including frequency, quorums, resolutions, code of conduct and access to advice; and
 - d. general obligations and mechanisms for accountability and transparency such as the timeframe for when the board assesses whether it has fulfilled its purpose and whether there is a continuing need for its functions.

- 110 The PSC's governance guidance also sets out that the board charter is typically supported by other documents such as a schedule of delegations, a code of conduct, a gifts and benefits register, legislative requirements, and strategic and operational policies.
- 111 There is no evidence to suggest that the GWC has a board charter or any legislative compliance plan in relation to casino regulation which identifies the GWC's legislative duties and responsibilities.
- 112 It is evident that the GWC would benefit from the adoption of a board charter. The documentation of the members' roles and responsibilities would ensure a clear and consistent understanding of the same amongst members. Members would have ready access to, and understanding of, the board's internal processes and would be more likely to ensure that those processes were followed. The stipulation of general obligations and mechanisms in respect of accountability and transparency would improve the quality of governance more generally.
- 113 The PCRC has recently been informed by the Department that steps are being taken to implement a board charter and a draft was being considered by the GWC at its February 2022 meeting.¹⁴⁵
- 114 The PCRC finds that the adoption of a board charter by the members of the GWC would likely enhance the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities.

Strategic focus and key performance indicators

- 115 The current PSC's governance guidance recommends that time is set aside by a board to develop a strategic focus, so that performance and outcomes of the board can be measured against it.¹⁴⁶ It also recommends that the chair, in consultation with the board, defines and agrees on key performance indicators (**KPIs**) and measures against these to assess the board's performance.¹⁴⁷
- 116 The importance of having a strategic focus has been emphasised in the PSC's governance guidance since 2009, as has the need to set and monitor KPIs.¹⁴⁸
- 117 The PCRC heard evidence that the GWC has not had a strategic plan.¹⁴⁹ The CCO from 2007 to 2012 gave evidence of developing a 'proactive and strategic regulatory plan' with Connolly (who was then Director Compliance) and she hoped to present it to the DG (Sargeant) and the GWC, but it was never pursued before she left in 2012.¹⁵⁰
- 118 The PCRC has examined the GWC's KPIs, which have not been meaningfully reviewed or changed in more than a decade.¹⁵¹
- 119 The *Financial Management Act 2006* (WA) (**FM Act**) applies to both the Department and the GWC.¹⁵² The FM Act requires the accountable authority of an agency to prepare and submit to the Minister an annual report which contains, amongst other things, KPIs and financial statements.¹⁵³ The KPIs and financial statements are also required to be submitted to the Auditor General.¹⁵⁴
- 120 The GWC is an accountable authority for the purposes of the FM Act, being the person or body having the general direction and control of, and the overall responsibility for, the operations of the GWC.¹⁵⁵ The DG of the Department is the accountable authority for the Department.¹⁵⁶
- 121 The Treasurer may issue instructions under s 78 of the FM Act. Treasurer's Instruction 904 defines KPIs as follows:¹⁵⁷

'Key Performance Indicator' provides an overview of the critical or material aspects of outcome achievement or service provision. Different types of key performance indicator are defined below:

‘Key Effectiveness Indicator’ provides information on the extent of, or progress in a reporting period towards, achievement of an agency level government desired outcome through the delivery of a service or services;

‘Key Efficiency Indicator’ relates a service to the level of resource input required to deliver it;

‘Key Cost Effectiveness Indicator’ relates achievement of an agency level government desired outcome to the cost of service(s) that achieved it.

122 ‘Agency level government desired outcome’ is defined as:¹⁵⁸

... those pitched at a level more relevant to agencies and are required to link to government goals. They are intended to bring about behavioural change or satisfy a community or client need.

123 ‘Service’ is defined as:¹⁵⁹

... the supply of an activity or good to a user external to the agency providing the service. Services comprise programs and outputs.

124 Treasurer’s Instruction 904 requires the accountable authority to disclose in its annual report, both key effectiveness and key efficiency indicators.¹⁶⁰ It goes on to provide that KPIs shall:¹⁶¹

- (a) be relevant and appropriate having regard to their purpose, and fairly represent indicated performance;
- (b) provide a substantial overview of the operations and material expenses of the agency, together with its subsidiaries and related bodies; [and]
- (c) be submitted to and audited by the Auditor General[.]

125 All changes to agency level government desired outcomes, services and KPIs require the prior approval of the Under Treasurer,¹⁶² being the head of the Department of Treasury.

126 An extract of the KPI summary in the GWC’s annual report for the 2020 financial year is set out below:¹⁶³

Summary of Key Performance Indicators			
Key Effectiveness Indicators	Target	Actual	Variation
Percentage of unlawful gambling detected in relation to total audits	0.49%	0.76%	0.27%
Number of violation reports/infringement notices issued in relation to casino gaming	1	0	1
Key Efficiency Indicator	Target	Actual	Variation
Cost per Gambling Certificate/Permit issued	\$297	\$310	\$13
Cost per Casino Employee Licence issued	\$815	\$623	(\$192)
Cost of monitoring the integrity of casino gaming operations over one year	\$1,072,530	\$1,334,236	\$261,706
Cost per instance of unlawful gambling detected	\$48,751	\$39,242	(\$9509)
Cost per casino submission received	\$591	\$543	(\$48)

127 In information supporting the effectiveness indicators, the GWC states that licensing and compliance regimes verify the integrity of gambling operators (not just in respect of the Perth Casino licensee) through initial probity checks and ‘ongoing licensing and audit and inspection requirements’. The efficiency indicators endeavour to show the costs associated

- with issuing licences and the costs associated with monitoring the probity and integrity of the gambling industry in Western Australia generally.¹⁶⁴
- 128** By the KPIs set out in the table above, only one element of the GWC's regulatory responsibility is measured for effectiveness, being the integrity of gambling both at Perth Casino and across Western Australia more broadly. It is measured at a transactional level, in the sense that the number of regulatory activities are counted and measured against the total cost of any particular activity and whether a licence or permit was issued, or a violation detected.
- 129** The reference to efficiency indicators is artificial as there can be no measure of 'efficiency' in circumstances where the Department does not undertake activity-based costing (which is discussed in Part Five of this chapter) and the number of casino employee licences issued cannot be controlled by the GWC (or the Department), as it is determined by how many licence applications Perth Casino makes in any given year.
- 130** The narrow focus of the KPIs is obvious as there is no measure of the level of the GWC's success in regulating any of the other risks to the attainment of the three objectives of regulation identified earlier in this chapter.
- 131** In respect of the GWC's obligations under the FM Act, the Auditor General's delegate has expressed the opinion that the KPIs:
- a. are the key effectiveness and efficiency indicators approved by the Under Treasurer which 'provide performance information about achieving outcomes and delivering services'; and
 - b. are 'relevant and appropriate to assist users to assess the [GWC]'s performance and fairly represent indicated performance for the year'.¹⁶⁵
- 132** The auditor's opinion addressed the relevance and appropriateness of the KPIs in compliance with the FM Act. However, certain GWC members consider that the KPIs are not 'fit for purpose'. Various members gave evidence that they attempted to have the KPIs reviewed by the Department however this was continuously delayed and never eventuated.¹⁶⁶ One member gave evidence that in August 2018, they queried whether the GWC's existing KPIs were fit for purpose when the Department proposed that the GWC approve target KPIs for the 2018/2019 financial year.¹⁶⁷ From about then and through until 2019, the GWC sought the assistance of the Department to prepare an overarching risk management framework to measure whether legislative outcomes were being achieved at a strategic rather than transactional level.¹⁶⁸
- 133** Separately, by letter dated 5 September 2019 (which was provided to GWC members with the board papers for the October 2019 GWC meeting),¹⁶⁹ the Office of the Auditor General:
- a. communicated that the result of the annual audit of the GWC's financial statements was 'generally satisfactory';¹⁷⁰ and
 - b. expressed concern that the targets for the two key effectiveness indicators did not reflect the desired performance for the GWC for the forthcoming year and recommended their review.¹⁷¹
- 134** Ultimately, in about February 2020, RiskWest, management consultants based in Perth, were engaged to prepare a risk management framework for the GWC and the Department so that the KPIs could be reviewed.¹⁷² The task stalled due to COVID-19 and the availability of departmental officers to attend essential RiskWest workshops.¹⁷³
- 135** The Department subsequently engaged an external facilitator to assist with a strategic planning day for the GWC on 21 June 2021, from which a Strategic Work Program for 2021/2022 developed.¹⁷⁴ A copy of the Strategic Work Program was provided to the PCRC prior to the public hearings at the end of August 2021. It canvasses actions to accomplish the strategic vision which was identified as follows:

By the end of 2022[,] the Commission will have the resources, skills and support to foster community trust through its proactive and visible role in gambling regulation across the State.

- 136** The Strategic Work Program sets out there is to be the identification of a suite of governance instruments relating to the GWC’s governance practice and such instruments would include a strategic plan and ‘KPI suite’. There is recent evidence before the PCRC that a review of the KPIs is proposed to commence in 2022 following some work on the costing of departmental services, which is discussed later in this chapter.
- 137** The Department concedes that it has not sufficiently prioritised or progressed the review of the GWC’s KPIs in a meaningful way when it ought to have done so when the issue was raised in 2018.¹⁷⁵
- 138** While the KPIs are considered ‘relevant and appropriate’ by the Office of the Auditor General and, necessarily, comply with the requirements of the FM Act, the PCRC is not satisfied that the GWC’s KPIs are as suitable as they should be in relation to casino regulation given that:
- a. the current KPIs do not measure how effectively (and efficiently) the GWC regulates casino gaming generally, as they only address the integrity aspects of gambling, and no other areas of regulatory responsibility, such as the minimisation of harm and the risk of money laundering;
 - b. the current KPIs that measure GWC’s performance in respect of the regulation of the integrity of gaming do not seek to substantively measure the effectiveness and efficiency of the GWC’s performance in regulating casino gaming by reference to the actual costs of the provision of its services; and
 - c. the Department has not sufficiently prioritised or progressed the review of the GWC’s KPIs in a meaningful way when it ought to have done so when the issue was raised in 2018.

The Problem Gambling Support Services Committee

- 139** Under s 15(1) of the GWC Act the GWC may, from time to time, appoint a committee or committees to:¹⁷⁶
- a. investigate and advise it on any aspect of its functions under the Act (or other legislation); or
 - b. subject to s 16, carry out such duties or exercise the powers of the GWC as determined by the GWC.
- 140** One of the duties of the GWC is to formulate and implement policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling.¹⁷⁷
- 141** The PCRC has examined the work of the Problem Gambling Support Services Committee (**PGSSC**). Various documents provided to the PCRC referred to the PGSSC as a committee of the GWC.¹⁷⁸ For the purpose of this chapter, the PCRC has considered how the PGSSC came into existence and whether it is in fact a committee of the GWC.
- 142** An evaluation of the effectiveness of the funding and work of the PGSSC is contained in Chapter Twelve: Harm Minimisation.
- 143** The PGSSC states on its current website that it was formed in 1995 under the auspices of the GWC and funds Gambling Help WA (face to face counselling through Centrecare) and the Problem Gambling Helpline.¹⁷⁹ It makes financial contributions to Gambling Help Online,

Gambling Research Australia and Responsible Gambling Awareness Week. Its mission statement, as stated on the website, is:

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

- 144 As at June 2021, the PGSSC consisted of representatives from the GWC, the Department, Perth Casino, Racing and Wagering WA, Lotterywest, WA Bookmakers Association, Department of Communities and the Mental Health Commission.¹⁸⁰ Since May 2021, Hodson-Thomas has sat on the PGSSC on behalf of the GWC¹⁸¹ and Emma Thomas represents the Department.¹⁸²
- 145 Amongst those members of the GWC who knew about the PGSSC, it was common knowledge that voluntary contributions are made by each member of the PGSSC¹⁸³ and held in a gambling support fund administered by the Department.¹⁸⁴
- 146 As to how and when the PGSSC began, on 14 December 1994, Sargeant (former Executive Director of the Office of Racing and Gaming), wrote to the Minister with a report from the GWC on a proposed policy for problem gambling in WA.¹⁸⁵ That followed the GWC's approval in August 1993 of the establishment of a steering committee to recommend a policy on problem gambling.
- 147 At a GWC meeting on 28 March 1995, it was resolved that the chair (Sargeant) would finalise the problem gambling pilot program, being a funding program developed to provide support services to people with gambling problems, to be overseen by a Problem Gambling Services Advisory Committee (**PGSAC**).¹⁸⁶
- 148 The PGSAC first met on 18 May 1995 and the inaugural members were representatives from the GWC, the Lotteries Commission, TAB, Burswood Casino and Healthway.¹⁸⁷
- 149 It is unclear when the PGSAC became the PGSSC, but they are one and the same committee and executive support is currently provided by the Department.¹⁸⁸
- 150 The GWC Act requires that a committee of the GWC must have at least one member who is also a member of the GWC and for the committee to report to the GWC on its activities as and when directed by the GWC.¹⁸⁹
- 151 For the reasons that follow, the PCRC concludes that the PGSSC is not a committee of the GWC. The Department agrees with that conclusion.¹⁹⁰
- 152 First, evidence before the PCRC revealed either little to no awareness by GWC members of the PGSSC¹⁹¹ as well as a lack of clarity amongst GWC members as to whether the PGSSC is a committee of the GWC or an independent body.¹⁹²
- 153 Second, in recent history, there has been little to no regular reporting to the GWC by the PGSSC. That conclusion can be drawn from the following:
- a. a review of GWC agenda papers and minutes;
 - b. in February 2020 the GWC resolved to 'request' the PGSSC to provide a briefing on meeting outcomes after each meeting;¹⁹³ and
 - c. a longstanding member of the GWC from 2006 to 2020, recalled that the GWC was not informed that the PGSSC did not meet in 2020,¹⁹⁴ information which, one would expect, would be passed on to a board with a legislative duty of involvement and oversight.
- 154 Third, neither the minutes from March 1995 nor Sargeant's letter to the Minister in 1994 make any reference to establishing a committee of the GWC.¹⁹⁵
- 155 Fourth, Sargeant gave evidence that, prior to the amendments to the GWC Act in 2003, there was no express requirement for the GWC to actively consider problem gambling

or responsible service of gambling, nor was there any funding for such things. He made specific reference to the introduction of that legislative provision.¹⁹⁶ He saw himself as the orchestrator of a committee designed to get the organisations that participate in gambling to fund and own the issues related to that industry.¹⁹⁷ He explained that he never saw the PGSSC as a committee of the GWC, but rather a standalone entity that 'had to sit somewhere' and, given its link to the GWC, the funds contributed by members were placed with the GWC.¹⁹⁸

- 156** The GWC advised the PCRC that it maintained representation on the PGSSC since January 2015 through Sargeant, Connolly and Ord.¹⁹⁹ The PCRC was unable to reach a conclusion as to whether the GWC maintained membership on the PGSSC from inception as required by s 15(3) of the GWC Act, as it did not have access to the entire suite of PGSSC minutes. In any event, given the reasoning above, such a conclusion is unnecessary.
- 157** The GWC has a duty to formulate and implement policies for the regulation of gaming and wagering taking into account the interests of the community and the need to minimise harm caused by gambling. The history of the PGSSC and the lack of control and oversight by the GWC over it is a failure by the GWC to discharge its duty as described above.

Part Four: Operational relationship between the Gaming and Wagering Commission and the Department

Legislative framework and summary of the support role

- 158** The current Department was established on 1 July 2017 under the *Public Sector Management Act 1994* (WA) (**PSM Act**)²⁰⁰ as an amalgamation of four previous departments, following the machinery of government changes announced in April 2017.²⁰¹ The Department supports the GWC in its functions as the casino regulator, but also has a wide portfolio of responsibilities across local government, sport and recreation, culture and the arts, Aboriginal history, multicultural interests and racing, gaming and liquor regulation.²⁰²
- 159** The GWC does not have its own staff²⁰³ but under s 18, s 19 and s 21 of the GWC Act it may:
- a. utilise employees in the public service, and public service facilities, by arrangement with the relevant employing authority or department;²⁰⁴
 - b. enter into contracts with external consultants;²⁰⁵
 - c. request assistance from any departments of the public service, as well as any government instrumentalities or agencies;²⁰⁶ and
 - d. appoint public servants as authorised officers under, relevantly, the GWC Act.²⁰⁷
- 160** The legislative framework relevant to casino regulation does not bestow any duties or powers on the Department although it does bestow some duties on the CCO who, as will be described later in this chapter, is also a departmental officer. Historically, there has been no agreement between the GWC and the Department as to the terms upon which services are provided by the Department (including the CCO) to the GWC.²⁰⁸
- 161** Ord described the Department's role of supporting the GWC as broadly encompassing the following:²⁰⁹
- a. undertaking all administrative tasks;
 - b. performing audits and inspections and associated compliance reporting;

- c. undertaking any required contract and procurement;
 - d. provision of technical and IT services;
 - e. policy development work;
 - f. provision of financial services and controls;
 - g. communicating on behalf of the GWC (including with Perth Casino, the Minister and external agencies);
 - h. reporting to the Minister and Parliament; and
 - i. preparing meeting agenda papers and giving effect to any resolutions or decisions of the GWC.
- 162** The GWC does not have any oversight, supervision or interaction with the departmental officers undertaking work on behalf of the GWC,²¹⁰ save for the interaction with those who attend GWC meetings from time-to-time. One GWC member gave evidence that there are no policies or guidelines that apply to the officers doing work on the GWC's behalf.²¹¹ Chopping acknowledged this as a governance issue and said that it is being addressed currently.²¹²
- 163** Notwithstanding that the Department is the relevant employer of departmental officers, the PCRC concludes that, when departmental officers are carrying out regulatory functions, exercising powers and discharging responsibilities on behalf of the GWC, it is inappropriate that the GWC has no oversight of those departmental employees or of how functions are carried out, powers are exercised or responsibilities are discharged on its behalf. It has been a deficiency in the GWC's processes to have failed to exercise oversight. The failure has compromised the GWC's effectiveness. The Department, in failing to ensure reporting lines through to the GWC has failed to support the GWC.

Preparation of agenda papers for Gaming and Wagering Commission meetings

- 164** The business of GWC meetings is carried out through a consideration of agenda papers which are prepared by the Department.²¹³ GWC meetings are held once per month,²¹⁴ except in January, and usually at the Department's offices.
- 165** Historically there have been no Department staff specifically dedicated to the GWC, however Ord described that one part-time level five executive officer was substantially tasked with supporting GWC meetings and any actions arising from those meetings.²¹⁵ Resourcing has recently been increased such that a dedicated secretariat has been established to provide governance and meeting support to the GWC.²¹⁶
- 166** The agenda papers address agenda items and contain a recommendation, whether to note a report or make a particular decision. If a GWC member wishes to add something to the agenda, they contact the Department's administrative staff and it is added.²¹⁷ There are standing, recurring items contained on the agenda, including reports on audits and inspections, and the use of delegated powers.²¹⁸
- 167** The agenda items often include applications by Perth Casino to the GWC (sometimes termed submissions), such as applications for the GWC to authorise new games.²¹⁹
- 168** The established process upon receipt of an application is that it is provided to departmental officers²²⁰ to review before it is presented at GWC meetings as an agenda item, accompanied by an agenda paper and recommendation. Agenda papers sighted by the GWC are written to support the recommendation of the departmental officer who authored the paper. That is, they do not set out arguments for and against a proposal and the options available to the GWC before the case is made for the author's recommendation.

- 169** Since 2014, the PSC's governance guidance has recommended that the chair of the board is responsible for matters including leading meetings and 'shaping the meeting agenda in relation to goals, strategy, budget and executive performance'.²²¹
- 170** Connolly gave evidence that since 2017 he had effective control of the agenda, due to his intimate knowledge of Perth Casino operations and the environment in which it operates.²²² Ord corroborated this evidence as he described that agenda items were submitted to the departmental executive officer and then 'vetted' by the CCO (who was Connolly during Ord's tenure as chair).²²³ Sargeant, on the other hand, said he usually settled the meeting papers when he was GWC chair.²²⁴ Chopping also sees the role of the chair differently to Ord, and describes it to include overseeing the preparation of papers and agendas.²²⁵
- 171** Connolly also gave evidence that he regularly contributed to GWC meetings by providing briefing and agenda papers on specific issues.²²⁶
- 172** Save for the agenda papers he authored, Connolly did not have control over the content of the agenda papers prepared by others in the Department.²²⁷ While he would occasionally ask questions about the papers, Connolly did not consider it open to him to change the recommendations.²²⁸
- 173** Speaking generally, several of the GWC members considered the agenda papers for GWC meetings to be adequate, and where they did not sufficiently assist GWC members in making a decision, the GWC sought additional information from the Department and it was provided.²²⁹ Members also described that occasionally departmental officers would attend meetings to provide additional detail or explain an agenda paper.²³⁰
- 174** One member testified that they considered that aspects of the agenda papers were not adequate.²³¹ For example, they noted that the agenda did not include a range of important matters such as an ongoing register of conflicts of interests, a standing monthly agenda item to consider strategy and risk or a schedule of important dates.²³² The lack of a register of conflicts of interest in particular, is explored in Chapter Eleven: Conflicts of Interest. That same member also considered the minutes of the GWC meetings were insufficiently detailed.²³³
- 175** Another member also gave evidence that the agenda papers were not adequate due to the sheer volume of material which had to be considered in a short amount of time.²³⁴ They suggested that consideration of matters for decision was made more difficult by the inclusion of irrelevant material.²³⁵
- 176** Some members gave evidence that they previously requested that the agenda papers be reviewed and prepared differently.²³⁶ One observed that no changes had been made following their request.²³⁷
- 177** Chopping gave evidence in August 2021 in which she flagged an impending improvement to agenda papers.²³⁸
- 178** When another member gave evidence before the PCRC for a second time in August 2021, they observed a significant improvement to the structure of the agenda papers as evidence of considerable effort having been exerted in refining them.²³⁹
- 179** The PCRC acknowledges that views may differ between GWC members about what comprises an adequate set of agenda papers. However, at least two members felt that their requests prior to May 2021 for improvement of certain aspects of the agenda papers were not substantively considered until August 2021.
- 180** The PCRC observes that to assist the GWC to effectively discharge their governance responsibilities, the form and content of agenda papers should meet the reasonable requirements of the GWC members. Further, in order to allow GWC members to reach their own views about applications by Perth Casino, all arguments reasonably available for and against allowing an application ought to be set out in an agenda paper, before the author

sets out their rationale for their recommendation. The failure to provide the GWC with arguments against the author's recommendation, as well as arguments in favour of it has been a failure by the Department to support the GWC.

- 181** The adequacy of the content of some specific agenda papers is examined in Chapter Twelve: Harm Minimisation.

Delegation of the Gaming and Wagering Commission's power

Power of delegation

- 182** All of the GWC's statutory powers can be delegated, save for the power of delegation itself, to a committee of the GWC, the CCO, an inspector or specified person or persons of a specified class or persons holding a specified office or class of office.²⁴⁰

Appropriate exercise of delegation power

- 183** In 2014, the PSC's governance guidance introduced content in respect of delegations. At that stage, the guidance identified:²⁴¹
- a. the importance of knowing any statutory limitations on board delegations as well as to whom powers may be delegated (for example, to a member or a subcommittee);
 - b. that it is good practice to maintain a register of delegations;
 - c. that delegating power does not absolve the board from accountability for the delegated powers or functions;
 - d. a decision to delegate power must be made formally by the board and recorded in the minutes of the meeting and an instrument of delegation must be signed by the chair;
 - e. a person who holds a delegation must comply with the limits and conditions of the delegation; and
 - f. the board should ensure it receives regular reports on the use of delegations to ensure that they are being applied appropriately and as intended.
- 184** Similar guidance is reflected in the subsequent versions of the PSC's governance guidance.²⁴²
- 185** The PSC's governance guidance emphasises the importance of a board maintaining oversight of the exercise of delegated power as the body ultimately accountable for all actions taken or decisions made under delegation.

Gaming and Wagering Commission's delegation process

- 186** The PCRC has seen numerous instruments of delegations signed by the chair, deputy chair and members of the GWC. There is evidently no policy or standard procedure that sets out the principles to be applied in deciding whether and how the GWC is to delegate its power. There is no evidence that the GWC has a procedure for documenting the fact of a delegation of its power or the reasons for the delegation.
- 187** Appendix M to this report is a table which summarises a number of the most recent delegations made by the GWC. The PCRC makes the following observations with respect to those delegations.
- 188** The delegations are typically to positions, rather than named individuals. This practice is permitted²⁴³ and avoids the practical difficulties that arise from an individual delegatee being on leave or moved to a different position. Typically, the GWC delegates its powers to director level positions of the Department or to the position of chair or deputy chair of the

GWC. Exceptions include, for example, delegations of power to a customer service officer within the Department so that they can issue non-contentious casino key employee licences under reg 8(1)(a) of the *Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985 (WA) (CCBILE Regs)*.²⁴⁴ These licences are discussed in more detail in Chapter Nine: Other Criminal Activity.

- 189** The earlier instruments of delegation expressly refer to the relevant resolution of the GWC by which the delegation was made and identify whether it is to replace a previous instrument.²⁴⁵
- 190** In April 2012, an agenda paper prepared by the Department for the GWC recommended a delegation of certain powers to the CCO in respect of, amongst other things, declaring an authorised game or making a direction under the CC Act.²⁴⁶ The agenda paper explained that the effect of making a delegation would be that, when submissions were received from Perth Casino, the GWC would have the opportunity to comment on them and that the delegated power would not be exercised by the CCO until the GWC had given its support to the submission.²⁴⁷ However, the terms of the GWC's resolution and the instrument of delegation were not so qualified.²⁴⁸ The delegation of power to the CCO is discussed later in this chapter.
- 191** The GWC has on four occasions delegated all of its powers under, relevantly, the GWC Act and CC Act, save for the power of delegation itself:
- a. to the chair and deputy chair respectively on 18 December 2012 (by separate instruments) (**December 2012 delegations**);²⁴⁹
 - b. to the DDG on 28 April 2020 (**April 2020 delegation**);²⁵⁰ and
 - c. to the Director Strategic Regulation of the Department on 16 February 2021 (**February 2021 delegation**).²⁵¹
- 192** In respect of the December 2012 delegation to the deputy chair, the agenda paper recommending the delegation²⁵² noted that 'it was agreed' that it would be appropriate to issue to the deputy chair a level of delegation similar to that to be issued to the chair.²⁵³
- 193** It is not clear on the evidence before the PCRC when, why and amongst whom it was agreed that the delegation to the deputy chair of all of the GWC's powers would be appropriate, in circumstances where:
- a. under the GWC Act, the purpose of the deputy chair is to act as chair in the absence or incapacity of the chair;²⁵⁴
 - b. when acting as chair, the deputy chair could presumably act pursuant to the delegation made to the position of chair; and
 - c. the instrument of delegation does not limit the power of the deputy chair to circumstances where the chair is absent or incapacitated.
- 194** In respect of the April 2020 delegation:
- a. The agenda paper recommending the delegation to the DDG explained that:²⁵⁵
 - i. the delegation was to assist in facilitating the efficient sale of the WA TAB by allowing the timely action of relevant matters between GWC meetings (such as the transitioning approvals to a new wagering licensee); and
 - ii. all instances of the exercise of power would be submitted to a subsequent meeting of the GWC for ratification.
 - b. At its meeting on 28 April 2020, the GWC resolved to delegate its powers in accordance with the recommendation, but the minutes also record that the delegation was 'to enable the position holder to exercise, in a timely manner, matters that may

require attention between Commission meetings'.²⁵⁶

- c. One member who was present at the meeting gave evidence that they understood that the GWC intended to allow the DDG to act on its behalf:
 - i. if an urgent but minor issue arose between meetings; and
 - ii. to formalise and finalise approvals given 'in principle' by the GWC.²⁵⁷
 - d. The proposed, resolved and perceived purpose of the delegation is not reflected in the instrument of delegation itself which contains no qualifications and includes the delegation of powers under the Acts including the GWC Act for which the GWC is responsible.²⁵⁸
- 195** The PCRC infers that the April 2020 delegation as made was evidently broader than it needed or was intended to be.
- 196** The need for the February 2021 delegation was said to be precipitated by the DDG (Connolly) stepping aside as CCO.²⁵⁹ However, the position of CCO had not previously been the subject of a general delegation of all of the GWC's powers. If the expectation was that Connolly would have no further involvement with the GWC while he remained as DDG, then the April 2020 delegation should have been revoked at the time the delegation to the position of Director Strategic Regulation was made.
- 197** In respect of the overall process of delegating GWC's powers since at least 2012, the PCRC concludes that the GWC:
- a. in April 2012 and April 2020 made instruments of delegation that do not reflect, in that they are broader than, the delegation which it intended to grant;
 - b. in December 2012 delegated unnecessarily broad powers to the position of deputy chair; and
 - c. in February 2021 should have revoked a previous delegation to the position of DDG at the time that it delegated its powers to the position of Director Strategic Regulation, but did not do so.
- 198** In these regards, the PCRC consequently finds that the GWC has not appropriately exercised its power of delegation. These failures reflect a broader failure by the GWC to comply with PSC's governance guidance in respect of delegations, and a failure of the Department to support the GWC. This is because each delegation was made after a recommendation to do so by a departmental officer and departmental officers were responsible for preparing the instruments of delegation to implement the GWC's decision.
- 199** The PCRC acknowledges that as a result of the information obtained in the course of the PCRC's inquiry, at its meeting on 25 May 2021, the GWC requested that all delegations be revoked with a view to reconsidering the delegation structure.²⁶⁰

Schedule of delegations and register of decisions

- 200** The Department submits that the GWC's instruments of delegation are kept in a central file by the Department.²⁶¹ It concedes that GWC members are not provided with a schedule of those delegation instruments as part of the induction process.²⁶²
- 201** As identified earlier in this chapter, the PSC governance guidance recommends that a board charter is supported by a schedule of delegations.
- 202** To the extent that the Department maintains a central file of instruments delegating the GWC's power, a schedule of delegations has not been made available to GWC members, either through induction or otherwise. Similarly, the GWC has not required the Department to maintain and provide to the GWC a schedule (or other record) of delegations.

- 203** In the absence of a schedule of delegations, there is a risk members may be unaware of the fact or details of a delegation made prior to their appointment. That is not consistent with good governance.
- 204** Two GWC members gave evidence that there was no central repository or register of exercised delegated power which the GWC members could inspect at any time²⁶³ and another member gave evidence that they had never seen one, nor do they know if one exists.²⁶⁴
- 205** The Department also concedes that a central register of the exercise of delegated power on behalf of the GWC is not maintained; rather, those decisions are kept on the relevant departmental file associated with the decision.²⁶⁵ The Department submits that a register is under development to be implemented in 2022.²⁶⁶
- 206** The absence of a register of decisions made under delegated power does not aid good governance. It is to be expected that the GWC's oversight of the exercise of delegated power would be enhanced by the ability to view holistically the way power has been exercised on its behalf, rather than only on a decision-by-decision basis.
- 207** The PCRC consequently finds that:
- a. the Department has not adequately supported the GWC in that it has not made available to the GWC a schedule of the instruments of delegation or a register of decisions made under delegation; and
 - b. it was inappropriate for the GWC not to require the Department to maintain and provide to the GWC a schedule of the instruments of delegation or a register of decisions made under delegation.
- 208** The Department has informed the PCRC that it has now obtained legal advice in respect of GWC delegations and that a review process is ongoing as it progresses its Strategic Work Plan, which process includes incorporating a schedule into the induction program for new GWC members and implementing a register of delegations.²⁶⁷

Reporting of the exercise of delegated power to the GWC

- 209** A review of the GWC's agenda papers indicate that there was a standing agenda item for the purpose of reporting that delegated GWC power had been exercised.
- 210** The PCRC found no evidence of any document which set out the GWC's expectations or preferences in respect of reporting the exercise of delegated power. The GWC concedes that there is a lack of procedural rigour in relation to the documentation of policies and processes, including in respect of delegations.²⁶⁸
- 211** The Department concedes that not all exercises of delegated power were reported to the GWC, and the report in the agenda papers sometimes contained limited information.²⁶⁹
- 212** In its concession, the Department did not elaborate on which exercises of power were not reported, nor which reports were insufficient. The PCRC has identified an example which demonstrates an insufficiently detailed report of the use of delegated power.
- 213** The GWC has given directions to the Perth Casino licensee and these have been consolidated as the Burswood Casino Directions (**Directions**).²⁷⁰ The Directions require, amongst other things, that Perth Casino maintain the Casino Manual (Operations) (**CM(Ops)**). In April 2017, Connolly, as CCO, approved amendments to the junket reporting procedures in the CM(Ops) the detail and effect of which is discussed in Chapter Six: Junkets.
- 214** The GWC was notified during its meeting on 23 May 2017²⁷¹ of Connolly's exercise of delegated authority and the members resolved to note those approvals issued under delegation.²⁷²

215 The relevant agenda item detailing Connolly's exercise of delegation is as follows:²⁷³

Date	Amendment	Details
11/4/17	Casino Manual (Operations) s 19 – International/ Interstate Gaming Business (new section)	New [s]ection 19 International/Interstate Gaming Business inserted as a result of removing content in relation to Junket Program from the Acc. & Internal Control Policies & Procedures s03A Main Bank (gradually being phased out). Requirement for Junket Operators to be approved by GWC has been removed, in line with Regulations that were previously amended in 2010.
11/4/17	Accounting and Internal Control Policies & Procedures – s 03A Main Bank	Content in relation to Junket Program, Gaming Incentive Program & Foreign Currency Program deleted and new s 19 – International/Interstate Gaming Business inserted into Casino Manual (Operations).

216 Connolly explained the use of delegated powers was to approve the amendments to the Casino Manuals as falling within the category of 'administrative type functions and cleaning up manuals'.²⁷⁴ While the 'details' above noted that a new section was 'inserted as a result of removing content in relation to Junket Program', the amendments comprised some 32 pages of deletions and additions and no such contextual information was provided in the agenda papers.²⁷⁵

217 The PCRC concludes that in this instance, the report by the Department of the use of delegated power was not sufficiently detailed as the GWC members:

- a. were not informed of the instrument of delegation relied upon; and
- b. based on the information provided, could not have appreciated, nor had the opportunity to scrutinise, the content which was removed and added to the CM(Ops) as it was not provided to them.

218 The Department has not adequately supported the GWC in that it has not consistently and fully reported to the GWC the exercise of delegated power by department officers.

Chief Casino Officer

Legislative framework providing for the appointment of the Chief Casino Officer

219 The position of CCO is a statutory office of the GWC prescribed under s 9(1) of the CC Act.

220 The Department and GWC submit that, currently and historically, the CCO is an officer of the Department and appointed by the 'employing authority'²⁷⁶ of the Department; that is, the DG.²⁷⁷ That is consistent with the evidence.²⁷⁸ The dual roles of the CCO as an officer of the Department and an officer of the GWC has compromised the capability and effectiveness of the GWC. The principal officer of the GWC has not been selected or appointed by the GWC or subject to direction from the GWC, except in relation to discrete matters brought to the GWC's notice and neither has the CCO been accountable to the GWC.

221 The GWC and the Department have each made submissions as to why the Department, rather than the GWC, appoints the CCO.

222 The Department submits that:

- a. the employing authority for all employees of any department or agency entering into an arrangement with the GWC under s 18(1) and (2) of the GWC Act will be the DG of the relevant department or agency;
- b. s 18 of the GWC Act does not envisage that when such an arrangement is entered into that the GWC will take on the role of employing authority; and
- c. accordingly, the DG of the Department is the employing authority of all employees of the Department currently assisting the GWC with the performance of its functions, including the officer holding the position of CCO, save that the GWC will be the employing authority if it directly engages temporary or casual employees as contemplated by s 9(2).²⁷⁹

223 The GWC submits that:

- a. the position of CCO is that of a public servant appointed under Part 3 of the PSM Act;²⁸⁰
- b. s 9(2) of the CC Act appears to restrict the GWC's power to employ staff to only employ casual or temporary employees;
- c. otherwise, s 18 and s 19 of the GWC Act, in substance and effect, only permit the GWC to be staffed, or supported by Public Service staff already employed within a department or State agency or instrumentality; and
- d. it therefore follows that the full-time or part-time employees appointed under the PSM Act for the purpose of s 9(1), must be employees of an employing authority other than the GWC if they are to be permanent employees.²⁸¹

224 The PCRC's view is that s 18 and s 19 of the GWC Act relate to staffing arrangements for the GWC more generally and are not of direct assistance in ascertaining whether the GWC can or should appoint or employ the CCO.

225 Section 9(1) of the CC Act is in these terms:

There shall be appointed under and subject to Part 3 of the Public Sector Management Act 1994 a Chief Casino Officer and such government inspectors and other officers, either full time or part time, as, having regard to the staff and facilities otherwise available to the Commission, are necessary to provide the administrative and other services in relation to casinos required by a casino complex agreement, this Act, the Gaming and Wagering Commission Act 1987 or any other Act.

226 This provision is not explicit as to the person or entity who is to appoint the CCO but is explicit that the appointment must be under and subject to Part 3 of the PSM Act.

227 Part 3 of the PSM Act concerns, amongst other things, employment of persons within the 'Public Service' which, by s 34, comprises government departments, SES organisations and people employed under Part 3, either in departments, SES organisations 'or otherwise'.²⁸²

228 Although not entirely clear, the language of Part 3 appears to equate the 'appointment' of a person to a position in the Public Service with their 'employment' in that position.

229 The Department is part of the Public Service whereas the GWC, as a 'non-SES organisation', is not.²⁸³ Section 34 in Part 3 contemplates employees may be employed 'otherwise' than by departments and SES organisations.

230 Section 64(1) in Part 3 empowers the employing authority of a 'department or organisation' to appoint public servants in accordance with the Public Sector Commissioner's instructions.

231 Section 64(6) goes on to provide:

The employing authority of an organisation shall not make an appointment under subsection (1) unless the written law under which the organisation is established or continued authorises or requires the appointment or employment of public service officers for the purposes of that organisation.

232 The GWC is an organisation for the purposes of the PSM Act.²⁸⁴ It is therefore at least arguable that the GWC could appoint and employ the CCO under Part 3 of the PSM Act. However, the PCRC acknowledges that the position is far from clear.

233 The power to appoint and employ the CCO should enure to the GWC and not to the Department. As an officer of the GWC who provides administrative and other services under the CC Act and as required by the State Agreement, it is necessary that the CCO is accountable to the GWC in that role and that, likewise, the GWC is responsible to oversee the CCO and empowered to direct them. The existing legislative framework should be amended to render this clear.

Appointment of the Chief Casino Officer in practice

234 As already mentioned, the CCO has always been an employee of the Department, appointed by the DG. The DG is also the chair of the GWC, but the appointment is not made in that capacity.²⁸⁵ GWC members who gave evidence to the PCRC understood the CCO to be a departmental employee, appointed by the Department.²⁸⁶

235 Historically, the GWC has not been consulted about the appointment of the CCO by the DG.²⁸⁷ That remained the position with respect to the appointment of Germaine Larcombe (**Larcombe**) as CCO on 15 July 2021.²⁸⁸

236 Ord gave evidence that he recommended the appointment of Mark Beecroft (**Beecroft**) to the position of CCO to the GWC, however that appointment on 12 February 2021 had already been made by the time the GWC supported the decision at its meeting on 16 February 2021.²⁸⁹ The PCRC infers that the GWC was not consulted in advance of Beecroft's appointment.

237 In the course of the Department's oral closing submissions on 1 February 2022, the PCRC was told that the position of CCO is currently vacant but that an appointment by the DG to that position was being processed.²⁹⁰ Counsel for the Department was unable to say whether the GWC would be consulted about that appointment or would be able to exercise any power of veto with respect to it.²⁹¹

238 By letter dated 11 February 2022, the PCRC was informed by the Department that Jennifer Shelton (**Shelton**) of the Department was appointed CCO on 1 February 2022.²⁹² No detail was provided as to whether the GWC were consulted. The instrument of appointment was signed by Chopping as DG.²⁹³ Shelton was also recently appointed to the role of Executive Director Racing Gaming and Liquor.²⁹⁴

239 The Department's approach in respect of appointing the CCO occurred in the context of the CCO being the GWC's statutory officer whose role, as set out below, is principally concerned with casino regulation, a matter for which the GWC, as a whole and not just the chair, is solely responsible.

240 The PCRC concludes that:

- a. the Department has assumed the role of appointor and employing authority with respect to the position of CCO; and
- b. notwithstanding that the CCO has always been a departmental employee and the DG is the chair of the GWC, the DG should have at least consulted the GWC in respect of the appointment of the CCO.

241 The PCRC finds that the Department did not adequately support the GWC by not doing so.

Statutory and delegated powers of the Chief Casino Officer

- 242** The CCO (as well as any other officer appointed under s 9(1)) has, and may exercise, such powers and perform such functions and duties as are conferred or imposed by or under the CC Act (including subsidiary legislation), any other Act, or a casino complex agreement.²⁹⁵
- 243** The statutory functions of the CCO under the CC Act include the power to:
- a. institute legal proceedings for an offence under the CC Act;²⁹⁶ and
 - b. issue an exemption to the Perth Casino licensee from compliance with the requirement to keep its books of account in a place other than the casino complex, or consent to their temporary removal.²⁹⁷
- 244** The CCO is also considered an 'authorised officer' for the purposes of the GWC Act.²⁹⁸ That allows the CCO to enter gaming premises and conduct examinations of gaming equipment and books (amongst other things) and to scrutinise and inquire into the conduct of gambling.²⁹⁹
- 245** The CCO may, with the approval of the GWC, delegate to another officer of the GWC (which may be a departmental officer appointed under s 9(1)), the exercise or performance of any of the powers, functions or duties of the CCO under the CC Act, any other Act or a casino complex agreement.³⁰⁰ A CCO cannot delegate their power of delegation, nor can they delegate any powers already delegated to them by the GWC.³⁰¹
- 246** As examined earlier in this Part, under the GWC Act, the GWC may delegate the exercise of all of its powers to the CCO, apart from the power of delegation itself.
- 247** As can be seen in Appendix M: List of Gaming and Wagering Commission Delegations, in recent history the CCO has been delegated powers by the GWC on three occasions: 24 April 2012,³⁰² 16 December 2014,³⁰³ and 27 June 2017.³⁰⁴
- 248** Pursuant to those delegations, the CCO has been able to exercise the GWC's powers:
- a. to declare and revoke the validity of a game under s 22(1) of the CC Act;
 - b. to issue a direction to the Perth Casino licensee under s 22(3) of the CC Act to alter the rules of an authorised game;
 - c. to give a direction to the Perth Casino licensee under s 24(1) and (1a) of the CC Act with respect to the system of internal control and administrative and accounting procedures applying to its gaming operations;
 - d. to affix the seal of the GWC³⁰⁵ to instruments and documents giving effect to the above;
 - e. in respect of dir 6.3 of the Burswood Casino Directions issued under s 24 of the CC Act, to approve any variation to:
 - i. the placement or positioning of the Keno or Trackside stations, count rooms, cages and any associated facilities, including the computer room; or
 - ii. areas within which the pit configurations, gaming tables and EGM are placed;
 - f. to approve purchase requests for gaming equipment and chips under dir 10.5 of the Directions; and
 - g. to grant an application for a casino key employee licence or a casino employee licence for applicants considered suitable under r 8(1)(a) of the CCBILE Regs and, under r 9(4), vary any term, condition or restriction imposed or issue a replacement licence.
- 249** In addition, the December 2014 instrument of delegation also empowered the CCO to approve suppliers of gaming equipment to Perth Casino.³⁰⁶

Job description, oversight and accountability

- 250** When Larcombe was appointed as CCO, she was also the Executive Director, Racing Gaming and Liquor,³⁰⁷ a newly created position at that time.³⁰⁸ The associated written position description as at July 2021, spanning five pages, briefly identifies part of the 'duties of the position' as Executive Director as follows:³⁰⁹
- Administers and ensures compliance with relevant racing, gaming and liquor legislation in a manner consistent with Government policy. As part of these duties, undertakes the statutory role of Chief Casino Officer under the Gaming and Wagering Commission Act 1987.
- 251** As at 17 April 2020, the role of CCO was identified briefly in a five page position description for the DDG, noting in the duties of that position that the 'results and outcomes' required of the DDG included the exercise of statutory authority as the CCO in accordance with the CC Act.³¹⁰ As at 17 September 2018 and 9 March 2012, the DDG position description similarly identified the role of CCO under the heading of 'work description'.³¹¹
- 252** David Halge (**Halge**) was appointed CCO in 1997 and continued in that role until he retired in 2007.³¹² He was CCO at the same time as being Director Operations of the Department and deputy chair of the GWC.³¹³ Halge described that by being CCO and Director Operations he was responsible for assisting the GWC in respect of casino gaming and gaming outside of the casino, but the CCO role was strictly in respect of casino gaming.³¹⁴
- 253** Janine Belling (**Belling**) was CCO from 2007 until 2012 and gave evidence that the role was 'attached' to the job description of the Director Licensing position she held.³¹⁵ She perceived the role of CCO as 'the senior officer' working for the GWC³¹⁶ and described fulfilling it on a part-time basis as she was unable to quantify the amount of time she spent performing her CCO duties.³¹⁷ Belling also described a tension that she felt during her tenure such that she felt she was not able to satisfactorily discharge her functions as CCO, in part because she needed more time to understand the complexity of Perth Casino and the quickly changing regulation landscape.³¹⁸
- 254** Belling was required to provide administrative support and other regulatory services to the GWC. She explained that in the context of overseeing departmental employees processing casino employee applications, she would refer any contentious applications to the GWC for its consideration.³¹⁹ She described representing the GWC in communications with Perth Casino, and at national and international conferences relating to casino regulation.³²⁰
- 255** Connolly was appointed CCO in July 2012.³²¹ In the latter years, Connolly held the role of CCO concurrently with his role as DDG of the Department and deputy chair of the GWC. He was never given any statement of duties or responsibilities when he commenced the role, nor did anyone outline what his duties were.³²²
- 256** Connolly described the role of the CCO as an important, but limited, one.³²³
- 257** In addition to controlling the agenda for the GWC meetings since mid-2017, Connolly described that his role as CCO was largely to sign off on recommendations to the GWC in agenda papers that had been provided to him by the Department.³²⁴ He said that prior to signing, he would review the materials he was provided to ensure he was satisfied as to what he was being requested to do.³²⁵
- 258** He also recalled his role in licensing casino employees, including key employees.³²⁶ That process, which was also undertaken by other departmental officers is explored in more detail in Chapter Nine: Other Criminal Activity.
- 259** Connolly frequently attended GWC meetings and said that the central purpose of his attendance was to provide an update as to casino operations and provide advice on all of

the agenda items, as required and requested.³²⁷ He also described that, in his role as DDG and CCO, he was to give effect to the wishes of the GWC.³²⁸

- 260** Beecroft replaced Connolly as CCO on 12 February 2021,³²⁹ followed by Nicola Perry, another departmental employee, who acted in the role prior to Larcombe's appointment.³³⁰ Beecroft and Perry both maintained departmental positions during their short tenures as CCO. Beecroft described the role of CCO as a statutory office, with licensing and administrative functions, combined with an expectation to attend GWC meetings.³³¹
- 261** Sargeant gave evidence that the GWC had no specific oversight of the CCO's performance, whether that be by setting KPIs or otherwise, and that performance management was ultimately left to 'public service processes'.³³²
- 262** Ord gave evidence that the GWC did not conduct any performance reviews of departmental staff generally in respect of the work they undertook for the GWC, nor did the members have any power to discipline or dismiss a departmental officer for good cause.³³³ That was undertaken by the Department on behalf of the GWC.³³⁴
- 263** Chopping gave evidence that the CCO reports to their superior in the Department, and ultimately the DG.³³⁵ She has received feedback from the GWC and the Department that oversight of the role of CCO has not been adequate in the past.³³⁶
- 264** Belling reported to the DG of the Department.³³⁷ Connolly said that while he reported to the GWC rather than the DG, both had informal oversight of his functions as CCO and if there was something to report in between GWC meetings, he would report to the DG in their capacity as chair of the GWC.³³⁸ Notwithstanding this reporting and oversight structure, neither the GWC nor the DG (or anyone else) gave him direction, so effectively he saw that any discharge of his role as CCO was entirely at his discretion.³³⁹
- 265** The PCRC concludes that neither the Department nor the GWC have prepared or maintained a written job description for the position of CCO.
- 266** It is apparent from the evidence given to the PCRC that there was no coherent or consistent understanding shared by the GWC, the Department or successive CCOs as to the content of the CCO role and whether or the extent to which the CCO was accountable to, and able to be directed by, the GWC. That situation may be viewed as a direct consequence of the lack of a job description for the role. As already explained, the PCRC's view is that it is necessary that the CCO is accountable to and directed by the GWC, not the Department.
- 267** Given that the role of CCO has never been a full-time position and has typically been undertaken by a departmental officer with other responsibilities in respect of casino regulation it should have been apparent to both the GWC and the Department that a job description for the role of CCO was of particular importance in order to delineate the responsibilities the officer had as CCO and that they had otherwise.
- 268** As the Department assumed the role of appointor and employing authority of the CCO, it was its role to prepare a job description. The PCRC finds that, in not doing so, the Department has not adequately supported the GWC.
- 269** Given that the CCO was an officer of the GWC to which position the GWC delegated numerous powers, the GWC should have requested that the Department prepare a job description for the role of CCO. The PCRC finds that it was inappropriate of the GWC not to do so.
- 270** The PCRC also finds that the lack of a job description for the position of CCO has potentially compromised the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities.

Chief Casino Officer training

- 271** Halge gave evidence that, when he was appointed CCO, he was given no formal training about the regulation of casinos or casino gaming.³⁴⁰ He explained that he attended all of the GWC's meetings between 1987 and 1997, due to his role at that time as Director of Gaming, and therefore had the opportunity to listen to all the information regarding casino regulation.³⁴¹
- 272** Belling gave evidence that prior to her appointment as CCO, her 'background in terms of the casino ... was very limited'.³⁴² She received no formal training in respect of the specific functions of the role and described a 'hands on/learn as you go experience',³⁴³ being mentored by Sargeant and learning from Connolly who she saw as having 'long experience' from working in the Department and from other jurisdictions nationally.³⁴⁴
- 273** Connolly was a casino departmental inspector (described later in this Part) from late 1989 to 2002 and then moved to more senior casino regulatory positions within the Department thereafter.³⁴⁵ He received no training prior to or following his appointment as CCO in 2012, save for a course he participated in regarding gaming regulation which was run by the University of Las Vegas and held in Sydney in 2019.³⁴⁶
- 274** Beecroft said that he was not given instructions or guidance from anyone as to how to perform the role of CCO.³⁴⁷ He said he took it upon himself to review the CC Act, the Directions and the CCBILE Regs.³⁴⁸
- 275** When Larcombe was appointed CCO, she did not have any specific qualifications or experience in relation to the regulation and oversight of casinos and casino gambling.³⁴⁹ Larcombe gave evidence that when she accepted the secondment to the Department, she was advised that an external consultant with expertise in casino regulation would be engaged to assist her.³⁵⁰ She was experienced in non-gambling regulation.
- 276** The PCRC concludes that successive CCOs have not had any, or any adequate, induction or ongoing training relevant to that role.
- 277** Appropriate induction and ongoing training of the CCO are important to ensure that the CCO can capably and effectively discharge their role throughout the term of their appointment.
- 278** The lack of a job description and a clearly defined role for the CCO may have made it difficult to formulate an induction and training program specific to the CCO role. However, as the Department, through the DG, employed and oversaw the work of the CCO, it had the primary responsibility to ensure that the CCO was and remained appropriately skilled to perform the role. Further, as the CCO was an officer of the GWC performing a role in relation to casino regulation, the GWC ought to have requested that the Department properly induct and train the CCO.
- 279** Given that members of the GWC are not usually skilled casino regulators, it is very important that the CCO be a highly skilled regulator or casino regulator. If they do not come to the position of CCO with casino regulation experience they must receive training in casino regulation. The community can have no confidence in the quality of casino regulation in Western Australia otherwise. The same applies if they come to the position of CCO as an experienced regulator without training in theories of regulation, and regulatory posture and practice. Casino regulation is a complex area. On the job training may be sufficient for a government inspector, but a CCO requires a level of expertise beyond what on the job training can provide.
- 280** The PCRC finds that the lack of induction and training process for successive CCOs has compromised the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities.

- 281** The PCRC finds that in not providing an appropriate induction and appropriate ongoing training for successive CCOs, the Department has not adequately supported the GWC.
- 282** The PCRC finds that the GWC has not acted appropriately in that it has not requested the Department to provide an appropriate induction and appropriate ongoing training for successive CCOs.
- 283** Three case studies follow that illustrate the practical issues that arise as a consequence of the present structural deficiencies in the CCO position identified above.

Case study one

- 284** The first case study relates to the GWC's consideration in 2014 of EGMs with a newly developed ball delivery system.

- 285** The minutes for the GWC meeting on 24 March 2014 record as follows:³⁵¹

5.2. Shuffle Master EGM Ball Delivery

The Deputy Director General provided members with a video demonstration of a spinning reel poker machine followed by video and machine demonstrations of a number of EGMs using rotating balls dropping into tubes to determine the outcome of the games. The EGM manufacturer Shufflemaster has developed this delivery mechanism for a number of games approved for use at Crown Perth.

Whilst members accepted that machines using the ball delivery system are not poker machines and that all the approved games meet the requirements of the WA Appendix to the Gaming Machine National Standard, the Deputy Director General was requested to liaise with Crown Perth with a view to decreasing the game speed by a further 20%.

- 286** Connolly understood his instruction was to liaise with Perth Casino with a view to changing the minimum speed of the EGM game from five seconds to six seconds (to slow the game down).³⁵²
- 287** Connolly appreciated that the increase to the minimum speed would lead to fewer games being played in a finite period, so this could be assumed to be to Perth Casino's financial disadvantage.³⁵³
- 288** The minutes for an Operations Division meeting on 27 March 2014, attended by both Department and Perth Casino representatives, record that Connolly advised the meeting that the GWC required the Department to examine the current five second 'speed of play' provisions in the Western Australian appendix to the Australian/New Zealand Gaming Machine National Standards (**WA Appendix**) and provide a report on whether the speed of play should be increased to six seconds. The minutes record that Connolly advised he would liaise with Perth Casino in this regard.³⁵⁴
- 289** Connolly then engaged with both Joshua Preston (**Preston**) and Paul Hulme (**Hulme**), representatives of Perth Casino, about the issue.³⁵⁵
- 290** Connolly subsequently met with Hulme in around June 2014 to ask him if Perth Casino could provide him with high level dot points explaining the impact of the change on Perth Casino.³⁵⁶
- 291** Connolly gave evidence that his 'personal view' was that he did not see a need to change the minimum speed of play requirement from five seconds to six seconds as five seconds had been the requirement 'for a long period of time'.³⁵⁷
- 292** When asked if Connolly saw it as his role to advocate for the GWC's position to Crown regarding the increase of the minimum speed of play to six seconds, Connolly said:³⁵⁸

I saw it as my role to inform Crown that that is what the Gaming and Wagering Commission was considering and my role to inform the Gaming and Wagering

Commission on what the full implications of that decision may be because there may be unwanted implications for that that they weren't considering. Again, they were looking at a video, not an actual game.

- 293** Connolly acknowledged that 'there are obvious benefits to increasing the minimum speed of play and they are harm minimisation benefits'.³⁵⁹
- 294** In a subsequent email exchange between Connolly and Preston on 20 June 2014, Preston set out various detrimental consequences of the proposed change in speed of play, including estimated reductions in casino revenue of between \$40 million and \$50 million per annum and reductions in tax revenue to the State of between \$8.4 million and \$10.5 million per annum.³⁶⁰
- 295** Preston then sent a further email to Connolly to ask if his information was sufficient.³⁶¹
- 296** Connolly responded:³⁶²
- Yeah, I have already put together dot points for an argument against increasing the speed which includes some of the info you provided. The revenue loss figures sound a bit heavy so I am assuming you have made some assumptions and that the loss estimated is if the GWC determined to slow game speed across the board. Regardless, I don't think it[']s a good idea and the figures will be useful for me for illustration.
- We talk about the thin end of the wedge when considering your proposals and it[']s just as valid a concern when considering ours. The GWC, if they wish to take this any further, need to consider very carefully the full impacts and particularly the range of economic outcomes that may result. Sounds a little dramatic but the current system and requirements work and in my view are not broken.
- Anyway, I can put my hand on my heart and say we have consulted.
- I will let you know asap how I went.
- Mick
- 297** Connolly confirmed to the PCRC that he had put together dot points for an argument against increasing the minimum speed of play before he had heard from Perth Casino as to its position.³⁶³
- 298** Connolly said that he thought the GWC's request for him to consider the change in speed of play to six seconds was flawed because it was made in response to a video presentation.³⁶⁴
- 299** Connolly recommended to the GWC that it not increase the minimum speed of play.³⁶⁵
- 300** The GWC minutes for 24 June 2014 record that Connolly:³⁶⁶
- ... reported on his enquiries relating to reducing the speed of play of electronic gaming machines (EGM) at Crown Perth. The DDG outlined a number of adverse consequences that would need to be considered as part of any decision to amend the existing requirements.
- In order to reduce inconsistencies in the requirements between game types and considering the potential economic and other unwanted outcomes resulting from increasing the time taken to play an EGM, the DDG recommended no further action.

Conclusions in respect of case study one

- 301** At the GWC meeting on 24 March 2014, the GWC directed Connolly 'to liaise with Crown Perth with a view to decreasing the game speed by a further 20%', not to consider the merits of an increase in the minimum game speed of a particular EGM game himself.

- 302** For the following reasons, the PCRC concludes that Connolly acted inconsistently with the GWC’s direction because of his personal view that the EGM speed of play should remain at five seconds.
- 303** First, Connolly commenced putting together an argument against increasing the speed before he received an email from Preston on 20 June 2014 conveying the Perth Casino’s position.
- 304** Second, the PCRC infers from the email sent by Connolly in response to Preston’s email, that Connolly did not liaise with Perth Casino with a view to achieving a decrease in the EGM game speed by a further 20%, as instructed, but instead liaised with a view to strengthening the argument that he intended to put to the GWC that there should not be a decrease in the game speed.
- 305** As CCO, Connolly was a statutory officer of the GWC and, as such, he was required to carry out lawful directions given to him by the GWC. The direction ‘to liaise with Crown Perth with a view to decreasing the game speed by a further 20%’ was a lawful direction.
- 306** Independently of the GWC’s direction, a CCO could have sought to provide objective advice to the GWC on its proposal. Such advice should have set out the reasonably available arguments for and against the proposal before setting out their own views. In no circumstances should a CCO seek to influence the GWC to their personal viewpoint by listing points only against a proposal. The language of Connolly’s email to Preston on 20 June 2014 wherein he said in effect to the regulator that he would (falsely) assert to the GWC that he had consulted with Perth Casino about the proposal, fell well short of the regulatory posture required of the senior representative of the GWC. It was likely to convey to Perth Casino that the CCO was partial to the interests of Perth Casino.
- 307** The PCRC therefore concludes that Connolly did not properly perform his role as CCO by not carrying out a direction given to him by the GWC. This omission on Connolly’s part may not have occurred, had he been appropriately trained and appointed, employed directly by the GWC and provided with a job description that clearly articulated his responsibility to comply with the GWC’s lawful directions.

Case study two

- 308** The second case study relates to the change to the GWC’s EGM policy (**EGM Policy**) in 2019.
- 309** On 7 March 2019, Barry Felstead (**Felstead**) on behalf of Perth Casino wrote to Ord to seek amendments to the WA Appendix.³⁶⁷
- 310** Felstead, Preston and James Sullivan (**Sullivan**) as representatives of Perth Casino attended the next GWC meeting, on 26 March 2019, to give a presentation to the GWC in relation to Crown’s request to amend the WA Appendix. The minutes record:³⁶⁸
- Amendments were sought to reduce the minimum game speed to three seconds from five seconds, to amend game design features and reduce [return to player].
- 311** At the next GWC meeting, the GWC requested that Connolly prepare an agenda paper ‘in relation to the reduction in game speed and the changes to the game design features’ but not the proposed reduction in return to player.³⁶⁹
- 312** Connolly prepared an agenda paper dated 22 July 2019 concerning the amendments sought to the WA Appendix, which was presented at the GWC meeting on 23 July 2019.³⁷⁰ There were five attachments to the agenda paper:
- a. a letter dated 7 March 2019 from Perth Casino seeking amendments to the WA Appendix;
 - b. a letter dated 1 March 2019 from **GLI** Australia (an accredited EGM testing facility) to Perth Casino giving an assessment of proposed amendments to the WA Appendix;

- c. a letter dated 18 April 2019 from Felstead to Connolly regarding the proposed amendments to the WA Appendix;
 - d. a copy of clause WA4.2 of the WA Appendix, which was marked up in tracked changes; and
 - e. a copy of the GWC's EGM Policy, which was marked up in tracked changes.
- 313** The marked-up version of the EGM Policy showed four changes: ³⁷¹
- a. a deletion of the requirement that 'symbols are not in fixed positions';
 - b. a change in the minimum speed of play from five seconds to three seconds;
 - c. a deletion of the clause headed 'Winning combinations', which included a provision stating that combinations are only acceptable if horizontal or vertical and that multi-line, multi-directional winning combinations are not acceptable; and
 - d. a deletion of the clause concerning independence of outcomes.
- 314** There was no reference in the agenda paper to any change to winning combinations (c above) prohibited by the EGM Policy. The agenda paper recorded that 'GLI have provided an assessment of the proposed game design changes'.³⁷² The proposed game design changes considered by GLI Australia concerned changes to the WA Appendix regarding symbols being in fixed positions and the independence of outcomes. The GLI Australia letter did not consider a change to winning combinations.
- 315** In the agenda paper, Connolly made the following recommendation:³⁷³
- That the Commission approve changes to the WA Appendix to the EGM National Standard and relevant policies to reduce the minimum game speed to 3 seconds and remove reference to the independence of outcomes.
- 316** The minutes for the GWC meeting on 23 July 2019 record that Connolly briefed the GWC on proposed changes to the WA Appendix and 'relevant policies' and further that:³⁷⁴
- Members agreed to approve the changes requested including those related to game design and the independence of outcomes ...
- 317** The minutes record that the GWC resolved to:³⁷⁵
- ... approve changes to the WA Appendix to the EGM National Standard and relevant policies to reduce the minimum game speed to 3 seconds for base games which incorporate game features and a minimum game speed of 5 seconds where no game features are incorporated with the base game and remove references from those documents relating to the independence of outcomes.
- 318** There is no reference in the resolution to the removal of the prohibition of multi-line or multi-directional winning combinations.
- 319** Connolly gave evidence to the effect that:
- a. Crown's presentation about the proposed changes included presenting the winning combinations that would be permitted if the prohibition of multi-line or multi-directional winning combinations was removed; and
 - b. the GWC agreed to remove the prohibition.³⁷⁶
- 320** No GWC member gave evidence that they understood the resolution to have been intended to authorise the removal of the prohibition of multi-line or multi-directional winning combinations. One GWC member's evidence was that the intended effect of the resolution was only to approve the matters that were specifically referenced in that resolution.³⁷⁷ Another member gave evidence that the intended effect of the resolution was only to

change the speed of play and remove references to the independence of outcomes.³⁷⁸ Sargeant, who was a GWC member at the time, gave evidence that the intended effect of the resolution 'was to only approve the matters that were expressly referenced in that resolution'.³⁷⁹

- 321** An amended EGM Policy dated 23 September 2019 was signed by Connolly in his capacity as 'D/Chairman' (deputy chair).³⁸⁰ The PCRC infers the amendment was made under delegated authority.³⁸¹ The amended EGM Policy incorporates all four of the changes set out in marked up version of the EGM Policy attached to the agenda paper dated 22 July 2019, including the removal of the prohibition of multi-line or multi-directional winning combinations.

Conclusions in respect of case study two

- 322** The PCRC concludes that Connolly exceeded the scope of the resolution made at the GWC meeting on 23 July 2019, which did not authorise the removal of the prohibition in the EGM Policy of multi-line or multi-directional winning combinations, in that Connolly signed an amended EGM Policy in which that prohibition was removed.
- 323** The PCRC has considered whether the reference in the minutes to the GWC members approving changes relating to game design might support the conclusion that the removal of the provision concerning winning combinations was agreed to by GWC members but not reflected in the resolution. The PCRC concludes that it is unlikely that this occurred for the following reasons.
- 324** First, there is no consideration in the agenda paper dated 22 July 2019 or in any of the attached documents of the consequences of removing from the EGM Policy the provision concerning winning combinations.
- 325** Second, the sentence in the agenda paper 'GLI have provided an assessment of the proposed game design changes' was referring to that as a 'game design' change. The reference in the minutes to the members approving a change to 'game design' is likely to be a reference to the deletion of the requirement that 'symbols are not in fixed positions' given that this was addressed in the GLI letter.
- 326** Third, the evidence of the GWC members supports the conclusion that there was not a briefing by Connolly regarding the removal of the provision concerning winning combinations.
- 327** Fourth, Connolly's evidence was that representatives of Perth Casino made a presentation about changing winning combinations but that presentation was made on 26 March 2019. Connolly's evidence was not that he gave a briefing about the winning combinations on 23 July 2019. That is, Connolly's evidence is also consistent with him not having presented to members about winning combinations on 23 July 2019. In that context, Connolly's recollection that the GWC agreed to the change appears to be mistaken because the GWC did not agree to any of the proposed changes at the meeting on 26 March 2019.
- 328** The PCRC therefore concludes that it is unlikely that there was any agreement by GWC members to the removal of the provision concerning winning combinations from the EGM Policy. In any event, even if there was a discussion of that provision, the GWC's resolution did not authorise the removal of that provision and so Connolly exceeded the scope of the resolution by deleting it from the EGM Policy and therefore acted inappropriately. It is possible that with appropriate induction and training, which emphasised to Connolly the importance of acting strictly in accordance with the GWC's resolutions, that might not have occurred.
- 329** Case study two is a very serious example of regulatory deficiencies impacting on the responsible service of gaming. An important prohibition in Western Australia on multi-line and multi-direction winning combinations, which had the effect of limiting the amount of money a patron could lose in a single game, was lifted without the proper consideration of it by the GWC and, in effect, without its authority.

Case study three

330 In Chapter Six: Junkets, the PCRC has, amongst other things, examined Connolly's support of the GWC, in his role as CCO and from March 2017, to regulate the risks of junkets. In summary, the PCRC has concluded that since in about March 2017 the GWC was not adequately supported by Connolly, as CCO and DDG, so as to enable the GWC to effectively mitigate the risk of criminal infiltration of the Perth Casino's operations by or through junkets. The detail of that examination suggests that, had Connolly had formal training in the regulation of risks in casino operations, been apprised of the content and breadth of his role as CCO (including as to the regulatory objectives of the GWC) and had he appreciated the extent to which he was directly accountable to the GWC in respect of the performance of that role, it is more likely that he would have supported the GWC to effectively regulate that risk.

Activities undertaken by the Department to assist the Gaming and Wagering Commission in casino regulation

Operations Division meetings

- 331** Operations Division meetings are held on a monthly basis between Perth Casino officers and officers of the Department following the GWC meeting.³⁸² Connolly, as CCO, attended Operations Division meetings along with a number of Crown staff including, from time to time, Preston, Claude Marais, Hulme, Lonnie Bossi and Sullivan. Often the Department's Director Licensing and Director Compliance also attended.
- 332** The meetings are intended to provide a forum to discuss any issues for Perth Casino that may have arisen from the preceding GWC meeting, as well as any other operational matters which warrant discussion.³⁸³ This would include governance and compliance matters such as amendments to the Casino Manuals, proposed applications to the GWC by Perth Casino, licensing matters, software upgrades and financial matters.³⁸⁴
- 333** The minutes of meetings are recorded and maintained by Perth Casino and then circulated to all attendees.³⁸⁵ Perth Casino has control of the minutes because historically the executive officer for those meetings has been provided by Perth Casino.³⁸⁶
- 334** The Operations Division meetings are not formally reported to the GWC nor are the minutes provided to members.³⁸⁷ Ord gave evidence that the outcomes of the meetings were conveyed to the GWC as part of the CCO's general report of their activities at each meeting.³⁸⁸
- 335** The PCRC concludes that the lack of:
- a. record-keeping by the Department of Operations Division meetings; and
 - b. formal reporting to the GWC of those meetings,
- is unsatisfactory because it deprives the GWC of the opportunity to oversee the conduct of both the Department (on behalf of the GWC) and Perth Casino in relation to casino operations generally, proposals, applications or submissions made by Perth Casino to the GWC, and any directions or requests that may have been given to the Department by the GWC in respect of such matters.
- 336** The PCRC finds that, by not providing the minutes of Operations Division meetings to the GWC, the Department compromised the GWC's ability to effectively perform its role as the casino regulator and has therefore not adequately supported the GWC.

Audit and inspection program

- 337** The Department assists the GWC in exercising a number of its regulatory powers and functions by having carriage of the GWC's audit and inspection program with respect to Perth Casino.
- 338** The audit and inspection program for Perth Casino was developed by the Department, rather than the GWC.³⁸⁹ The government inspectors who carry out audits and inspections have always been departmental officers.
- 339** When Perth Casino first opened in 1985, there were 16 departmental inspectors dedicated to Perth Casino (**casino departmental inspectors**), plus a senior inspector.³⁹⁰ Initially, there was a permanent physical presence (24 hours of each day of the year the casino was open).³⁹¹ All of the casino departmental inspectors were located at Perth Casino where they had (and still have) a small, dedicated office with restricted access. The 16 inspectors were divided into groups of four, the effect being that in any shift, there would be four inspectors present at Perth Casino.³⁹²
- 340** The PCRC heard evidence that the overall purpose of audit and inspection activities carried out at the Perth Casino is to ensure the State receives all of the tax it is entitled to, and all games are played fairly.³⁹³ Historically, there was not any audit or inspection activities specific to monitoring or regulating the risks of gambling-related harm or of money laundering through the casino's operations, rather if there was ever any detection it was incidental to other activities.
- 341** Audits were described by one former casino departmental inspector as counting and balancing the revenue of Perth Casino each day by attendance at 'soft' and 'hard' counts. Soft counts involve the reconciliation of cash, gaming chips and paperwork which had been placed in the drop box at table games by a dealer. Hard counts are simply the counting of coins deposited into EGMs.³⁹⁴
- 342** The current manager of the inspectorate described the audit function as a more in-depth analysis of casino operations or processes and procedures. Such audit work includes confirming compliance with the Directions.³⁹⁵
- 343** Inspections were described as the observation of dealers during a game to ensure it was conducted in accordance with the rules and procedures.³⁹⁶
- 344** Casino departmental inspectors also carry out investigations.³⁹⁷ They arise in response to an incident or complaint at Perth Casino, or to protect the integrity of gaming.³⁹⁸

Inspector training

- 345** Two former inspectors gave evidence of the training programs they undertook when they became casino departmental inspectors in 1985 and 1990 respectively. At that time, new recruits underwent full-time training for three or four months so that they were intimately familiar with all aspects of Perth Casino, including all of the games (as well as cheating techniques), and operations of the cage (casino bank) and casino generally.³⁹⁹
- 346** It is not entirely clear when the training regime in this form fell away, but the current manager, who was an acting casino departmental inspector from February 2001,⁴⁰⁰ gave evidence that they received only on-the-job training from senior departmental inspectors, and that there continues to be no formal inspector training from any external provider.⁴⁰¹ One of the first casino departmental inspectors gave evidence that by the mid-2000s the inspectors' skills were diminished.⁴⁰²
- 347** There have been numerous amalgamations across State government departments over the years which ultimately saw the fusing of inspectorial roles. Departmental inspectors began to undertake duties across several industries, rather than working exclusively in casino regulation.⁴⁰³

- 348** One of the first amalgamations of the Department in about 2006 saw the creation of three positions of Senior Inspector, one in each of the areas of casino, liquor and racing, and community gaming.⁴⁰⁴ Some 18 departmental inspectors sitting below these inspectors then rotated through each of the various industries.
- 349** The emergence of the more generalist departmental inspectors caused the inspectors' specialist knowledge of casino operations to dissipate.⁴⁰⁵ From a practical perspective, a departmental inspector might find themselves undertaking an investigation at Perth Casino one minute, only to then be rostered into another industry and having to hand over that investigation to another inspector.⁴⁰⁶
- 350** One former casino departmental inspector described that they were forced to become 'jack of all trades and masters of none' which they saw as being to the detriment of casino regulation. Inspectors were in a constant state of relearning the necessary skills, such as how to manipulate the cameras which were part of Perth Casino's surveillance system.⁴⁰⁷ The access to the surveillance system is addressed in more detail in Chapter Nine: Other Criminal Activity.
- 351** In about 2012, two of the three Senior Inspector roles were permanently dissolved.⁴⁰⁸
- 352** The present-day inspectorate canvasses four industries: wagering; community gaming; liquor; and casino.⁴⁰⁹ Currently there are 13 departmental inspector positions, of which 12 are presently occupied. Each of the departmental inspectors are 'authorised officers' for the purposes of s 14 of the *Liquor Control Act 1988* (WA), s 21(1) of the GWC Act and s 9(1) of the CC Act.⁴¹⁰ The Manager Inspections gave evidence that several retirements from the inspectorate are imminent, and expressed concern about the attrition rate of inspectors, particularly those of long-standing tenure, who will not be available to train new inspectors.⁴¹¹
- 353** The PCRC concludes as follows:
- a. Over time, the training of departmental inspectors has reduced and is now comprised solely of on-the-job training for generalist departmental inspectors.
 - b. The quality of the training for departmental inspectors may well be compromised by the imminent retirement of some long-serving departmental inspectors.
 - c. A lack of specialisation in casino regulation amongst the departmental inspectors has occurred over time and has reduced the overall skill and capability of the casino inspectorate to the detriment of the quality of regulation of gaming operations at Perth Casino.

Physical presence of inspectors at Perth Casino

- 354** The arrangements for the physical presence of departmental inspectors at Perth Casino were adjusted in 2002.
- 355** At its meeting on 16 April 2002,⁴¹² the GWC considered and noted an agenda paper prepared by the former Manager Inspections.⁴¹³ That paper described a new roster which came into effect from 1 April 2002 and saw the reduction of the physical presence of inspectors at Perth Casino. Instead of a 24-hour presence, inspectors would not be on duty from 3:00am to 7:00am on weekdays, 5:00pm to 6:00pm Fridays and Saturdays and 4:00am to 7:00am Saturdays and Sundays.
- 356** It was explained in the agenda paper that the reduction came about for a number of reasons, including:
- a. to support the reduction of the 'hands on' approach of inspectors in areas where certain operational procedures were perceived to be the role of the casino operator

(such as involvement in the soft count), and the inspectors could move to an audit or monitoring role;

- b. to address an identified reduction of inspector productivity in the last hours of a night shift at the Perth Casino which finished at 6:00am; and
- c. to satisfy industrial relations directives issued by the Government to reduce working hours.

357 The PCRC infers that the decision in 2002 to reduce the inspectorial presence in Perth Casino was the Department's and not the GWC's as the GWC was only asked to note a process which was already underway.⁴¹⁴

358 The arrangements with respect to the physical presence of departmental inspectors at Perth Casino were revisited in 2015.

359 At its meeting on 25 August 2015, the GWC considered a detailed agenda paper prepared by Connolly entitled 'Crown Perth Casino: Regulatory Approach'.⁴¹⁵ That paper recommended that the GWC endorse a proposal to entirely remove the physical presence of departmental inspectors after 1 September 2015 (who at that stage were in attendance 19.5 hours per day)⁴¹⁶ provided that:

- a. a risk-based approach to the allocation of casino audits and inspections was maintained;
- b. there was annual certification of the accuracy of revenue and tax reported by the casino licensee by an accredited testing facility;
- c. the number and scope of audits and inspections undertaken by government inspectors in the future were within budget but still provided assurance as to the integrity of casino operations; and
- d. the Department could still react to incidents or issues that occurred outside of the 'normal proactive risk-based audit regime'.⁴¹⁷

360 In effect, the GWC accepted a recommendation to remove the physical presence of departmental inspectors on the basis that cost savings were needed, but the quality of the inspections would not be compromised.⁴¹⁸

361 In 2017 some physical presence of departmental inspectors returned to Perth Casino. Leigh Radis (**Radis**), a former departmental inspector who has been employed by the Department since 2002 and has been the Manager Industry Regulation and Education in Racing, Gaming and Liquor since 2017,⁴¹⁹ began amending the roster on his own initiative to require, resources permitting, a daily, 9.5 hour shift to be performed at Perth Casino.⁴²⁰ He thought it might help departmental inspectors reach their casino inspection targets. Radis perceived that if inspectors had to be at Perth Casino, those inspections would at least be carried out.⁴²¹

362 In February 2018, Radis also implemented a change to the surveillance reporting regime so that any resulting investigations could be conducted in 'real time'.⁴²² Essentially, under the revised regime, inspectors would announce the commencement of their shift at Perth Casino to its surveillance and security department so that any incidents which the inspectors were authorised or empowered to deal with that occurred during that shift could be attended to then and there.

363 Radis gave evidence that he currently, and since 15 March 2021, holds monthly meetings attended by compliance officers, his director above him and the DDG. In those meetings, the attendees review an activity register and compliance activity frequency chart which documents the inspector activities undertaken and the outcomes (across all four industries) so that compliance can be monitored and the frequency of particular audits or inspections can be adjusted appropriately.⁴²³ In particular, inspectors use the risk category compliance

activity sheets which provide short commentary on audits conducted and assign a risk ranking from zero to three.⁴²⁴

- 364** Prior to each monthly meeting, the GWC members receive a statistical report in their agenda paper detailing the number of audits and inspections undertaken by the inspectorate. In recent history, the report is often from Radis, presented in tabular form, which lists the description of the audits, inspections and investigations undertaken (for example, EGM revenue verification audit, cage transactions audit or drop box check), sets out how many were undertaken in the reporting period and notes whether any compliance issues were reported.⁴²⁵
- 365** While there is evidence before the PCRC that there were concerns voiced at the time of the reduction and subsequent removal of the physical presence of departmental inspectors from Perth Casino, there is no evidence that the audit and inspection program is now less effective or is inadequate as a consequence. However, the PCRC concludes that for the reasons expressed by Radis and because there is a regulatory advantage in having an inspector at the casino, in that it is a sign of regulatory oversight and a sign of regulator interest in what happens at the casino, there are advantages to formalising Radis' approach to having casino departmental inspectors at the casino permanently for at least one shift per day.

Part Five: Financial arrangements

Statutory and regulatory framework

- 366** There are a number of Acts that together constitute the legislative framework for the financial administration and management of the GWC.
- 367** The GWC Act expressly provides that the provisions of the FM Act and *Auditor General Act 2006 (AG Act)* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the GWC and its operations.⁴²⁶ The financial regulations made under the FM Act are supplemented by the Treasurer's instructions that are also made under that Act.
- 368** The GWC Act, CC Act and *Casino (Burswood Island) Agreement Act 1985 (WA) (CBIA Act)* all contain provisions directly concerning the financial administration and management of the GWC.

Financial Management Act 2006 (WA)

- 369** The FM Act provides the overarching legislative framework for the management, administration and reporting of the public finances of the State of Western Australia.
- 370** The FM Act applies to both the Department and the GWC because they are both agencies for the purposes of that Act. The FM Act provides that each agency is to have an 'accountable authority' who is responsible to the Minister for the financial management of the services under the control of the agency.⁴²⁷ As noted in [120], the GWC is the accountable authority for the GWC and the DG of the Department is the accountable authority of the Department. Appendix E: Corporate Governance Theory,⁴²⁸ sets out the functions conferred upon an accountable authority.

Chief Finance Officer

- 371** The FM Act requires the accountable authority of an agency to designate an office, post or position as Chief Finance Officer (**CFO**).⁴²⁹ It also provides that the CFO for an agency is responsible to the accountable authority for:⁴³⁰

- (a) the preparation of financial information to facilitate the discharge of statutory reporting obligations of the agency; and
- (b) the provision of advice on the effectiveness of accounting and financial management information systems and financial controls in meeting the requirements of the agency; and
- (c) the provision of advice concerning the financial implications of, and financial risks to, the agency's current and projected services; and
- (d) the development of strategic options for the future financial management and capability of the agency; and
- (e) the development of financial management skills within the agency.

372 Prior to the commencement of the FM Act in 2007, the overarching legislative framework for public finances in Western Australia was contained in the *Financial Administration and Audit Act 1985* (WA) (repealed) (**FAA Act**). The role of CFO was established under the FAA Act in 2006⁴³¹ but, prior to 2006, the broadly equivalent role was the Principal Accounting Officer.⁴³²

373 Kin Wing (Terry) Ng (**Ng**) was the Principal Accounting Officer and then the CFO for the Department from March 2000 until 30 June 2017. During that time, he held the same roles for the Gaming Commission of Western Australia (**GC**) and then the GWC (that is, after the GC was renamed GWC).⁴³³ From around September 2017 until at least 1 September 2021, Shanaeya Sherdiwala (**Sherdiwala**) was the CFO for the Department and the GWC.

374 The Department informed the PCRC that since 2007, the designated CFO for the GWC has been the CFO for the Department.⁴³⁴ The PCRC concludes that, in practice, the Department and the GWC have had the same person occupying the role of Principal Accounting Officer or CFO from at least March 2000.

Internal audit

375 Under s 53(1)(d) of the FM Act, an accountable authority is required to develop and maintain an effective internal audit function for the agency. The relevant Treasurer's instruction, Treasurer's Instruction 1201, requires an agency to establish an internal audit committee, independently chaired by a suitably qualified person who is not employed within the agency.⁴³⁵

Auditor General Act 2006 (WA)

376 The FM Act provides that the accountable authority must submit to the Auditor General financial statements, KPIs and any other information as required by Treasurer's instructions.⁴³⁶ The Auditor General is then required to audit that information.⁴³⁷

377 The Auditor General may at any time carry out an investigation or examination into an agency for a number of purposes, including to:

- a. examine the accounting and financial management systems of any agency to determine their effectiveness; and
- b. examine an agency's compliance with legislative provisions, public sector policies or its own internal policies.⁴³⁸

Gaming and Wagering Commission Act 1987 (WA)

378 The GWC Act imposes an obligation upon the GWC in s 7(2) as follows:

In carrying out its duties the Commission shall, in so far as is practicable, ensure that the revenue derived pursuant to this Act, and under any other written

law relevant to the duties of the Commission, is sufficient to provide for the operating, administrative and other costs of the Commission.

379 The proper construction of s 7(2) is considered below.

Casino Control Act 1984 (WA)

380 Section 14(1) of the CC Act provides that funds available for the administration of the CC Act consist of:

- a. moneys appropriated by Parliament;
- b. casino gaming licence fees paid under s 20; and
- c. all other moneys lawfully received by, made available to or payable to, the GWC or its predecessor prior to the establishment of the GWC.

381 Section 14(2) of the CC Act further requires that casino gaming licence fees be paid to an agency special purpose account called the Gaming and Wagering Commission Account.

382 Section 20(1) of the CC Act provides that a public company entering into a casino complex agreement shall undertake to pay a casino gaming licence fee to the GWC and casino tax to the Treasurer. Section 20(2) provides that the casino complex agreement may provide for the joint review by the parties to the casino complex agreement of the casino gaming licence fee or for a variation of the amount of that fee in accordance with the agreement.

Casino (Burswood Island) Agreement Act 1985 (WA)

383 The GWC receives an annual casino gaming licence fee from the Perth Casino licensee pursuant to the terms of the State Agreement, which agreement is ratified by the CBIA Act. As set out in Chapter Three: Overview of Regulatory Framework for Casino Gaming, the State Agreement originally set the licence fee at \$400,000 (adjusted for consumer price index (**CPI**))⁴³⁹ and in 1990 was increased to \$1.4 million (adjusted for CPI).⁴⁴⁰ In the financial year ending 30 June 2021, the GWC received a casino gaming licence fee payment in the amount of \$3,001,476.⁴⁴¹ The licence fee is paid in advance in equal quarterly instalments.⁴⁴²

384 Although s 20(2) of the CC Act provides that a casino complex agreement can provide for the regular review of the amount of the casino gaming licence fee, the State Agreement does not provide for any such review.

Costing and pricing Government services

385 A publication by Western Australia's Department of Treasury (**Treasury**) entitled 'Costing and Pricing Government Services' provides detailed guidance for agencies about how the costs of its services should be calculated.⁴⁴³

386 The May 2020 edition of the publication outlines the benefits of accurately determining the full cost of services⁴⁴⁴ and emphasises that '[u]nless Government approves otherwise, prices should be set at levels that reflect the full costs of providing the services'.⁴⁴⁵ However, the need for flexibility is also acknowledged:⁴⁴⁶

Whenever a costing exercise is considered, the reason for engaging in the exercise should be clarified before deciding how to approach the task. The purpose of the costing exercise may influence the range of factors ultimately taken into consideration in decision making processes and may affect judgements about the treatment of some expenses. It will also determine the extent to which approximations of some components of cost are acceptable, or whether more detailed analysis is required.

- 387** The Costing and Pricing Government Services publication is guidance only. The only mandatory requirements in relation to pricing and charging are specified in the Treasurer's instructions which, relevantly, require each agency to include details of its pricing policies in its annual report and to review fees and charges as part of the budget process.⁴⁴⁷
- 388** The Costing and Pricing Government Services guidance states, relevantly and in effect, that:
- developing an unambiguous description of the service or the process used to deliver the service is an essential prerequisite to any costing exercise;⁴⁴⁸
 - when carrying out a costing exercise, the primary aim should be to focus on the services rather than the processes and/or relationships to the organisation's structure;⁴⁴⁹ and
 - the full cost of a service must be determined by considering direct costs, indirect costs and the opportunity cost of capital.⁴⁵⁰
- 389** As regards direct staffing costs, the publication states that:⁴⁵¹
- If it is unclear whether a staff member or a group is exclusively associated with the service, then it may be necessary to establish some basis for estimating involvement in the delivery of different services. This type of work analysis has been undertaken quite successfully in government agencies and is usually based on data collected during a survey period of relatively short duration. The approach taken is usually to request staff to keep a record of their time involved in a pre-determined and defined range of activities supporting the delivery of various services.
- The estimation process can serve several purposes, including information for performance indicators required for an agency's annual report. It is important that the basis of any estimation of staff involvement in the delivery of different services be verifiable.
- 390** As regards indirect costs, the publication favours the use of an 'Activity Based Costing' method, where practicable, to measure or estimate the actual usage of resources.⁴⁵² That method is explained as follows:⁴⁵³

Activity Based Costing (ABC) provides a detailed and accurate method of determining the actual attribution of costs in an indirect cost pool. It closely examines the activities undertaken within an organisation, determines what drives or causes the activities to be used in the production process, and then allocates costs on the basis of the resource consumption of each activity.

Gaming and Wagering Commission's bank accounts

- 391** The GWC has two bank accounts, which were established by Treasury, and have subsequently been operated by the Department on behalf of the GWC, namely:
- The Gaming and Wagering Commission Account; and
 - The GWC Racing Bets Levy Account.⁴⁵⁴
- 392** The Gaming and Wagering Commission Account was opened in August 1988.⁴⁵⁵ When it was first opened it was called the Gaming Commission Account, but it was renamed the Gaming and Wagering Commission Account in 2004.⁴⁵⁶ The GWC Racing Bets Levy Account was opened in November 2013.⁴⁵⁷
- 393** Transactions on those accounts may only be conducted by departmental officers with appropriate financial delegations and an individual departmental officer's access to the Department's online financial management system is limited to those matters for which the position has delegated authority.⁴⁵⁸

394 The casino gaming licence fee payment is deposited into the Gaming and Wagering Commission Account.⁴⁵⁹

Gaming and Wagering Commission's operating revenue and operating expenses

Operating revenue

395 In the financial year ending 30 June 2020, the GWC's actual operating revenue was \$4,274,080, which was comprised as follows:

- a. casino gaming licence fee: \$2,980,812;
- b. casino employee licence fee: \$127,816;
- c. recoup from Lotterywest: \$118,598;
- d. funding from Racing and Wagering WA: \$434,065;
- e. fees and charges: \$602,708; and
- f. interest received: \$10,081.⁴⁶⁰

396 It can be seen that the casino gaming licence fee accounts for about 70% of the GWC's operating revenue.

397 The casino employee licence fee amount reflects the licence fees paid by applicants for a casino employee licence or casino key employee licence under the CCBILE Regs.

398 The recoup from Lotterywest is a payment made to the GWC by Lotterywest for work undertaken by the GWC in relation to the verification of all lotto and promotional draws.⁴⁶¹

399 The funding from Racing and Wagering WA is for the GWC's regulation of activities including audit and cash counts of TAB agencies and administering the Racing Bets Levy.⁴⁶²

400 The fees and charges are amounts received for GWC's approval of the conduct of lawful community gambling activities.⁴⁶³

401 These have been the sources of GWC revenue for many years.⁴⁶⁴ From 2010 until the present Parliament has not appropriated any monies to the GWC pursuant to s 14(1)(a) of the CC Act.⁴⁶⁵

Operating expenses

402 In the financial year ending 30 June 2020, the GWC's total actual operating expenses were \$4,399,554, which comprised the following expenditure:

- a. fees paid to board members: \$108,446;
- b. superannuation expense to GESB: \$10,303;
- c. problem gambling expenditure: \$76,000;
- d. services provided by the Department: \$4,140,575;
- e. conference and seminar fees: \$9,970; and
- f. other operating expenses: \$54,260.⁴⁶⁶

403 It can be seen that the costs associated with GWC members (fees and superannuation expenses) are only a small proportion of the GWC's total operating expenses.

404 The third-listed expense is the GWC's contribution to the PGSSC. There has been some variation in recent years in the amount of the GWC's contribution to the PGSSC. In the

financial year ending 30 June 2019, no financial contributions were made to the PGSSC at all and so the GWC made no contribution in that year. For the financial year ending 30 June 2022, the GWC had indicated it will contribute \$146,000.⁴⁶⁷

- 405** In the financial year ending 30 June 2020, the bulk of the GWC's operating expenses comprised the payment to the Department for services provided to the GWC. The service fee charged by the Department to the GWC has consistently over the years been by far the most substantial expense for the GWC.⁴⁶⁸
- 406** In the past, the GWC has also paid capital contributions to the Department. For example, for the financial year ending 30 June 2013, the GWC approved a budget in which it made a contribution of \$300,000 for what was described as a single 'Unified Regulation System' to replace its 'legacy liquor licensing and gaming and racing systems'.⁴⁶⁹ The GWC has not made a capital contribution to the GWC since the machinery of government changes in 2017.

Service fee charged by the Department to the Gaming and Wagering Commission

- 407** As the GWC does not have its own staff, the regulatory and licensing activities conducted by the GWC are performed on its behalf by departmental officers. In addition, the GWC does not have its own infrastructure and so relies upon the Department's infrastructure for the performance of its functions.
- 408** The Department charges the GWC a fee for the provision of services performed across all of the GWC's responsibilities and not solely for the regulation of Perth Casino.
- 409** The GWC Act provides that the GWC's use of the services of the Department's officers or employees is required to be 'on such terms as are agreed by the parties'.⁴⁷⁰ However, there is no formal, documented agreement between the GWC and the Department in that regard.
- 410** In addition, since at least March 2000, the Department has not had an Activity Based Costing system in place.⁴⁷¹ Without such a system, it is not possible to ascertain the true cost of different activities performed by the Department.⁴⁷²
- 411** In the absence of an agreement as to the terms on which services are to be provided and an Activity Based Costing system, the Department has estimated the cost of the services being provided by the Department to the GWC. The service fee is included in the budgets of both the Department and the GWC. The Department has over time adopted different approaches to calculating the budgeted service fee.
- 412** In the period from 2000 to around 2007 or 2008, Ng would calculate a recommended service fee using the method described below and then provide this recommended fee to his immediate supervisor, a Director. It would ultimately be approved by Sargeant for inclusion in the Department's budget.⁴⁷³ In the period from 2007 or 2008 to 2017, Ng would meet with Sargeant, an accountant from the Department's Finance section, Connolly and sometimes the Director of Corporate Services in approximately February or March of each year to discuss the GWC's budget, including the service fee.⁴⁷⁴
- 413** The Department informed the PCRC that from the time that Sherdiwala commenced as CFO in September 2017, two of the Department's Divisional Accountants were also involved in the process of calculating the fee prior to endorsement by Sherdiwala and Ord.⁴⁷⁵
- 414** The PCRC concludes that from 2000 to the present, the Department's CFO has played a significant role in determining the budgeted service fee that the Department should charge to the GWC as a revenue item.

Gaming and Wagering Commission's budget process

- 415** The GWC's budget is prepared by the GWC's CFO. Each year, budget estimates, which include the GWC's operating revenue and expenses are prepared by the CFO and submitted as an attachment to an agenda paper for approval by the GWC at a meeting.
- 416** Once the Department has calculated the budgeted service fee that it intends to charge to the GWC as a revenue item in the Department's budget papers, it then includes that fee in the GWC's budget papers. Once the GWC approves the budget papers, the Department proceeds on the basis that the GWC has approved the service fee. The budget is then submitted to the Minister for the Minister's approval.⁴⁷⁶

Conflict of Director General as ex officio chair of the Gaming and Wagering Commission

- 417** In the DG's capacity as CEO of the Department, the DG is responsible for the provision of the Department's services to the GWC and for ensuring that the Department recovers the full cost of the services provided to the GWC.
- 418** In the DG's capacity as GWC chair, the DG has a responsibility, together with the GWC members, to ensure that the GWC is paying a reasonable value for the services, including that the services are not overpriced.
- 419** This puts the DG in a position of conflict between the responsibilities owed to the Department and those owed to the GWC.
- 420** The conflict manifests itself most acutely at the time when the GWC is called upon to approve the GWC's budget because the GWC's budget includes the service fee to be proposed by the Department.
- 421** This conflict has the potential for other GWC members to feel constrained in querying the amount or calculation of the service fee because the GWC chair is also the CEO of the Department providing and charging for the services.
- 422** Another consequence of this conflict is that it undermines the negotiation process between the Department and the GWC in respect of the proper cost and delivery of services because the DG has a role on both sides of the negotiation.
- 423** The PCRC concludes that this structural feature of the GWC's composition has contributed to the deficiencies with the determination of the service fee that are set out below.

Conflict of Department's Chief Finance Officer as Gaming and Wagering Commission's Chief Finance Officer

- 424** The appointment of the Department's CFO as the GWC's CFO also puts the Department's CFO into a position of conflict.
- 425** The Department's CFO plays a significant role in determining the budgeted service fee that the Department should charge to the GWC as a revenue item. The CFO then prepares the GWC's budget and includes that service fee as an expenditure item. The CFO is obliged to provide financial advice to the GWC about the 'financial implications of ... the agency's current and projected services'.⁴⁷⁷ However, the CFO cannot provide an independent assessment of the financial implications of the services provided by the Department on the GWC's behalf, including the service fee, because the CFO is employed by that Department and has assisted to determine the budgeted service fee.

- 426** The conflicted position of the CFO again manifests itself in respect of the actual service fee. The present arrangement is that the Department's CFO (in the capacity as GWC's CFO) authorises the annual payment of the service fee once the budgeted service fee has been approved by the GWC through the budget process.
- 427** The Department has an interest in that payment being authorised as soon as possible. However, the CFO's obligation to the GWC would suggest that there should be some verification that the services have been provided before payment is authorised. The CFO is therefore in a position of conflicted duties.
- 428** That conflict inhibits the CFO's ability to provide independent advice in respect of financial implications and risks, as required by s 57 of the FM Act.

Provision of advice to the Gaming and Wagering Commission by Chief Finance Officers

- 429** The evidence of the current and former CFOs was that they rarely attended GWC meetings.
- 430** Ng attended part of a GWC meeting on one occasion only, in approximately 2000 or 2001 to answer a question about finance.⁴⁷⁸ Sherdiwala has personally attended a GWC meeting on only two occasions. The first occasion was in approximately the second half of 2018 to introduce herself to the GWC members. The second occasion was on 27 August 2021 when Sherdiwala presented two papers to the GWC at the request of the GWC, which were the monthly financial papers for July 2021 and a paper giving an explanation for the service fee.⁴⁷⁹
- 431** While the PCRC accepts that the CFO for the GWC could satisfy their responsibility to provide financial advice to the GWC, to some degree, through providing written papers and making departmental accountants available to the GWC, the PCRC concludes that there should have been more regular attendance by the CFOs at GWC meetings and, in particular, that the CFOs ought to have personally attended GWC meetings when the GWC budget was being set, in order to ensure that appropriate financial advice was given in respect of those budgets.
- 432** Ng's evidence was that, even though the CFO was given responsibility by the FM Act to provide advice concerning the financial implications of and financial risks to the GWC's current and projected services, in his role of CFO for the Department, 'risk management was not part of my job'.⁴⁸⁰ Ng's evidence was, in effect, that this responsibility was handled by the Director Corporate Services. Ng accordingly felt constrained by the Department's structure to comment on financial risks so that, in practice, there was a deviation from the terms of the FM Act.⁴⁸¹
- 433** The PCRC infers that Ng was constrained by the Department's structure from carrying out his legislative responsibility to provide advice to the GWC on financial risks. While it might have been permissible for another departmental officer to give advice to the GWC about financial risks, this should have been done with guidance from Ng due to his legislative responsibility as CFO.
- 434** Sherdiwala gave evidence that it is for the GWC to review the draft annual budget and form a view on whether the individual line items for anticipated expenses or revenue in the budget are sufficient.⁴⁸²
- 435** However, it is the CFO's responsibility to provide financial advice to the GWC and this would include providing advice to the GWC about the line items in the budget rather than leaving it to the GWC to form a view on its own. The PCRC concludes that a failure by the GWC's CFO to give advice to the GWC about these line items was a failure to discharge the CFO's responsibilities to the GWC.

- 436** In addition, there is no evidence that the GWC was ever advised about the Treasury publication entitled 'Costing and Pricing Government Services'. In particular, it was not referred to in the paper presented to the GWC by Sherdiwala at the GWC meeting on 27 August 2021, in which the Department explained the basis upon which the service fee is calculated.⁴⁸³ The PCRC concludes that the GWC ought to have been advised about this publication in order for the GWC to have an appropriate basis upon which to assess the calculation of the service fee.
- 437** The Department accepts that the quality of its financial advice and services to the GWC can be improved, and therefore the CFO now attends the monthly GWC meetings.⁴⁸⁴
- 438** For the above reasons, the PCRC finds that the GWC has not been provided with adequate financial advice by the Department, though successive CFOs.

Calculation of the budgeted service fee

- 439** This section considers how the Department has calculated the budgeted service fee.
- 440** The Department accepts that its calculation of the service fee has not been based on the actual costs incurred by the Department but has at all times involved an element of estimation.⁴⁸⁵ This is largely due to the fact that the Department did not, and does not, have an activity-based model of time recording.⁴⁸⁶
- 441** The Department has adopted different methods for calculating the service fee over time.

Calculation of budgeted service fee between 2000 and around 2007 or 2008

- 442** Between 2000 and around 2007 or 2008, the Department determined the service fee to the GWC and the Racing Penalties Appeal Tribunal by a process of estimating those agencies' share of the total cost of non-liquor related services of the Department.⁴⁸⁷ At that time, there were 'core business' cost centres and 'non-core business' costs centres in the Department.⁴⁸⁸
- 443** The 'core business' cost centres separately handled each core business activity, being gaming, racing, casino and liquor.⁴⁸⁹ The costs which the Department spent servicing each core business activity could therefore be easily determined.⁴⁹⁰
- 444** The 'non-core business' costs centres included Policy and Executive Support, and Corporate Services such as Finance, Human Resources, and Information Technology.⁴⁹¹ The Department allocated a share of 'non-core business' costs centre costs to 'core business' activities based upon estimates from the managers of 'non-core business' costs centres as to the percentage of time that the officers within their cost centre spent on each of the 'core business' activities.⁴⁹²
- 445** The 'core business' cost centre costs and the portion of 'non-core business' centre costs allocated to the GWC were then added together to give the service fee to be charged to the GWC.⁴⁹³ Ng then provided that recommended service fee amount to his immediate supervisor, a Director, and it would ultimately be approved by Sargeant for inclusion in the Department's budget.⁴⁹⁴

Change in approach to calculation of budgeted service fee from 2007 or 2008

- 446** Following a departmental restructure in approximately 2006 or 2007, the cost centres within the Department were merged and this meant a different approach was needed for calculating the service fee.⁴⁹⁵
- 447** Within the relevant Operations Divisions of the Department, the cost centres were merged into two divisions, being 'Licensing' and 'Compliance' and each division had a number of different cost centres within them. The new cost centres did not distinguish between the

business activities of racing, casino, gaming and liquor.⁴⁹⁶ This made it much more difficult and time consuming to calculate the estimated time spent on each of the business activities.⁴⁹⁷

- 448** In around 2006 or 2007, it was decided to calculate the service fee by adding the CPI to the service fee charged in the immediately preceding year.⁴⁹⁸ This approach was subject to there being any significant changes in the scope of the activities related to the GWC or the GWC's operational needs.⁴⁹⁹
- 449** At the annual departmental budget meeting, Sargeant and Ng would discuss any significant changes to the GWC's business activities and operational needs.⁵⁰⁰ The budgeted recoupment fee may have been reduced for a particular year if there was a reduced scope of business activities by the GWC or if Sargeant considered that the GWC was not in a position to pay a service fee based on the approach described above.⁵⁰¹

Significant increase in budgeted service fee increase in 2009

- 450** At the GWC meeting on 24 March 2009, Sargeant, in his capacity as DG, presented an agenda paper called 'Budget 2009-10', which attached budget estimates for the approval of the GWC.⁵⁰² The budgeted service fee proposed for the financial year ending 30 June 2010 was \$771,344, or over 24%, higher than the estimated actual service fee for the financial year ending 30 June 2009.
- 451** In the agenda paper, Sargeant explained that the service fee had increased due to a review of fees and charges exercise undertaken by the Department and continued:⁵⁰³
- This figure is now a true indication of the costs and services provided by the Department.
- 452** The minutes of the relevant GWC meeting in March 2009 record that the budgeted service fee was approved.⁵⁰⁴
- 453** Sargeant gave evidence that in early 2009 Raymond Younger (**Younger**), who had recently retired as a senior manager of the Department, was asked by the Department to conduct a review of the time taken by licensing officers to undertake their tasks across all licensing functions of the Department (that is, racing, gaming and liquor). Sargeant's evidence was, in effect, that the increase in service fee was a consequence of Younger's review.⁵⁰⁵ Younger's review was not provided to the GWC.⁵⁰⁶

Calculation of the budgeted service fee from 2010 until machinery of government changes

- 454** Between 2010 and 2017, there were several occasions when the budgeted service fee was increased by reference to inflation.⁵⁰⁷ For the financial year ending 30 June 2014, the budgeted service fee was reduced to \$4,420,000.⁵⁰⁸ The explanation given in the budget paper was that it was due to reduced scope of services to be provided.⁵⁰⁹
- 455** For the financial year ending 30 June 2017, the budgeted service fee was reduced to \$4,066,360.⁵¹⁰ The explanation given in the budget paper was:⁵¹¹
- Recoupment rate is decreased from \$4.655 million to \$4.066 million by \$577,400 to enable the sustainability of the Commission. This has been achieved by savings in the Department and redundancies in 2015-16.
- 456** For the financial year ending 30 June 2018, the budgeted service fee was reduced again to \$4,027,355.⁵¹² The same explanation was given to the GWC.⁵¹³
- 457** It was Ng's usual practice to meet with Sargeant close to the end of the financial year to go through the financial position of the Department and the GWC to see whether they were financially sustainable or needed any action to address any of their financial problems.⁵¹⁴

Calculation of the budgeted service fee following machinery of government changes in 2017

- 458** Sherdiwala's broad understanding was that prior to the machinery of government changes in 2017, the Department of Racing, Gaming and Liquor had developed a process of identifying an appropriate cost recovery and sharing mechanism for its charge for services provided to the GWC.⁵¹⁵ In effect, she broadly understood the previous Department to have allocated its costs on the basis that 30% of its budget as expended on racing and gaming function comprised in particular of:
- a. 28.75% of its costs that were attributable to providing support for the GWC; and
 - b. the remaining 1.25% of its costs that were attributable to providing support to the Racing Penalties Appeal Tribunal.⁵¹⁶
- 459** This method of cost recovery was adopted by the Department after the machinery of government changes, although the former Department of Racing, Gaming and Liquor now exists as the Racing, Gaming and Liquor division within the new Department.⁵¹⁷ Sherdiwala said that in around 2017/2018, she 'inherited' the service fee that the Department had adopted from the Department of Liquor, Racing and Gaming.⁵¹⁸
- 460** According to Sherdiwala, the budgeted service fee does not relate to the actual cost of the services provided to the GWC by the Department. Instead, it relates to the budgeted total cost of services for the Racing, Gaming and Liquor division.⁵¹⁹
- 461** At the GWC meeting on 27 August 2021, the Department presented a paper to the GWC to explain the basis upon which the budgeted service fee is calculated for the financial years ending 30 June 2019, 30 June 2020 and 30 June 2021.⁵²⁰ It appears that this was the first time that the Department provided an explanation to the GWC of the method of calculation of the budgeted service fee that the Department had employed since the machinery of government changes took place in 2017.⁵²¹
- 462** The paper stated that, prior to the machinery of government changes in 2017, the former Department of Racing, Gaming and Liquor undertook some work at Treasury's request to identify an appropriate cost allocation mechanism between gaming and liquor expenses. Ultimately, that review identified that the 'total cost of services' was allocated 70% and 30% to liquor, and to racing and gaming respectively and that, within this, 28.75% of the former Department of Racing, Gaming and Liquor's costs were attributable to support provided to the GWC.⁵²²
- 463** The agenda paper then explained, in effect, that in its first year of operations, the Department applied 28.75% of the total costs of the Racing, Gaming and Liquor division as the proposed professional services fee for the financial year ending 30 June 2019.
- 464** The application of that method led to a budgeted service fee of \$4,140,575 for the financial year ending 30 June 2019.⁵²³
- 465** Sherdiwala said she was not in a position to comment on the nature and content of any records kept by departmental staff in order to assist with the calculation of the Department's service fee to the GWC and to allocate cost between casino, gaming, community gaming, wagering and liquor regulation categories.⁵²⁴ The PCRC infers that if there were such records created during the period in which Sherdiwala was CFO, then Sherdiwala, as CFO, would have been aware of them. The PCRC concludes that the Department has no records created between September 2017 and September 2021 that support the allocation of cost of 28.75% of the Racing, Gaming and Liquor division's budget to the GWC through the service fee.

Calculation of the budgeted service fee for financial year ending 30 June 2020

- 466** For the financial year ending 30 June 2020, the budgeted service fee was not increased by CPI because the CPI was so low that it was decided that any increase would not be material. Sherdiwala's recommendation to this effect⁵²⁵ was reflected in the agenda paper for the GWC meeting on 27 August 2021.⁵²⁶

Calculation of the budgeted service fee for financial year ending 30 June 2021

- 467** For the financial year ending 30 June 2021, the Department's finance team noted that over the previous two financial years, the GWC's output in terms of audits, inspections and investigations had increased materially by 11 percentage points to represent 40% of the Department's output in relation to gaming and wagering functions.⁵²⁷ The 40% output was reflected in the KPIs produced by the Racing, Gaming and Liquor division for the GWC's functions.⁵²⁸ This meant that the Department was providing materially more services to GWC and that this led Sherdiwala to recommend to the DG that there be a 5% fee increase, which was above CPI but below the full percentage increase in output.⁵²⁹ This recommendation was reflected in the agenda paper for the GWC meeting on 27 August 2021.

- 468** Despite this, budget papers for the financial year ending 30 June 2021 were considered at the GWC meeting on 28 April 2020, in which the following statement appears:⁵³⁰

The 2018-19 Actuals and 2019-20 Budgeted KPIs show an increase of 11% in casino and gaming activity. However, DLGSC is proposing to only increase the fee for services provided by CPI at 1.8% to \$4,215,105 to support the Commission.

- 469** That budget was not approved on the basis that the budget information was outdated.⁵³¹

- 470** At the August 2020 meeting of the GWC, a new set of GWC budget papers were presented to the GWC. In that budget paper, the following statement appears:⁵³²

The 2018-19 Actuals and 2019-20 Budgeted KPIs show an increase of 11% in casino and gaming activity. However, DLGSC is proposing to only increase the fee for services provided by 5% to \$4,347,606 to support the Commission.

- 471** The minutes for the August 2020 meeting of the GWC record:⁵³³

11.2 GWC Budget 2020-21

...

The Chairman informed members that the Department is proposing to increase the fee for services provided to the Commission by 5%.

...

Members discussed whether the Commission's operating fee expenses could be reduced. Ms Blackman advised that previously the probity checks that now form part of the expenses were conducted by the WA Police and this expense was billed to the Department. It was recently identified that the Department was still paying for this expense. As the GWC collects revenue which results from this, the Commission is paying for this expense as this increased oversight needs to be reflected in operations.

Resolved 150/2020 to approve the GWC Budget for 2020-21 for forwarding to the Minister.

- 472** The approved service fee was \$4,347,606.⁵³⁴

Calculation of the budgeted service fee for financial year ending 30 June 2022

- 473** The Department's finance team undertook a similar review exercise for the financial year ending 30 June 2022 which led Sherdiwala to recommend to the DG that there be a further 5% increase in the service fee.⁵³⁵
- 474** The agenda paper presented to the GWC at its August 2021 meeting did not include any explanation as to how the budgeted service fee was calculated for the financial year ending 30 June 2022 even though that fee was set in March 2021.⁵³⁶
- 475** The GWC budget papers for the financial year ending 2022 include the following:⁵³⁷

A review of the 2019-20 targeted and actual cost of services for the regulation activities attributable to GWC found compliance audits and inspections for casino and gaming have increased by 5%. Additionally, based on 2020-21 budgeted KPIs and Total Cost of Services (TCOS) for the regulation division, an increase of \$1.2 million (or 28%) was calculated. However, as this is [a] significant increase, DLGSC is proposing to increase the fee for services provided by 5% to \$4,564,986 to support the Commission, consistent with 2020-21.

The minutes for that meeting do not record substantial discussion about the budgeted service fee.⁵³⁸ The approved service fee was \$4,564,986.⁵³⁹

Gaming and Wagering Commission's approval of the budgeted service fee

- 476** Since at least 2005, the GWC has not been involved in the calculation of the budgeted service fee.⁵⁴⁰ The service fee is presented to the GWC as part of the GWC's budget estimates and it approves the service fee as part of its approval of those estimates.
- 477** The minutes generally do not record any discussion concerning the budget other than to indicate that it has been approved. However, the approach to minute-taking is generally sparing and the PCRC does not conclude that the fact that no discussion is recorded means that no discussion occurred. The evidence of the members, some of which is summarised below, indicates that members had a limited understanding of the basis of the budgeted service fee and the Department did not provide details of how it was calculated.
- 478** A former GWC member gave evidence that, on his commencement with the GWC, Ng provided him with an oral briefing on the GWC's finances, including revenue and operating expenses for gaming and wagering. The former member said that Ng advised the service fee charged by the Department was arrived at on advice from Department heads on the cost of salary, wages and overheads for employees of the Department involved in discharging duties on wagering and gaming.⁵⁴¹
- 479** The former member's evidence was, in effect, although he queried the service fee and the lack of detail supporting it, none of those queries ever led to the service fee being changed from the one that was proposed in the budget.⁵⁴²
- 480** A current member gave evidence that, in effect, the service fee was presented to the GWC by the Department as a 'set figure' and that the service fee had not been negotiable.⁵⁴³
- 481** Another current member gave evidence that their understanding of the service fee was that it was set prior to their appointment as a GWC member by reference to the scale and scope of departmental resources that were allocated to GWC matters and that the figure generally increased by CPI each year.⁵⁴⁴
- 482** Another current member gave evidence that the budgeted service fee amount equalled the actual service fee charged each month, and that their assumption would be that the Office

of the Auditor General, when they are reviewing the financial statements, would be looking for confirmation of how the departmental cost is split.⁵⁴⁵

Determination of the actual service fee

- 483** The Department does not undertake a process to determine the actual cost of the services provided to the GWC by the Department after the budgeted service fee has been set.⁵⁴⁶ As already explained, since at least March 2000, the Department has not had an activity-based costing system and it is therefore not possible to ascertain the actual cost of the services provided to the GWC. Consequently, the Department has not provided any record of a calculation or substantiation of the actual cost of the provision of services by the Department to the GWC.⁵⁴⁷
- 484** Since the machinery of government changes in 2017, the approach has been to charge the GWC the budgeted amount so that the actual service fee is the same as the budgeted service fee.⁵⁴⁸ Prior to the machinery of government changes in 2017, there was some financial years in which the actual service fee was less than the budgeted service fee.
- 485** For example, in the financial year ending 30 June 2006, the budgeted service fee was \$2,938,000⁵⁴⁹ and the actual service fee was \$2,538,000,⁵⁵⁰ being a variance of \$400,000. The reason for the variance was to capture in the GWC some of the additional revenue the Department received, as opposed to returning those amounts to Treasury.⁵⁵¹
- 486** Since the machinery of government changes in 2017, the physical payment of the service fee has been made without recourse to the GWC members. The CFO (of both the Department and the GWC) approves an annual purchase order for the service fee and that constitutes sufficient approval for the monthly invoices to be paid by the departmental officer. The GWC itself does not receive an invoice from the Department nor does it specifically approve each monthly payment.⁵⁵²
- 487** The Department has informed the PCRC that, from the start of the financial year 1 July 2021 onwards, the GWC Divisional Accountant, a departmental Divisional Accountant who has portfolio responsibility for GWC matters, has created, on a monthly basis, an invoice for the GWC to pay the service fee.⁵⁵³

Overall conclusions on service fee

Department's role in setting budgeted service fee

- 488** The PCRC concludes that, since at least March 2000, the Department has not determined the proposed budgeted service fee by reference to the actual costs incurred by the Department in providing those services to the GWC.
- 489** As regards the substantial increase in the budgeted service fee in 2009, the PCRC concludes that the Department should have provided greater detail to the GWC about the basis for that proposed increase. The PCRC finds that, in not providing more detailed substantiation for the increase, the Department did not adequately support the GWC.
- 490** The PCRC concludes that, while the Department has, from time to time, provided the GWC with an explanation of increases or decreases in the budgeted service fee, the Department did not, until August 2021, provide an adequate explanation to the GWC about how it calculated the budgeted service fee following the machinery of government changes in 2017.
- 491** The PCRC also concludes that the method for calculating the budgeted service fee for the financial years ending 30 June 2021 and 30 June 2022, which services fees were presented

to the GWC in August 2020 and March 2021 respectively, were not calculated in accordance with Treasury's Costing and Pricing Government Services publication dated May 2020 for the following reasons.

- 492** First, the publication states that the development of an unambiguous description of the service or process used to deliver the service is an essential prerequisite to the costing exercise.⁵⁵⁴ The PCRC concludes that the Department has not developed such a description.
- 493** That is apparent because the Department has set the budgeted service fee for the financial years ending 30 June 2021 and 30 June 2022 by reference to KPIs for audits, inspections and investigations conducted by the Department for the GWC. The provision of those services by the Department is only one of a range of services provided by the Department, which also include providing administrative support to the GWC and the processing of applications for the grant and renewal of casino employee licences. The PCRC concludes that it was inappropriate for the Department to adjust the service fee solely by reference to one of the categories of service that it provides to the GWC.
- 494** Secondly, the publication states that the primary aim of the costing exercise should be to focus on the services rather than the processes or relationships to the organisation's structure. It gives the example that the focus should not be on 'administering the payroll system' or 'the payroll branch' but rather on 'the provision of payroll services'.
- 495** In setting the service fee for the financial year ending 30 June 2019, the Department calculated the service fee on the basis that it was 28.75% of the budget of the division of Racing, Gaming and Liquor division in the new Department on the basis of its understanding that the former Department had calculated the service fee on the basis that it was 28.75% of the former Department's budget. This was a calculation made by reference to the organisation's structure rather than by reference to services provided. The Department has calculated the service fee in the financial years ending 30 June 2021 and 30 June 2022 by using the service fee set for the financial year ending 30 June 2019 as a baseline. The PCRC concludes using that figure as a baseline was inconsistent with the guidance in the publication because that baseline service fee was calculated by reference to the organisation's structure rather than the services provided.
- 496** Thirdly, the publication states, in effect, that the basis for attributing staffing costs to the delivery of different services must be verifiable. The publication suggests that this can be done by data collected during a survey period of relatively short duration.⁵⁵⁵ Since the machinery of government changes in 2017, the Department has not undertaken a survey of this kind and simply relied upon its understanding that the service fee had been calculated by the former Department of Liquor, Gaming and Racing on the basis that it was 28.75% of the former Department's budget. This understanding led to the setting of the baseline service fee for the financial year 2019, from which the service fees for the financial years ending 30 June 2021 and 30 June 2022 were adjusted by reference to KPIs. The PCRC concludes that this means that, contrary to Treasury's guidance, there is not a verifiable basis for the attribution of staffing costs which underpins services fees for the years ending 30 June 2021 and 30 June 2022.
- 497** In addition, the use of the change in raw number of audits, inspections and investigations conducted by the Department on behalf of the GWC is not a proper basis for adjusting the service fee because the cost of audits, inspections and investigations will vary depending upon the nature of the audit, inspection and investigation. A principled approach to the use of data about audits, inspections and investigations in the calculating of the service fee would need to factor in that the cost of audits, inspections and investigations will differ. The PCRC concludes that it was inappropriate for the Department to calculate the budgeted service fee for the financial years ending 30 June 2021 and 30 June 2022 by reference to the raw numbers of audits, inspections and investigations conducted by the Department for the GWC.

- 498** For the above reasons, the PCRC concludes that there was not a sound basis for the Department's calculation of the budgeted service fee in the financial years ending 30 June 2021 and 30 June 2022.
- 499** Separately, the PCRC concludes that the failure of the Department to provide the explanation of the basis upon which it had been calculating the service fee since the machinery of government changes in 2017 until August 2021 means that the Department has not been sufficiently transparent with the GWC about the manner of calculation of the service fee. The PCRC finds that the Department has failed to adequately support the GWC in this regard.
- 500** The Department has commenced work to develop a Service Level Agreement between itself and the GWC. The Department proposes to have a Service Level Agreement in place with the GWC for the commencement of the 2022-2023 financial year.⁵⁵⁶
- 501** The Department also has engaged an external and independent organisation to undertake a review of the service fee.⁵⁵⁷ A mid-tier professional services consultancy firm will develop an activity-based costing model, consistent with the Treasury's 'Costing and Pricing Government Services' guidelines. The model will form the basis of the calculation of the service fee.⁵⁵⁸
- 502** The review was scheduled to commence in January 2022 with possible completion by March 2022. A paper on the review is to be provided to the GWC in the second quarter of 2022.⁵⁵⁹

Gaming and Wagering Commission's role in approving budgeted service fee

- 503** The PCRC infers that GWC members may have understood, incorrectly, that the budgeted service fee was a sum that was not a matter for negotiation with the Department. The PCRC further infers that this was likely to be, in part, a product of the structure of the GWC in that the GWC chair is also the DG of the Department that provides the services.
- 504** Further, as the PCRC has already concluded, the GWC has not been provided with adequate financial advice by the Department or successive CFOs.
- 505** These matters in combination have likely contributed to the position where the GWC has not inquired sufficiently into the basis of the calculation of the budgeted service fee or required an adequate explanation from the Department about its method of calculation.
- 506** The PCRC concludes that, in approving the budgeted service fee:
- a. the GWC has generally failed to inquire sufficiently into the basis of the calculation of the budgeted service fee and to require an adequate explanation from the Department about its method of calculation;
 - b. the statutory requirement that the GWC chair was the DG of the Department and the lack of adequate financial advice to the GWC may have operated as an impediment to the GWC inquiring sufficiently into that matter; and
 - c. the GWC should have taken an active role in reviewing the budgeted service fee and negotiating that fee with the Department.
- 507** The issues described above are not technical and unimportant. Unless the GWC understands the basis on which the budgeted service fee is determined, it cannot make rational and informed decisions about the adequacy of its funding and whether it requires further funding or increased departmental services to discharge its obligations, including its obligation to regulate Perth Casino.

Department's calculation of the actual service fee

- 508** Since the machinery of government changes in 2017, the Department has charged the GWC an actual service fee that is the same as the budgeted service fee. In previous years, it appears that the actual service fee was either the same as, or adjusted from, the budgeted service fee.
- 509** Given that the PCRC has concluded that the calculation of the service fee for the financial year ending 30 June 2021 did not have a sound basis, it follows that it was not appropriate for the actual service fee to be charged on the basis of the budgeted service fee.
- 510** The PCRC therefore finds that the Department has not adequately supported the GWC because it did not have a sound basis for the actual service fee that it charged the GWC for the financial year ending 30 June 2021.

Gaming and Wagering Commission's payment of the actual service fee

- 511** The PCRC infers from the above that, when approving or permitting payment to the Department of the actual service fee, the GWC has not required substantiation from the Department of the actual cost of the services charged or otherwise inquired into the basis of calculation of the actual service fee.
- 512** Similar to the position with the budgeted service fee, this circumstance may be explained in part by the structure of the GWC, with the DG as chair, and the inadequate financial advice the GWC received from the Department and successive CFOs.
- 513** The PCRC concludes that, when approving or permitting payment to the Department of the actual service fee:
- a. the GWC has generally failed to require substantiation from the Department of the actual cost of the services charged or otherwise sufficiently inquired into the basis of calculation of the actual service fee;
 - b. the statutory requirement that the GWC chair was the DG of the Department and the lack of adequate financial advice to the GWC may have operated as an impediment to the GWC requiring substantiation of the actual cost or otherwise inquiring sufficiently into that matter; and
 - c. the GWC should have satisfied itself that the actual service fee had been reasonably substantiated by the Department and reflected the actual cost of the service charged.

Funding of the Gaming and Wagering Commission

Application of the casino gaming licence fee

- 514** One issue that has arisen during the course of the PCRC is whether the casino gaming licence fee can only be applied to the expenses associated with the regulation of casino gaming or whether it can be applied to the expenses of the GWC more generally.
- 515** Section 14(2) of the CC Act was amended in 1985 to expressly provide that the casino gaming licence fee was to be used by the Casino Control Committee (**Control Committee**) for its costs and the costs of administering the Act. At that time, the regulatory responsibilities of the Control Committee were confined to the regulation of Perth Casino.
- 516** The potential for confusion about whether the casino gaming licence fee could be used for a purpose that was not connected to casino regulation arose following the enactment of the *Gaming Commission Act 1987* (WA) and as a consequence of the broad responsibilities of the GC with respect to the regulation of betting and gaming in Western Australia.
- 517** Nonetheless, it remains the case that s 14(1) of the CC Act provides that the casino gaming

licence fee is available for the administration of the CC Act. Payment of the fee into the Gaming and Wagering Commission Account does not mean that the casino gaming licence fee is now available for the general administration of the GWC.

- 518** The PCRC therefore finds that it is not appropriate for the GWC to apply the casino gaming licence fee to meet its regulatory responsibilities outside of casino regulation.

Adequacy of funding

- 519** The PCRC has examined whether the GWC has, or has had, a process for determining whether its income from the casino gaming licence fee and other sources is sufficient to meet the costs of regulating the Perth Casino to the standard expected by the community.
- 520** From at least 2005, the Department has only budgeted for the cost of providing services to the GWC generally and has not specifically budgeted for the cost of providing services in relation to casino regulation.⁵⁶⁰ Departmental officers do not keep a record of when they are working on casino regulation as opposed to any other form of regulation.⁵⁶¹ The actual cost of regulating Perth Casino is therefore unknown.⁵⁶²
- 521** Without knowing the actual current cost of regulating Perth Casino, the PCRC is not in a position to assess whether the casino gaming licence fee, with or without GWC's other income is currently adequate. The PCRC observes, however, that the casino gaming licence fee comprises the bulk of the GWC's revenue. It has not been reviewed since 1990. An obvious question arises in that context as to whether it remains an adequate amount to fund GWC's regulation of casino gaming.
- 522** The PCRC infers that the GWC has not sought information from the Department to ascertain how much the GWC is expending on casino regulation or sought detailed information from the Department as to any fees charged for the provision of services to the GWC for casino regulation.⁵⁶³
- 523** The PCRC finds the GWC has not acted appropriately in the discharge of its responsibilities in that it has failed to ascertain:
- the costs of regulating Perth Casino; and
 - whether the casino gaming licence fee and (or) GWC's income more generally is adequate to meet the costs of regulating Perth Casino.
- 524** The failure to seek that information also means that the GWC is unable to determine whether it is applying the casino gaming licence fee to its regulatory responsibilities other than casino regulation.
- 525** The PCRC finds that the GWC has not acted appropriately in the discharge of its responsibilities in that it has failed to seek information necessary to ensure the casino gaming licence fee is applied only to the regulation of Perth Casino.

Gaming and Wagering Commission's obligation to assess the adequacy of its funding

- 526** The GWC submits that s 7(2) of the GWC Act requires the GWC to 'live within its means'.⁵⁶⁴ An implication of this submission is that the GWC was not required to determine for itself whether its income was sufficient to meet the cost of regulating Perth Casino and its other regulatory responsibilities but, instead, was required to do the best it could with the funding it had. The PCRC does not accept that this is the correct construction of s 7(2).
- 527** Section 7(2) of the GWC Act imposes an obligation upon the GWC to ensure 'in so far as is practicable' that the revenues that it derives are sufficient 'to provide for the operating, administrative and other costs of the Commission'. That is, s 7(2) requires the GWC to take practicable steps to ensure its revenues are sufficient to meet its costs.

- 528** GWC's construction attributes the converse meaning to s 7(2). That is, in effect, GWC submits that s 7(2) requires it to ensure its costs are contained in order that they do not exceed its revenues. However, the obligation that s 7(2) imposes upon the GWC is to ensure that its 'revenue' is 'sufficient' not that its costs are contained.
- 529** Instead, the GWC was obliged to consider whether its funding was adequate to regulate Perth Casino to a standard that meets community expectations in order that it had sufficient funding to carry out its legislative responsibilities in respect of casino regulation.
- 530** This obligation required that the GWC assess the adequacy of the casino gaming licence fee. For the reasons explained above, there is presently insufficient information for the GWC to determine the adequacy of the casino gaming licence fee.
- 531** If the GWC concluded that the casino gaming licence fee was inadequate, then this was a matter to raise with the Minister so that the Minister could consider whether there was a need for government to renegotiate the casino gaming licence fee in the State Agreement or alternatively, to seek additional funding through an appropriation. Section 14(1)(a) of the CC Act expressly provides that the funds available for the administration of the CC Act, that is, the funds available for the regulation of Perth Casino, include moneys from time to time appropriated by Parliament.
- 532** While the GWC might be concerned that a request for an appropriation might be unwelcome or might be refused, that does not absolve the GWC of the responsibility to seek an appropriation if its funding was inadequate for the proper regulation of Perth Casino. If the GWC determined that its funding was inadequate, then the proper course would be to seek an appropriation under s 14(1)(a) of the CC Act.
- 533** Further, to the extent that the GWC has decided not to regulate certain regulatory risks associated with Perth Casino at all or to regulate them to a standard that does not meet community expectations because it had to 'live within its means', this was not a proper basis for that decision.
- 534** The PCRC finds that:
- a. the GWC was obliged to consider the adequacy of its funding and seek further funding by way of an appropriation if its funding was inadequate in order for it to discharge the regulatory responsibilities that are assigned to it; and
 - b. the GWC did not act appropriately to the extent that it refrained from discharging its regulatory responsibilities on the basis that it did not believe that it could seek additional funding.

Department's role in supporting the Gaming and Wagering Commission to seek additional funding

- 535** As noted above, s 14(1)(a) of the CC Act provides that the funds available for the administration of the CC Act, that is, the funds available for the regulation of Perth Casino, include moneys from time to time appropriated by Parliament.
- 536** The evidence before the PCRC indicates that departmental officers have discouraged GWC members from seeking additional funding from the State Government including by way of an appropriation from Parliament.
- 537** Connolly gave evidence that he never recommended the GWC seek additional funding.⁵⁶⁵ One GWC member gave evidence that, when she suggested the GWC write to the Minister to seek additional resources, the suggestion was met with amusement from the public servants in the room who told her that there would be no money forthcoming.⁵⁶⁶

- 538** Ord stated that there was not much scope to apply for increased funding in the budget process.⁵⁶⁷ While Ord gave evidence that it was and is open to the GWC to seek to put a submission to the Expenditure Review Committee for additional funds to undertake activities on their behalf, in Ord's four years as GWC chair, no such submission was ever made.⁵⁶⁸
- 539** That is not an appropriate approach for the Department to take. In its role of supporting the GWC, it should assist the GWC to ascertain its reasonable funding requirements and, if additional funding is required, it should assist the GWC to seek that funding.
- 540** The PCRC finds that the Department has not adequately supported the GWC in ascertaining the GWC's need for additional funding and assisting it to seek any such additional funding that the GWC requires.

Internal audit committee

- 541** As at 30 June 2021, the GWC did not have, and could find no record of it having ever had, an internal audit committee.⁵⁶⁹ Ord gave evidence that the GWC participates in the Department's audit sub-committee in that a member of the GWC will attend that sub-committee when it is convened to review GWC audit outcomes.⁵⁷⁰
- 542** At its meeting on 28 July 2020, the GWC resolved to include the GWC within the written charter of the Department's internal audit committee and appoint Meadows as its representative on that committee.⁵⁷¹
- 543** Evidence before the PCRC suggests that this internal audit committee had not met as at August 2021, despite meetings having been scheduled on 4 March and 3 June 2021.⁵⁷²
- 544** In August 2021, Meadows gave evidence to the PCRC in which she referred to discussions at the July and August 2021 GWC meetings to the effect it was probably not the appropriate course for the GWC to be a part of the Department's internal audit committee, on the basis that the GWC had very specific risks which differed to those of the Department.⁵⁷³
- 545** The GWC resolved at its November 2021 meeting that the Department would prepare a paper for GWC's consideration on the cost, processes and options for establishing an audit and risk Committee. That paper was to be presented at the GWC's meeting in February 2022.⁵⁷⁴
- 546** The PCRC finds that the GWC has not acted appropriately in the discharge of its functions and responsibilities in that the GWC has failed to comply with its obligation to establish and maintain an effective internal audit function.

Part Six: Regulation of specific risks to the attainment of the regulatory objectives

Regulation of the risk relating to the suitability of the casino licensee and its associates

Legislative framework

- 547** Chapter Fifteen: Enhancements to the Regulatory Framework, addresses the lack of a legislative provision requiring a periodic review of a casino licensee or of any associated entities.

Gaming and Wagering Commission's practice in respect of suitability

- 548** With the exception of the probity checks completed when ownership of the Perth Casino changed in 2004, since the casino licence was issued in 1985 there has not been an investigation or review by the GWC of the continuing suitability of the existing licensee or its close associates, or of the way in which the licensee conducts the gaming and gaming related activities of Perth Casino.
- 549** In response to a request for information from the PCRC, the GWC advised that since 2010 no investigations had been conducted under s 21A of the CC Act with respect to the suitability of the existing licensee or any related party, but that from time to time, Perth Casino has advised the GWC of company structure changes, including changes of directorships. In response to these notifications, probity checks have been undertaken to determine licence applications for those individuals.⁵⁷⁵
- 550** At its first meeting in 2021, the GWC resolved to request the Minister to direct the Commission under s 21A(5) to arrange an inquiry into the suitability of the Perth Casino licensee, in light of the findings in the Bergin Report.⁵⁷⁶ That inquiry never eventuated, due to the establishment of the PCRC.
- 551** The PCRC heard evidence from Connolly that probity and suitability of the operator of the Perth Casino has always been of interest to the GWC⁵⁷⁷ and that he had infrequent but regular discussions with representatives of Australian casino regulators in relation to those matters.⁵⁷⁸
- 552** As to the GWC's contribution to those discussions, Connolly gave evidence that, from time to time, the GWC participated in joint investigations with other Australian casino regulators in the sense that it has contributed funding to those investigations, but not conducted any investigations in Western Australia.⁵⁷⁹ He explained that the GWC had not conducted any of its own investigations because of a lack of skills and resources for something which he viewed as quite technical.⁵⁸⁰
- 553** Belling understood the function of ensuring the integrity of gambling included ensuring that the operator of Perth Casino remained a suitable person.⁵⁸¹ She described suitability as having a 'wide gambit' which included the 'fitness and propriety of all the individuals involved and that would exten[d] to the entity's history and background in terms of the conduct of business ... whether there was any criminal history attached ... as an individual person or even as a corporate entity'.⁵⁸²
- 554** At its meeting on 23 June 2015, the GWC considered a Casino Compliance Strategy (**CC Strategy**) for '2015/2016'.⁵⁸³ Connolly, as DDG, prepared the accompanying agenda paper with a recommendation to approve the CC Strategy.⁵⁸⁴ In his paper, he described the CC Strategy as 'developed to articulate the activities that will be undertaken by officers from the Department to maintain the integrity of casino gaming operations'.
- 555** The CC Strategy itself set out four objectives; the first was to ensure the ongoing suitability of the Perth Casino licensee and licensed casino employees,⁵⁸⁵ and the others related to the promotion and maintenance of legislative compliance and public confidence, and ensuring the accurate calculation of revenue and tax. The remainder of the CC Strategy, set out how the GWC and Department would achieve those objectives, namely through conducting audit and inspection activities, based on risk assessments and operational compliance plans.⁵⁸⁶ Those activities were directed at casino table games, EGMs, casino revenue and tax, surveillance, security, controlled contracts and approved suppliers, and casino employee licensing.
- 556** The CC Strategy was endorsed by the GWC.⁵⁸⁷
- 557** One member gave evidence to the PCRC that the objective of the CC Strategy was to ensure the ongoing suitability of the licensee,⁵⁸⁸ however suitability was not actually something the

GWC turned its mind to frequently because there was nothing in the legislation which would allow the GWC to 'act in that area', rather it was in the Minister's remit.⁵⁸⁹

- 558** Another former member recalled that the CC Strategy was developed to make the Perth Casino and the Department more accountable to the GWC. They did not view it as a change in the GWC's regulatory approach.⁵⁹⁰
- 559** Sargeant described the CC Strategy as an 'aspirational document' and he did not recall it being a document which, in effect, set out strict protocols on how outcomes were to be achieved.⁵⁹¹ When he first gave evidence to the PCRC (when he was still a member of the GWC) he said it reflected the current view of the GWC but that he did not think much of it had been achieved.⁵⁹²
- 560** The PCRC concludes that, although the CC Strategy referred to 'suitability of the licensee', in practice, it was not a document which guided any formal or regular assessment of the suitability of the Perth Casino licensee, rather it related to the processes and procedures for maintaining integrity of casino operations.

Gaming and Wagering Commission's response to the Victorian inquiry into Melbourne Casino

- 561** The GWC informed the PCRC that its past practice regarding the assessment of the suitability of Crown as a licensee was to consider the outcomes of the then Victorian Commission for Gambling and Liquor Regulation (**VCGLR**)'s process of review into suitability of Melbourne Casino and 'apply key findings and outcomes of those reviews to auditing and monitoring Crown Perth's suitability as a licensee'.⁵⁹³
- 562** Under the Victorian legislative regime, the VCGLR (now the Victorian Gambling and Casino Control Commission) must, at least every five years, investigate and form an opinion as to the following, which is provided to the Minister:
- a. whether or not the operator of Melbourne Casino is a suitable person to continue to hold its casino licence;
 - b. whether it is being compliant with various legislation and regulations and any other required documents or agreements; and
 - c. whether it is in the public interest that the casino licence should continue.⁵⁹⁴
- 563** The last suitability assessment, outside of the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**), was completed in June 2018.
- 564** The VCGLR's Sixth Review of the Casino Operator and Licence report (**Sixth Review**)⁵⁹⁵ was provided to the Victorian Minister for Consumer Affairs, Gaming and Liquor Regulation under cover of a letter from the chair of the VCGLR dated 2 July 2018. It did not include the VCGLR's assessment in relation to the China Arrests, which are examined in Chapter Seven: China Arrests.
- 565** Subject to that issue, the GWC submitted to the PCRC that, while it identified some failures of governance and risk management, the Sixth Review was 'generally benign'.⁵⁹⁶
- 566** However, on the basis of the evidence set out below, the PCRC concludes that the Sixth Review was not generally benign, and, given the apparent failings of Melbourne Casino, it ought to have prompted an investigation by the GWC into the suitability of the licensee to hold the Perth Casino licence.
- 567** The Sixth Review was brought to the GWC's attention by way of an agenda item for its meeting on 28 August 2018.⁵⁹⁷ That agenda paper was prepared by a departmental regulatory officer, who recommended the GWC '[n]ote the report' which comprised 209 pages.

568 A portion of the agenda paper summarised the suitability aspects of the Sixth Review. It stated as follows:⁵⁹⁸

Outcome: Crown Melbourne remains a suitable person to hold a casino licence.

Purpose: The report explores the question of general suitability.

Crown Melbourne has a satisfactory corporate structure, and it is financially sound. Its directors and executives have substantial experience in business and other relevant matters, especially the management and operation of a casino. No matters have emerged which would reflect negatively on Crown Melbourne or its associates having regard to honesty, integrity or financial matters.

However, there have been failings in governance and risk management. Three disciplinary actions taken in the review period raise questions as to how and why Crown's culture and practices allowed them to occur. The relative recency of the last disciplinary action means that this is a work in progress, but it is clear that Crown has taken decisive steps to address organisational weaknesses in regulatory compliance.

Crown Resorts has demonstrated commitment to improvement of its risk management and compliance effort by adding executive capacity at the group level across risk and audit, and regulatory [anti-money laundering/ counter-terrorism financing] compliance.

- 569** At the end of the agenda paper, the areas identified for improvement were noted as responsible gambling, organisation approach to regulation and institutional governance.⁵⁹⁹
- 570** The minutes of the GWC meeting record a resolution in line with the recommendation,⁶⁰⁰ but elsewhere in the minutes it was recorded that the members agreed the Perth Casino should provide a submission on the recommendations of the Sixth Review in respect of responsible service of gambling (or gaming) (**RSG**) 'as if those recommendations were made in respect of casino gambling operations in Western Australia'.⁶⁰¹ That response, limited to the topic of RSG, was provided by way of a letter from Perth Casino dated 14 November 2018, which was passed onto the GWC with its agenda papers for the meetings scheduled on 27 November 2018 and 18 December 2018.⁶⁰²
- 571** The minutes of the GWC's December 2018 meeting record that Preston provided an update for members in relation to the 20 recommendations that came out of the Sixth Review. Those 20 recommendations in the Sixth Review were not solely in relation to RSG.
- 572** The PCRC heard limited evidence from some GWC members in respect of the Sixth Review.
- 573** One former member gave evidence that they did not think that they read the Sixth Review.⁶⁰³ They were present at the meeting on 18 December 2018, and with a caveat that they could not be certain it was an independent recollection, described the presentation, in effect, as an explanation of what recommendations had relevance to the Perth Casino and that steps had already been taken to implement them. That member thought the GWC was provided with sufficient comfort in respect of its response to the Sixth Review.⁶⁰⁴
- 574** That former member also gave evidence that they did not believe any further steps were taken by the Department or the GWC in respect of the Sixth Review, save for monitoring for the VCGLR's review in respect of the China Arrests.⁶⁰⁵
- 575** Another former member recalled receiving the Sixth Review and it being considered at the meeting.⁶⁰⁶ They could not recall whether, in light of the recommendations in the Sixth Review, the GWC considered that a deeper investigation was required into the corporate governance and the anti-money laundering processes at Perth Casino.⁶⁰⁷

Conclusions

- 576** For the reasons explained at the outset of this chapter, the GWC, as the casino regulator, has the responsibility to regulate the risks relating to the suitability of the casino licensee and its associates. That responsibility devolves upon the GWC even in the absence of an express legislative requirement for periodic suitability reviews.
- 577** The PCRC infers that the GWC and the Department had a general appreciation of the need to monitor the ongoing suitability of the licensee; so much is evident from the practice of considering the outcomes of the VCGLR's process of review into suitability. However, the PCRC concludes that practice was inadequate for at least four reasons.
- 578** First, the practice was entirely reactive to and dependent upon the issues identified by the VCGLR in respect of the Melbourne Casino licensee. There was therefore a risk that suitability issues unique to the Perth Casino licensee, or which had not been identified by the VCGLR, might be overlooked. In that regard, it does not appear that the GWC has ever considered or sought to ascertain the nature and breadth of matters that are relevant to an assessment of suitability of the licensee.
- 579** Second, based on the evidence of the GWC's response to the Sixth Review, the GWC did not engage with the VCGLR's recommendations beyond those relating to RSG. Importantly, the GWC did not engage with three recommendations in respect of corporate governance and risk, where failings and disciplinary action had been identified.
- 580** Third, the GWC's failure to have processes in place to consider the suitability of the Perth Casino licensee and its associates at regular intervals (whether that be by what was publicly known or through its own investigation) compromised its effectiveness as a casino regulator. In this regard the Department failed to support the GWC by not proposing a process for suitability review for the GWC's approval.
- 581** Fourth, the Department's support of the GWC was deficient because the agenda paper's recommendations to the GWC to 'note' the Sixth Review was patently inadequate.
- 582** The PCRC concludes that the identification of failings and need for improvement in those areas ought to have put the GWC on notice, given the known association between Melbourne Casino and Perth Casino, that similar failings might exist at Perth Casino, and so it should have acted to ascertain whether that was the case.
- 583** The PCRC finds that the regulation of the risks relating to the suitability of the casino licensee and its associates has, in general, not been managed appropriately and effectively by the GWC. Neither has the Department supported the GWC in this respect.

Regulation of the risk of a lack of integrity in casino gaming

- 584** The GWC has a statutory duty to administer the law relating to gaming and to keep under review the conduct, extent and character of gaming.⁶⁰⁸ The GWC informed the PCRC that the GWC's practices and policies are 'designed to maintain public confidence in the integrity of gambling in all of its forms including casino gaming'.⁶⁰⁹

Legislative framework

- 585** The legislative framework for casino gaming provides that the GWC authorises the games that can be played at Perth Casino, as well as the rules of the game.⁶¹⁰ The GWC has the power to give directions to a casino licensee with respect to the system of internal controls and administrative and accounting procedures that apply to the gaming operations of the casino licensee.⁶¹¹

Exercise of the Gaming and Wagering Commission's power to make directions

- 586** The GWC creates binding procedures for table games through the exercise of its power under s 24 of the CC Act to make Directions. These procedures are designed to ensure the integrity of casino gaming.
- 587** The Directions require the Perth Casino to maintain the Casino Manual (Games Procedures) (**CM(Games)**) which contains the rules by which authorised table games must be conducted.⁶¹² Any amendment to the CM(Games) must be approved by the GWC.⁶¹³
- 588** Direction 2.1 provides that the Casino Operator (as defined in the Directions) must ensure that at all times each authorised game is conducted in accordance with the procedures for that game set out in the CM(Games).
- 589** The first section of the CM(Games) sets out the general procedural requirements of casino gaming at Perth Casino, such as opening and closing tables, new decks of cards, shuffling, chips, and paying and taking procedures. The remaining sections each deal with the specific procedures for playing particular games. For example, s B concerns Blackjack, s C concerns Roulette, and s F concerns Poker. Each of these sections is extensive and detailed.
- 590** Compliance with those procedures is monitored as an aspect of the audit and inspection program, which is considered further below.
- 591** In addition, the Directions include provisions that are directly relevant to the integrity of casino gaming. For example, dir 9 addresses gaming table supervision levels and sets minimum standards for supervision by casino staff of gaming. Direction 10 addresses gaming equipment and chips which must be approved by the GWC.
- 592** Direction 15.1 concerns assisting patrons in relation to the rules of the game. It requires the Casino Operator to make available, at the request of a casino patron, a copy of the rules of gaming approved by the GWC in respect of the particular authorised game.
- 593** The PCRC concludes that the use of the CM(Games), which is made binding upon the Perth Casino licensee by the Directions, is an appropriate use of the GWC's regulatory powers to establish binding procedures for the playing of casino games that positively support the regulation of the risk of a lack of integrity in casino gaming.

Effectiveness and capability

- 594** The audit and inspection program is the principal means by which the GWC seeks to ensure compliance with the rules and procedures established for casino gaming.
- 595** Departmental inspectors, on behalf of the GWC, seek to ensure through the audit and inspection program that only authorised table games are played at Perth Casino and that they are played according to the approved rules and procedures in the CM(Games).
- 596** As described in Chapter Thirteen: Electronic Gaming Machines, the GWC sets policies and standards for EGMs at the Perth Casino. The GWC uses an accredited testing facility to obtain assurance that the EGMs meet those standards and receives reports regarding the performance of EGMs. The testing and reporting predominantly relates to fairness and integrity of the EGMs. The departmental inspectors also have a monitoring role in respect of EGMs.
- 597** The licensing regime for casino employees, considered in Chapter Nine: Other Criminal Activity, also contributes towards ensuring the integrity of casino gaming by requiring casino employees to meet a suitability standard.
- 598** Although concerns have been raised about the significant decrease in the resourcing of the inspectorate over time, there is no evidence that this has adversely affected the regulation of the risk of a lack of integrity in casino gaming.

- 599** The PCRC finds that the risk of a lack of integrity in casino gaming has been, in general, regulated appropriately, capably and effectively by the GWC.
- 600** The PCRC finds that the Department has adequately supported the GWC to regulate the risk of a lack of integrity in casino gaming.

Regulation of the risk of a lack of integrity in casino operations

- 601** This section addresses the risk of a lack of integrity in casino operations other than by reason of criminal activity.
- 602** The CM(Ops) contain provisions dealing with accounting and financial matters, security and surveillance, computers and information technology, cooperation with and assistance to the GWC and departmental inspectors, and the admission and exclusion of patrons from the casino.
- 603** The effect of dir 1.5 is that the CM(Ops) is a document that is approved by the GWC and can only be amended with the approval of the GWC.
- 604** The relationship between the Directions and the CM(Ops) is more complicated than the relationship between the Directions and the CM(Games). The Directions make only some parts of the CM(Ops) binding upon the Perth Casino licensee. It is not evident on the face of the Directions or the CM(Ops) which of the many sections and subsections of the CM(Ops) are binding on the licensee. To the extent that parts are not binding, the purpose of their inclusion in the CM(Ops) is unclear.
- 605** The PCRC concludes that the Directions and the CM(Ops) are unclear about the extent to which compliance with the CM(Ops) is required by the Directions.
- 606** In this regard, the PCRC finds that, as the CM(Ops) is one of the main means by which the GWC regulates the Perth Casino operations, the GWC has not appropriately discharged its responsibility to regulate the risk of a lack of integrity in casino operations.
- 607** The licensing regime for casino employees referred to in the previous section contributes to ensuring the integrity of casino operations by requiring casino employees meet a suitability standard.
- 608** The PCRC has examined in Chapter Six: Junkets and Chapter Eight: Money Laundering, deficiencies in the regulation by the GWC of the risk that the casino's operations will be used to facilitate money laundering and the risk that the casino's operations will be infiltrated by criminal organisations. In that regard, the PCRC finds that the regulation by the GWC of the risk of a lack of integrity in casino operations has not been effective.
- 609** There is no evidence that risk of a lack of integrity in casino operations has materialised in any other significant way.

Part Seven: Statutory enforcement mechanisms

- 610** There are three statutory enforcement mechanisms available to the GWC in respect of the Perth Casino licensee, namely, prosecution, the issue of an infringement notice and the special penalty regime in s 21A and 21B of the CC Act.

Prosecutions

- 611** A prosecution for an offence against the CC Act may be commenced by a member of the Police Force, the CCO or a person authorised by the Minister or the GWC.⁶¹⁴
- 612** The most recent prosecution of the Perth Casino licensee, Burswood Nominees Limited

- (**BNL**), at the instigation of the GWC appears to have occurred in 2010.⁶¹⁵ BNL was charged with permitting a game to be conducted at Perth Casino other than in accordance with the approved rules of the game contrary to s 22(6)(b) of the CC Act. It appears that the incident occurred on 16 April 2010 when a game of Baccarat was played contrary to the approved rules in that a patron was paid out \$320,000 despite the fact that the patron's wager had not been placed on the correct area of the layout.
- 613** That offence then carried, and still carries, a maximum penalty of \$25,000 for a body corporate.⁶¹⁶ BNL entered a plea of guilty on 15 December 2010 and, on 5 January 2011, was fined \$2,500 and required to pay \$650 in costs.⁶¹⁷
- 614** The purpose of having a penalty for failing to comply with the approved rules of the game is to deter that conduct. Some instances of a failure to play in accordance with the approved rules could, if they improved the payout ratio to the licensee from the game, be of very substantial value to the licensee. The current maximum penalty available would have almost no deterrent effect with respect to that conduct.
- 615** Another example of an offence by the casino licensee that may give rise to a prosecution is contravention of a direction made by the GWC under the CC Act.⁶¹⁸ That offence carries a maximum penalty for a body corporate of \$5,000. The Directions given by the GWC are central to the GWC's regulation of the conduct of the Perth Casino licensee. For example, as noted above, the Directions address the risk of a lack of integrity in casino gaming by making the CM(Games) binding. Therefore, a failure by the Perth Casino licensee to comply with the CM(Games) is punishable by a maximum penalty of \$5,000.
- 616** It is self-evident that in a modern casino gaming context, the likely level of turnover and profit mean that a penalty of \$5,000 is insufficient to act as a deterrent to a breach of the CM(Games). The current penalty for a breach of the Directions therefore is not adequate to support the regulator to mitigate regulatory risks such as the risk of a lack of integrity in casino gaming.
- 617** It is self-evident also that in a modern casino gaming context, it is necessary for the regulator and its agents to understand their role in regulatory law enforcement. Evidence heard by the PCRC indicates that the GWC and the Department eschew any responsibility for law enforcement. The number of prosecutions commenced under the CC Act confirms this approach.
- 618** The PCRC recommends that the GWC, supported by the Department, review the GWC's and the CCO's role in regulatory law enforcement through prosecutorial action and take what steps are necessary to ensure that it and the CCO have the capability to exercise their regulatory law enforcement functions.
- 619** The PCRC finds that these penalties, and the maximum penalties available under the CC Act more generally, are manifestly inadequate to support the proper regulation of Perth Casino.

Infringement notices

- 620** Part VB of the CC Act establishes an infringement notice regime. The offences under the CC Act in respect of which an infringement notice may be issued are prescribed by the *Casino Control Regulations 1999 (WA) (CC Regs)*.⁶¹⁹ An infringement notice can be issued by a person authorised by the GWC⁶²⁰ who has reason to believe that a person has committed a prescribed offence.⁶²¹ The CC Regs also prescribe the 'modified penalty' to be paid by the recipient of an infringement notice.⁶²² If the recipient of an infringement notice pays the modified penalty for the offence within the specified time, the recipient is not able to be prosecuted for the offence.⁶²³

- 621** Since 1 January 2010, there have been six infringement notices issued to BNL at the instigation of the GWC.⁶²⁴ The suspected offences that were the subject of the infringement notices included:
- a. a failure to conduct the game of Blackjack in accordance with the approved rules contrary to s 22(6)(b) of the CC Act on 21 April 2011;⁶²⁵
 - b. a failure to ensure that no person under the age of 18 years is permitted to enter or remain in the Perth Casino on 16 November 2012;⁶²⁶ and
 - c. a breach of dir 10.5 of the Directions by failing to seek the approval of the GWC before purchasing tournament gaming chips.⁶²⁷
- 622** No infringement notices have been issued at the instigation of the GWC since 14 July 2016.⁶²⁸
- 623** The modified penalties prescribed by the CC Regs have not been amended since the CC Regs were promulgated in 1999. The modified penalty for a failure to conduct games according to the approved rules is \$250.⁶²⁹ The modified penalty for a failure of the licensee to comply with directions is, if the licensee is a body corporate, \$500.⁶³⁰ That is the largest of the modified penalties available against the Perth Casino licensee under the infringement notice regime.⁶³¹
- 624** For the reasons already explained in respect of the conclusion that the penalties under the CC Act are manifestly inadequate, the PCRC concludes that the penalties under the infringement notice regime are also manifestly inadequate.
- 625** The PCRC finds that the modified penalties that are prescribed by the CC Regs are also manifestly inadequate.

Recommendations under s 21A(4) of the *Casino Control Act 1984 (WA)*

- 626** Sections 21A(1) and (2) of the CC Act confer powers of investigation upon the GWC. Section 24A(4) provides that the GWC may report to the Minister in respect of an investigation and make recommendations as to any action that the GWC considers should be taken under s 21B of the CC Act.
- 627** The actions which may be taken under s 21B are set out in subsection (3) and are broad powers of the Minister to serve a letter of censure on a casino licensee and, with the approval of the Governor, suspend or revoke a casino licence, terminate an agreement (other than a casino complex agreement) relating to the management or operation of the casino complex, and, with the approval of the Governor, order a casino licensee to pay a monetary penalty fixed by the Minister but not exceeding \$100,000.
- 628** Since 1987, the GWC has only made two recommendations to the Minister pursuant to s 21A(4) of the CC Act.⁶³²
- 629** In December 2000, the Minister imposed a monetary penalty of \$30,000 on BNL for permitting a juvenile to enter and remain in Perth Casino, after receiving a recommendation from the GC under s 21A(4) of the CC Act.⁶³³
- 630** On 8 October 2004, the GWC made a recommendation to the Minister that the Minister issue a letter of censure to BNL for a breach of dir 8.1(e) and 8.5 of the Directions arising from a failure to maintain a system of control over keys pertaining to the licensed gaming area.⁶³⁴ The Minister did not form the opinion that he should exercise the powers conferred by s 21B(3).⁶³⁵
- 631** The PCRC concludes that the special penalty regime under the s 21A and 21B of the CC Act has been infrequently used. Given the special nature of that regime, it may be expected that it will not be used frequently.

- 632** However, the fact that this regime is not used frequently underlines the importance of the inclusion of an adequate penalty regime in the CC Act more generally. As the PCRC has already found, the penalties that may be imposed upon a successful prosecution and that accompany an infringement notice are manifestly inadequate.

Endnotes

- 1 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 1, 140; *Casino Control Act 1992* (NSW) [PUB.0016.0001.2799] s 4A; *Casino Act 1997* (SA) [PUB.0016.0001.0001] s 2A; *Casino Control Act 1982* (Qld) [PUB.0016.0001.2401] s 3; *Gaming Control Act 1993* (NT) [PUB.0016.000 1.2893] s 2A.
- 2 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 – 16.
- 3 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 7(1)(a) – (b).
- 4 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 8(1) – (2).
- 5 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20A(3).
- 6 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20B(5).
- 7 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20A(2).
- 8 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20B(5).
- 9 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch1 cl 23(1)(c).
- 10 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 12(1).
- 11 Formerly known as Jodie Hede.
- 12 Email from Bovell to PCRC (15 July 2021) [PCRC.0012.0003.0001].
- 13 Chopping, witness statement [DLG.0001.0009.0227_R] [11].
- 14 Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [11], [13], [18].
- 15 Western Australia, Government Gazette, No 175 (15 October 2021) [PUB.0032.0004.0004] 4744.
- 16 Meadows, witness statement [GWC.0003.0007.0015_R] [14] – [15].
- 17 Western Australia, Government Gazette, No 175 (15 October 2021) [PUB.0032.0004.0004] 4744.
- 18 Fiorentino, witness statement [GWC.0003.0003.0006_R] [9].
- 19 Western Australia, Government Gazette, No 175 (15 October 2021) [PUB.0032.0004.0004] 4744; Fiorentino has given notice to the GWC and Minister that she will resign effective 31 March 2022; GWC, agenda papers (25 November 2021 meeting) [GWC.0015.0001.0020_R] 12.
- 20 Prowse, witness statement [GWC.0003.0006.0004_R] [10].
- 21 Western Australia, Government Gazette, No 53 (26 March 2021) [PUB.0016.0023.0001] 1170.
- 22 Dobson, witness statement [GWC.0003.0009.0022_R] [15].
- 23 Western Australia, Government Gazette, No 53 (26 March 2021) [PUB.0016.0023.0001] 1170; Western Australia, Government Gazette, No 220 (24 December 2021) [PUB.0016.0030.0001] 5756.
- 24 Western Australia, Government Gazette, No 175 (15 October 2021) [PUB.0032.0004.0004] 4744.
- 25 Western Australia, Government Gazette, No 175 (15 October 2021) [PUB.0032.0004.0004] 4744.
- 26 Hayward, witness statement [GWC.0003.0004.0001_R] [8].
- 27 Cogan, witness statement [GWC.0003.0010.0001_R] [9].
- 28 Harrison, witness statement [GWC.0003.0008.0003_R] [10].
- 29 Dullard, witness statement [GWC.0003.0011.0001_R] [10].
- 30 Carr, witness statement [WIT.0005.0001.0001_R] 1.
- 31 Duckworth, witness statement [GWC.0003.0005.0001_R] [8], [11].
- 32 Fisher, witness statement [WIT.0003.0001.0001_R] [2].
- 33 Western Australia, Government Gazette, No 195 (28 October 2016) [PUB.0032.0004.0025] 4937.
- 34 Ord, witness statement [WIT.0002.0001.0001_R] [4]; Chopping became the subsequent chairperson of the GWC on 31 May 2021; Chopping, witness statement [DLG.0001.0009.0227_R] [11].
- 35 Sargeant, witness statement [GWC.0003.0002.0001_R] [9].
- 36 Sargeant, witness statement [GWC.0003.0002.0001_R] [6]; Sargeant, transcript [TRA.0001.0001.0001] 149.
- 37 Sargeant, witness statement [GWC.0003.0002.0001_R] [5].
- 38 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 12(1)(a).
- 39 Sargeant, witness statement [GWC.0003.0002.0001_R] [9].

40 Department, annual report 2011/12 [PUB.0004.0006.0167] 8; Chopping, witness statement [DLG.0001.0009.0227_R] [41].

41 GWC, Royal Commission Part 1 Responses to Requirements 1 & 2 - Appendix B Appointments of the Chief Casino Officer [GWC.0001.0001.0001]; GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (15 April 2021) [QNE.0001.0001.0024] 2.

42 Western Australia, Government Gazette, No 133 (24 July 2012) [PUB.0005.0001.0001] 3402.

43 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 12(1).

44 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 12(4)(a).

45 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 12(4).

46 Prowse, witness statement [GWC.0003.0006.0004_R] [12]; Hayward, witness statement [GWC.0003.0004.0001_R] [7]; Duckworth, witness statement [GWC.0003.0005.0001_R] [9]; Harrison, witness statement [GWC.0003.0008.0003_R] [11]; Dullard, witness statement [GWC.0003.0011.0001_R] [11]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [14]; Cogan, witness statement [GWC.0003.0010.0001_R] [10]; Carr, transcript [TRA.0001.0001.0001] 957; Fisher, transcript [TRA.0001.0001.0001] 753.

47 Department of the Premier and Cabinet, OnBoard WA (21 June 2021) [PUB.0029.0006.0001].

48 Meadows, witness statement [GWC.0003.0007.0015_R] [11]; Dobson, witness statement [GWC.0003.0009.0022_R] [16]; Fiorentino, transcript [TRA.0001.0001.0001] 5.

49 Prowse, witness statement [GWC.0003.0006.0004_R] [8], [13]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [8]; Hayward, witness statement [GWC.0003.0004.0001_R] [6]; Duckworth, witness statement [GWC.0003.0005.0001_R] [5]; Meadows, witness statement [GWC.0003.0007.0015_R] [9]; Cogan, witness statement [GWC.0003.0010.0001_R] [5]; Dullard, witness statement [GWC.0003.0011.0001_R] [9]; Fisher, witness statement [WIT.0003.0001.0001_R] [1]; Carr, witness statement [WIT.0005.0001.0001_R] 1; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [10]; Harrison, transcript [TRA.0001.0001.0001] 656; Dobson, transcript [TRA.0001.0001.0001] 465.

50 Fiorentino, witness statement [GWC.0003.0003.0006_R] [5.4].

51 Duckworth, witness statement [GWC.0003.0005.0001_R] [7a].

52 GWC, annual report 2013/14 [PUB.0002.0001.0403] 9.

53 Hayward, witness statement [GWC.0003.0004.0001_R] [4] – [5].

54 Cogan, witness statement [GWC.0003.0010.0001_R] [4], [7].

55 Harrison, witness statement [GWC.0003.0008.0003_R] [5] – [6]; Duckworth, witness statement [GWC.0003.0005.0001_R] [6] – [7].

56 Duckworth, witness statement [GWC.0003.0005.0001_R] [7].

57 Dullard, witness statement [GWC.0003.0011.0001_R] [6] – [7].

58 Carr, witness statement [WIT.0005.0001.0001_R] 1.

59 Fisher, witness statement [WIT.0003.0001.0001_R] [1].

60 Fisher, witness statement [WIT.0003.0001.0001_R] [1].

61 Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [5] – [7].

62 Meadows, witness statement [GWC.0003.0007.0015_R] [4].

63 Fiorentino, witness statement [GWC.0003.0003.0006_R] [4].

64 Dobson, witness statement [GWC.0003.0009.0022_R] [4].

65 Prowse, witness statement [GWC.0003.0006.0004_R] [5].

66 Prowse, witness statement [GWC.0003.0006.0004_R] [7].

67 GWC, Submission to PCRC (20 January 2022) [PCRC.0036.0013.0001] [300].

68 Department, Submission to PCRC responding to Discussion Paper on the Regulatory Framework [PCRC.0012.0002.0061] [59]; Department, transcript [TRA.0001.0001.0001] 6078.

69 Prowse, witness statement [GWC.0003.0006.0004_R] [16]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [26]; Hayward, witness statement [GWC.0003.0004.0001_R] [17]; Duckworth, witness statement [GWC.0003.0005.0001_R] [17]; Meadows, witness statement [GWC.0003.0007.0015_R] [28] – [29]; Harrison, witness statement [GWC.0003.0008.0003_R] [24]; Dobson, witness statement [GWC.0003.0009.0022_R] [29]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [33] Ord, transcript [TRA.0001.0001.0001] 50.

70 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 13(1).

71 Hodson-Thomas, transcript [TRA.0001.0001.0001] 407, 411; Harrison, transcript [TRA.0001.0001.0001] 665; Dobson and Sargeant said that after the PCRC commenced, remuneration did not adequately compensate him for work. However, prior to the PCRC, the remuneration was appropriate; Dobson, transcript [TRA.0001.0001.0001] 468 – 469; Sargeant, transcript [TRA.0001.0001.0001] 3665.

72 Fiorentino, transcript [TRA.0001.0001.0001] 593.

73 Prowse, witness statement [GWC.0003.0006.0004_R] [17]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [29]; Duckworth, witness statement [GWC.0003.0005.0001_R] [20]; Meadows, witness statement [GWC.0003.0007.0015_R] [32] – [34]; Harrison, witness statement [GWC.0003.0008.0003_R] [25]; Dobson, witness statement [GWC.0003.0009.0022_R] [31]; Cogan, witness statement [GWC.0003.0010.0001_R] [12]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [37] – [38].

74 Hodson-Thomas, transcript [TRA.0001.0001.0001] 407.

75 Sargeant, transcript [TRA.0001.0001.0001] 209; Hodson-Thomas, transcript [TRA.0001.0001.0001] 453; Meadows, transcript [TRA.0001.0001.0001] 559; Duckworth, transcript [TRA.0001.0001.0001] 1283.

76 Fiorentino, transcript [TRA.0001.0001.0001] 610; Prowse, transcript [TRA.0001.0001.0001] 640; Hayward, transcript [TRA.0001.0001.0001] 808, 813.

77 Hodson-Thomas, transcript [TRA.0001.0001.0001] 453 – 454; Fiorentino, transcript [TRA.0001.0001.0001] 621 – 622; Duckworth, transcript [TRA.0001.0001.0001] 1283.

78 Meadows, witness statement, [GWC.0003.0007.0015_R] [75.3.3].

79 Meadows, transcript [TRA.0001.0001.0001] 559.

80 Letter from PSC to PCRC (3 December 2021) [PUB.0032.0008.0001]; Letter from PSC to PCRC (9 December 2021) [PSC.0001.0001.0001].

81 PSC, *Governance Manual for Western Australian Boards and Committees* (2021) [PUB.0032.0008.0191].

82 PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087]; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139].

83 See for example: PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 14, 36; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 11 – 12.

84 See for example: PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 39; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 47; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 47.

85 PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 27.

86 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 12(6).

87 Western Australia, Premier’s Circular (4 November 2021) [PUB.0032.0004.0001].

88 PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 19.

89 PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 19.

90 PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 19.

91 PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 34.

92 See for example: PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 32; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 32.

93 PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 14; PSC, *Board Essentials* (2015) [PUB.0032.0008.0044] 14.

94 Duckworth, witness statement [GWC.0003.0005.0001_R] [12]; Meadows, witness statement [GWC.0003.0007.0015_R] [23]; Dobson, witness statement [GWC.0003.0009.0022_R] [20]; Cogan, Dullard, Fisher and Carr do not recall receiving training in relation to casino regulation: Dullard, witness statement [GWC.0003.0011.0001_R] [13]; Fisher, witness statement [WIT.0003.0001.0001_R] [3]; Carr, witness statement [WIT.0005.0001.0001_R] 1.

95 Fiorentino, witness statement [GWC.0003.0003.0006_R] [36.3], [37].

96 Meadows, transcript [TRA.0001.0001.0001] 518.

97 Fiorentino, witness statement [GWC.0003.0003.0006_R] [13] – [17]; Meadows, witness statement [GWC.0003.0007.0015_R] [17] – [19]; Harrison, witness statement [GWC.0003.0008.0003_R] [15] – [16];

- Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [20] – [25]; Dobson, witness statement [GWC.0003.0009.0022_R] [23].
- 98 Cogan does not recall with certainty what materials she was provided with in relation to duties and powers; Cogan, witness statement [GWC.0003.0010.0001_R] [18].
- 99 Hayward, witness statement [GWC.0003.0004.0001_R] [22]; Dullard, witness statement [GWC.0003.0011.0001_R] [16].
- 100 Hayward, witness statement [GWC.0003.0004.0001_R] [22]; Meadows, witness statement [GWC.0003.0007.0015_R] [18.1.3]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [23.3]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [15.3].
- 101 Prowse, witness statement [GWC.0003.0006.0004_R] [14]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [15.4]; Meadows, witness statement [GWC.0003.0007.0015_R] [18.1.4].
- 102 Prowse, witness statement [GWC.0003.0006.0004_R] [14]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [19.3]; Meadows, witness statement [GWC.0003.0007.0015_R] [16]; Harrison, witness statement [GWC.0003.0008.0003_R] [17.7]; Dobson, witness statement [GWC.0003.0009.0022_R] [22]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [23.2].
- 103 Prowse, witness statement [GWC.0003.0006.0004_R] [19]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [15.2]; Meadows, witness statement [GWC.0003.0007.0015_R] [18.1.2]; Dobson, witness statement [GWC.0003.0009.0022_R] [34].
- 104 Fiorentino, witness statement [GWC.0003.0003.0006_R] [11.4], [19.1]; Meadows, witness statement [GWC.0003.0007.0015_R] [16]; Harrison, witness statement [GWC.0003.0008.0003_R] [17]; Dobson, witness statement [GWC.0003.0009.0022_R] [22]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [20.1], [23.4].
- 105 Fiorentino, witness statement [GWC.0003.0003.0006_R] [15.5]; Meadows, witness statement [GWC.0003.0007.0015_R] [22].
- 106 Fiorentino, witness statement [GWC.0003.0003.0006_R] [17.1].
- 107 Fiorentino, witness statement [GWC.0003.0003.0006_R] [34].
- 108 Dobson, witness statement [GWC.0003.0009.0022_R] [36]; GWC, Casino Control Act 1984 Investigation/Inquiry [GWC.0003.0009.0018].
- 109 Documents include '100km radius Burswood Casino', 'Automatic teller machine at Crown Casino', 'Casino Gaming on Cruise Ships', 'Electronic Gaming Machines (EGM) return to player policies', 'Electronic Gaming Machines', 'How to conduct Trade Promotion Lotteries', 'Licensing of Security Officers at Crown Perth (Casino Operator)', 'Probity Assessment Policy', 'Two-Up', 'Video Lottery Terminals Policy', 'WA Race fields': Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [25.1].
- 110 Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [27].
- 111 Fisher, witness statement [WIT.0003.0001.0001_R] [7] – [8].
- 112 Meadows, transcript [TRA.0001.0001.0001] 517 – 519.
- 113 PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 34 – 35.
- 114 See for example: PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 32; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 32.
- 115 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 9.
- 116 PSC, Commissioner's Instruction 8 (28 February 2019) [PUB.0029.0003.0001].
- 117 GWC, agenda papers (25 November 2014 meeting) [GWC.0002.0016.0122_R] 177.
- 118 Email between DRGL officers (5 January 2016) [DLG.0022.0001.0014] 1 – 2; GWC, agenda papers (23 February 2016 meeting) [GWC.0002.0016.0169_R] 330 – 348.
- 119 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] [274].
- 120 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 9.
- 121 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 8.
- 122 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 9.

- 123 Meadows, witness statement [GWC.0003.0007.0015_R] [23]; Sargeant, witness statement [GWC.0003.0002.0001_R] [59]; Ord, witness statement [DLG.0001.0002.0001_R] [19].
- 124 Hayward, witness statement [GWC.0003.0004.0001_R] [25]; Duckworth, witness statement [GWC.0003.0005.0001_R] [14]; Dullard, witness statement [GWC.0003.0011.0001_R] [15]; Connolly, transcript [TRA.0001.0001.0001] 261 – 262.
- 125 Harrison, witness statement [GWC.0003.0008.0003_R] [53].
- 126 Fiorentino, witness statement [GWC.0003.0003.0006_R] [21] – [22].
- 127 Sargeant, witness statement [GWC.0003.0002.0001_R] [59].
- 128 Sargeant, witness statement [GWC.0003.0002.0001_R] [59]; Ord, witness statement [DLG.0001.0002.0001_R] [19].
- 129 Ord, witness statement [WIT.0002.0001.0001_R] [19].
- 130 Ord, transcript [TRA.0001.0001.0001] 58.
- 131 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 9 – 10.
- 132 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 9.
- 133 A Frieberg, *Regulation in Australia* (2017) 239.
- 134 *Interpretation Act 1984* (WA) [PUB.0033.0001.0416] s 18.
- 135 PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 9; PSC, *Board Essentials* (2015) [PUB.0032.0008.0044] 9; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 9 – 10; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 9 – 10; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 7.
- 136 PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 43; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 30.
- 137 PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 9; PSC, *Board Essentials* (2015) [PUB.0032.0008.0044] 9; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 10 – 11; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 10 – 11; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 7.
- 138 GWC, statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (20 May 2021) [PCRC.0002.0034.0001] 6.
- 139 Hayward, transcript [TRA.0001.0001.0001] 805.
- 140 Meadows, witness statement [GWC.0003.0014.0021_R] [8.1] – [8.2].
- 141 Letter from Minister for Racing and Gaming to GWC (30 June 2021) [GWC.0003.0014.0087].
- 142 Letter from Minister for Racing and Gaming to GWC (30 June 2021) [GWC.0003.0014.0087] 2.
- 143 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] [213]; Department, Submission to PCRC on Improvement to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 6; GWC, agenda papers (25 November 2021 meeting) [GWC.0015.0001.0020_R] 409 – 410.
- 144 PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 24; PSC, *Board Essentials* (2015) [PUB.0032.0008.0044] 26; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 33; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 33; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 10.
- 145 Department, Submission to PCRC on Improvement to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 10.
- 146 PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 13.
- 147 PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 13.
- 148 PSC, *Good Governance for Western Australian Public Sector Boards and Committees* (2009) [PSC.0001.0001.0002] 4; PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 10 – 11, 20, 23; PSC, *Board Essentials* (2015) [PUB.0032.0008.0044] 10 – 11, 22, 25; PSC, *Board Essentials – Good Governance for Public Sector Boards and*

- Committees* (2016) [PUB.0032.0008.0087] 11, 28, 31; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 11, 28, 31.
- 149 Chopping, transcript [TRA.0001.0001.0001] 3318; Hayward, transcript [TRA.0001.0001.0001] 817.
- 150 Belling, witness statement [DLG.0001.0005.0001_R] [24].
- 151 GWC, statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (30 June 2021) [PCRC.0002.0009.0001] 12; GWC, Effectiveness and Efficiency Indicators for compliance (1991 – 2020) [GWC.0008.0007.0001].
- 152 Both being agencies for the purposes of the *Financial Management Act 2006* (WA) [PUB.0016.0023.0003]; see definitions of agency and statutory authority in s 3.
- 153 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 61(1)(a) – (b), s 63(2).
- 154 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 63(1).
- 155 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 52.
- 156 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 52, 54(1).
- 157 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 78; Western Australia Financial Administration Bookcase, '904 Key Performance Indicators' (1 June 2018) [DLG.0022.0001.0011] cl (1)(v).
- 158 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 78; Western Australia Financial Administration Bookcase, '904 Key Performance Indicators' (1 June 2018) [DLG.0022.0001.0011] cl (1)(iii).
- 159 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 78; Western Australia Financial Administration Bookcase, '904 Key Performance Indicators' (1 June 2018) [DLG.0022.0001.0011] cl (1)(iv).
- 160 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 78; Western Australia Financial Administration Bookcase, '904 Key Performance Indicators' (1 June 2018) [DLG.0022.0001.0011] cl 2(iv) – (v).
- 161 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 78; Western Australia Financial Administration Bookcase, '904 Key Performance Indicators' (1 June 2018) [DLG.0022.0001.0011] cl 4.
- 162 *Financial Management Act 2006* (WA) [PUB.0016.0023.0003] s 78; Western Australia Financial Administration Bookcase, '904 Key Performance Indicators' (1 June 2018) [DLG.0022.0001.0011] cl 3.
- 163 GWC, annual report 2019/20 [PUB.0002.0001.0658] 11.
- 164 GWC, annual report 2019/20 [PUB.0002.0001.0658] 48 – 49.
- 165 GWC, annual report 2019/20 [PUB.0002.0001.0658] 54.
- 166 Fiorentino, witness statement [GWC.0003.0003.0006_R] [38]; Meadows, witness statement [GWC.0003.0007.0015_R] [77.1] – [77.2]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [59.1]; Fiorentino, transcript [TRA.0001.0001.0001] 601.
- 167 Fiorentino, witness statement [GWC.0003.0003.0006_R] [38.1].
- 168 Fiorentino, transcript [TRA.0001.0001.0001] 615.
- 169 GWC, agenda papers (29 October 2019 meeting) [GWC.0002.0016.0289_R] 192 – 196.
- 170 GWC, agenda papers (29 October 2019 meeting) [GWC.0002.0016.0289_R] 193.
- 171 GWC, agenda papers (29 October 2019 meeting) [GWC.0002.0016.0289_R] 196.
- 172 Ord, transcript [TRA.0001.0001.0001] 3404, 3406 – 3407.
- 173 Meadows, transcript [TRA.0001.0001.0001] 524 – 525; Ord, transcript [TRA.0001.0001.0001] 3406 – 3408.
- 174 Meadows, witness statement [GWC.0003.0014.0053_R] 3 – 4; GWC, Strategic Work Program 21/22 Financial Year (27 August 2021) [GWC.0003.0014.0018].
- 175 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] [109].
- 176 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 15(1).
- 177 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 7(1)(ba).
- 178 GWC, agenda papers (25 February 2020 meeting) [GWC.0002.0016.0296_R] 257; Department, Briefing Notes on Department of Racing, Gaming and Liquor [DLG.8001.0045.9437_R] 25.
- 179 Department, Problem Gambling Support Services Committee Strategic Plan 2017-2020 (26 August 2021) [PUB.0029.0005.0001].
- 180 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (10 June 2021) [PCRC.0002.0004.0001] 1 - 2.
- 181 GWC, minutes (22 June 2021 meeting) [GWC.0012.0001.2546_R] 13; Hodson-Thomas, transcript [TRA.0001.0001.0001] 3159.

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184 Sargeant, witness statement [GWC.0003.0019.0039_R] [111].

185 Letter from Sargeant to Minister (14 December 1994) [GWC.0005.0001.0001].

186 GWC, minutes (28 March 1995 meeting) [GWC.0007.0011.0106_R] 22.

187 GWC, Support for People with Gambling Problems Pilot Funding Program (April 1995) [GWC.0005.0001.0005].

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189 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 15(2) – (4).

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192 Hayward, transcript [TRA.0001.0001.0001] 2936 – 2937.

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196 Sargeant, witness statement [GWC.0003.0019.0039_R] [109]; *Racing and Gambling Legislation Amendment and Repeal Act 2003* (WA) [PUB.0033.0011.0448] s 126.

197 Sargeant, witness statement [GWC.0003.0019.0039_R] [110]; Sargeant, transcript [TRA.0001.0001.0001] 3684.

198 Sargeant, witness statement [GWC.0003.0019.0039_R] [110].

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207 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 21(1).

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211 Hodson-Thomas, transcript [TRA.0001.0001.0001] 421.

212 Chopping, transcript [TRA.0001.0001.0001] 3359.

213 Prowse, witness statement [GWC.0003.0006.0004_R] [28]; Duckworth, witness statement [GWC.0003.0005.0001_R] [34(c)]; Meadows, witness statement [GWC.0003.0007.0015_R] [66].

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- 220 Connolly, transcript [TRA.0001.0001.0001] 281.
- 221 See for example: PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 10; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 8.
- 222 Connolly, witness statement [MCN.0001.0001.0001_R] [87].
- 223 Ord, witness statement [WIT.0002.0001.0001_R] [26b – c].
- 224 Sargeant, witness statement [GWC.0003.0002.0001_R] [74].
- 225 Chopping, witness statement [DLG.0001.0009.0227_R] [16].
- 226 Connolly, witness statement [MCN.0001.0001.0001_R] [94] – [96].
- 227 Connolly, transcript [TRA.0001.0001.0001] 263.
- 228 Connolly, transcript [TRA.0001.0001.0001] 263.
- 229 Prowse, witness statement [GWC.0003.0006.0004_R] [29] – [30]; Hayward, witness statement [GWC.0003.0004.0001_R] [24], [32]; Duckworth, witness statement [GWC.0003.0005.0001_R] [35] – [36]; Meadows, witness statement [GWC.0003.0007.0015_R] [71]; Cogan, witness statement [GWC.0003.0010.0001_R] [30].
- 230 Connolly, transcript [TRA.0001.0001.0001] 237; Hodson-Thomas, transcript [TRA.0001.0001.0001] 443; Dobson, transcript [TRA.0001.0001.0001] 508; Fiorentino, transcript [TRA.0001.0001.0001] 614; Fisher, transcript [TRA.0001.0001.0001] 777; Carr, transcript [TRA.0001.0001.0001] 989.
- 231 Meadows, witness statement [GWC.0003.0007.0015_R] [73].
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- 234 Fiorentino, witness statement [GWC.0003.0003.0006_R] [50].
- 235 Fiorentino, witness statement [GWC.0003.0003.0006_R] [50].
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- 241 PSC, *Board Essentials* (2014) [PUB.0032.0008.0003] 24 – 25.
- 242 PSC, *Board Essentials* (2015) [PUB.0032.0008.0044] 26 – 27; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087] 33 – 34; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139] 33 – 34; PSC, *Governance Manual for Western Australian Government Boards and Committees* (2021) [PUB.0032.0008.0191] 18.
- 243 *Interpretation Act 1984* (WA) [PUB.0033.0001.0416] s 59(1)(d).
- 244 GWC, Delegation of Powers (Customer Service Officer) (27 June 2017) [GWC.0004.0003.0009].
- 245 GWC, Delegation of Powers (Chief Casino Officer) (24 April 2012) [GWC.0004.0003.0005]; GWC, Delegation of Powers (Deputy Director General) (24 April 2012) [GWC.0004.0003.0012]; GWC, Delegation of Powers (Director Gambling Regulation) (22 May 2012) [GWC.0004.0003.0018]; GWC, Delegation of Powers (GWC Chairman) (18 December 2012) [GWC.0001.0007.0175]; GWC, Delegation of Powers (Director Gambling Regulation) (22 May 2012) [GWC.0004.0003.0018].
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- 247 GWC, agenda papers (24 April 2012 meeting) [GWC.0002.0016.0056_R] 350.
- 248 GWC, minutes (24 April 2012 meeting) [GWC.0002.0016.0059_R] 6; GWC, Delegation of Powers (Chief Casino Officer) (24 April 2012) [GWC.0004.0003.0005].

249 GWC, Delegation of Powers (GWC Chairman) (18 December 2021) [GWC.0001.0007.0175]; GWC, Delegation of Powers (GWC Deputy Chairman) (18 December 2012) [GWC.0004.0003.0011].

250 GWC, Delegation of Powers (Deputy Director General) (28 April 2020) [GWC.0004.0003.0013].

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262 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] [167].

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268 GWC, Submission to PCRC (20 January 2022) [PCRC.0036.0013.0001] [112].

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270 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R].

271 GWC, agenda papers (23 May 2017 meeting) [GWC.0002.0016.0222_R] 93.

272 GWC, minutes (23 May 2017 meeting) [GWC.0002.0016.0220_R] 4.

273 GWC, agenda papers (23 May 2017 meeting) [GWC.0002.0016.0222_R] 93.

274 Connolly, transcript [TRA.0001.0001.0001] 3538 – 3539.

275 Letter from Hulme to Connolly (16 March 2017) [CRW.708.008.7829_R] 2 – 33.

276 *Public Sector Management Act 1994* (WA) [PUB.0016.0031.0001] s 5.

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279 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] [42] – [44].

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282 *Public Sector Management Act 1994* (WA) [PUB.0016.0031.0001] s 34.

283 *Public Sector Management Act 1994* (WA) [PUB.0016.0031.0001] s 3(1), sch 1, sch 2.

284 *Public Sector Management Act 1994* (WA) [PUB.0016.0031.0001] s 3(1), sch 1.

285 See for example: DLGSC, Appointment of Chief Casino Officer (15 July 2021) [DLG.0001.0011.0007].

286 Fiorentino, transcript [TRA.0001.0001.0001] 576 – 577.

287 Sargeant, witness statement [GWC.0003.0002.0001_R] [60]; Sargeant, transcript [TRA.0001.0001.0001] 150; Halge, transcript [TRA.0001.0001.0001] 893.

288 Chopping, transcript [TRA.0001.0001.0001] 3321 – 3322; Larcombe, witness statement [DLG.0001.0011.0026_R] [5]; DLGSC, Appointment of CCO (15 July 2021) [DLG.0001.0011.0007].

289 Ord, witness statement [WIT.0002.0001.0001_R] [36]; GWC, minutes (16 February 2021 meeting) [GWC.0002.0016.0368_R] 3; Beecroft, witness statement [DLG.0001.0001.0001_R] [10]; GWC, Royal

Commission Part 1 Responses to Requirements 1 & 2: Appendix B Appointments of the Chief Casino Officer [GWC.0001.0001.0001].

290 GWC, transcript [TRA.0001.0001.0001] 6078 – 6079.

291 GWC, transcript [TRA.0001.0001.0001] 6079 – 6080.

292 Letter from Department to PCRC (11 February 2022) [DLG.0022.0002.0001].

293 Department, Appointment of Chief Casino Officer (1 February 2022) [DLG.0022.0002.0004].

294 GWC, transcript [TRA.0001.0001.0001] 6079.

295 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 9(3).

296 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 36(1).

297 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 26(2).

298 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 3(1).

299 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 22(1).

300 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 11.

301 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 11(1).

302 GWC, Delegation of Powers (Chief Casino Officer) (24 April 2012) [GWC.0004.0003.0005].

303 GWC, Delegation of Powers (Chief Casino Officer) (10 December 2014) [GWC.0004.0003.0004].

304 GWC, Delegation of Powers (Chief Casino Officer) (27 June 2017) [GWC.0004.0003.0006]

305 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 4(2)(b)(ii).

306 GWC, Delegation of Powers (Chief Casino Officer) (10 December 2014) [GWC.0004.0003.0004] 2.

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310 Beecroft, witness statement [DLG.0001.0001.0001_R] [12]; DDG position description (17 April 2020) [GWC.0002.0002.0021] 3.

311 DDG position description (17 September 2018) [DLG.8001.0060.5018] 3; DDG position description (9 March 2012) [GWC.0002.0002.0049] 2.

312 Halge, transcript [TRA.0001.0001.0001] 893.

313 Halge, transcript [TRA.0001.0001.0001] 894.

314 Halge, transcript [TRA.0001.0001.0001] 894.

315 Belling, witness statement [DLG.0001.0005.0001_R] [10], [23].

316 Belling, transcript [TRA.0001.0001.0001] 1206.

317 Belling, witness statement [DLG.0001.0005.0001_R] [22].

318 Belling, witness statement [DLG.0001.0005.0001_R] [23].

319 Belling, witness statement [DLG.0001.0005.0001_R] [11].

320 Belling, witness statement [DLG.0001.0005.0001_R] [12] – [13].

321 Connolly, witness statement [MCN.0001.0001.0001_R] [43] – [44].

322 Connolly, transcript [TRA.0001.0001.0001] 240.

323 Connolly, witness statement [MCN.0001.0001.0001_R] [45].

324 Connolly, witness statement [MCN.0001.0001.0001_R] [59].

325 Connolly, witness statement [MCN.0001.0001.0001_R] [60].

326 Connolly, witness statement [MCN.0001.0001.0001_R] [77(a)].

327 Connolly, witness statement [MCN.0001.0001.0001_R] [88].

328 Connolly, witness statement [MCN.0001.0001.0001_R] [77(b)].

329 Beecroft, witness statement [DLG.0001.0001.0001_R] [10]; GWC, Royal Commission Part 1 Responses to Requirements 1 & 2: Appendix B Appointments of the Chief Casino Officer [GWC.0001.0001.0001].

330 Letter from Department to PCRC (22 July 2021) [GWC.0003.0014.0015].

331 Beecroft, witness statement [DLG.0001.0001.0001_R] [11], [13].

332 Sargeant, witness statement [GWC.0003.0002.0001_R] [70].

333 Ord, transcript [TRA.0001.0001.0001] 67.

334 Ord, transcript [TRA.0001.0001.0001] 67.

335 Chopping, transcript [TRA.0001.0001.0001] 3360.

336 Chopping, witness statement [DLG.0001.0009.0227_R] [62].

337 Belling, transcript [TRA.0001.0001.0001] 1153; Department, Director Licensing Job Description Form [GWC.0002.0002.0045].

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339 Connolly, witness statement [MCN.0001.0001.0001_R] [62] – [63].

340 Halge, transcript [TRA.0001.0001.0001] 896.

341 Halge, transcript [TRA.0001.0001.0001] 896.

342 Belling, transcript [TRA.0001.0001.0001] 1155 – 1156.

343 Belling, witness statement [DLG.0001.0005.0001_R] [31].

344 Belling, witness statement [DLG.0001.0005.0001_R] [18], [28].

345 Connolly, witness statement [MCN.0001.0001.0001_R] [10] – [37].

346 Connolly, witness statement [MCN.0001.0001.0001_R] [50] – [55].

347 Beecroft, witness statement [DLG.0001.0001.0001_R] [11], [13].

348 Beecroft, transcript [TRA.0001.0001.0001] 357.

349 Larcombe, witness statement [DLG.0001.0011.0026_R] [3].

350 Larcombe, witness statement [DLG.0001.0011.0026_R] [4].

351 GWC, minutes (25 February 2014 meeting) [DLG.0002.0002.0052_R] 7.

352 Connolly, transcript [TRA.0001.0001.0001] 3577 – 3578.

353 Connolly, transcript [TRA.0001.0001.0001] 3578.

354 DRGL Operations, minutes (27 March 2014) [DLG.0004.0001.0236_R] 2 – 3.

355 Connolly, transcript [TRA.0001.0001.0001] 3579.

356 Connolly, transcript [TRA.0001.0001.0001] 3580; Email from Hulme to Bossi and Preston (17 June 2014) [CRW.709.139.8384_R].

357 Connolly, transcript [TRA.0001.0001.0001] 3581.

358 Connolly, transcript [TRA.0001.0001.0001] 3581.

359 Connolly, transcript [TRA.0001.0001.0001] 3582.

360 Email from Preston to Connolly (20 June 2014) [DLG.8001.0022.7525_R].

361 Email from Preston to Connolly (20 June 2014) [DLG.8001.0022.7525_R].

362 Email from Preston to Connolly (20 June 2014) [DLG.8001.0022.7525_R].

363 Connolly, transcript [TRA.0001.0001.0001] 3583.

364 Connolly, transcript [TRA.0001.0001.0001] 3585.

365 Connolly, transcript [TRA.0001.0001.0001] 3588.

366 GWC, minutes (25 February 2014 meeting) [DLG.0002.0002.0052_R] 19 – 20.

367 GWC, agenda papers (26 March 2019 meeting) [GWC.0002.0016.0268_R] 77.

368 GWC, minutes (26 March 2019 meeting) [GWC.0002.0016.0271_R] 4.

369 GWC, minutes (30 April 2019 meeting) [GWC.0002.0016.0273_R] 2.

370 GWC, agenda papers (23 July 2019 meeting) [GWC.0002.0016.0281_R].

371 GWC, agenda paper (23 July 2019 meeting) [GWC.0002.0016.0281_R] 33 – 34.

372 GWC, agenda paper (23 July 2019 meeting) [GWC.0002.0016.0281_R] 2.

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374 GWC, minutes (23 July 2019 meeting) [GWC.0002.0016.0285_R] 2.

375 GWC, minutes (23 July 2019 meeting) [GWC.0002.0016.0285_R] 2.

376 Connolly, transcript [TRA.0001.0001.0001] 3608.

377 Hodson-Thomas, witness statement [GWC.0003.0013.0067_R] [80].

378 Fiorentino, witness statement [GWC.0003.0012.0074_R] [65].

379 Sargeant, witness statement [GWC.0003.0019.0039_R] [84].

380 GWC, *Electronic Gaming Machines* (23 September 2019) [GWC.0001.0007.0192] 3.

381 GWC, Delegation of Powers (GWC Deputy Chairman) (18 December 2012) [GWC.0004.0003.0011].

382 Connolly, witness statement [MCN.0001.0001.0001_R] [175].

383 Connolly, witness statement [MCN.0001.0001.0001_R] [177]; Connolly, transcript [TRA.0001.0001.0001] 280.

384 DRGL Operations Division, minutes (25 May 2012 meeting) [CRW.709.134.4622].

385 Connolly, witness statement [MCN.0001.0001.0001_R] [176]; Connolly, transcript [TRA.0001.0001.0001] 280.

386 Connolly, transcript [TRA.0001.0001.0001] 280.

387 Ord, transcript [TRA.0001.0001.0001] 100.

388 Ord, transcript [TRA.0001.0001.0001] 100.

389 Del Prete, witness statement [DLG.0001.0013.0023_R] [13].

390 Toyne, transcript [TRA.0001.0001.0001] 1002.

391 GWC, agenda papers (25 August 2015) [GWC.0002.0016.0155_R] 17; Toyne, transcript [TRA.0001.0001.0001] 1002.

392 Toyne, transcript [TRA.0001.0001.0001] 1002.

393 Toyne, witness statement [DLG.0001.0004.0016_R] [4]; Connolly, witness statement [MCN.0001.0001.0001_R] [14], [220] – [223]; Connolly, transcript [TRA.0001.0001.0001] 223 – 224; Meadows, witness statement [GWC.0003.0014.0021_R] [110].

394 Toyne, transcript [TRA.0001.0001.0001] 1005.

395 Radis, transcript [TRA.0001.0001.0001] 1304.

396 Toyne, transcript [TRA.0001.0001.0001] 1003.

397 Connolly, witness statement [MCN.0001.0001.0001_R] [15].

398 Toyne, transcript [TRA.0001.0001.0001] 1013.

399 Toyne, witness statement [DLG.0001.0004.0016_R] [10]; Toyne, transcript [TRA.0001.0001.0001] 103; Connolly, transcript [TRA.0001.0001.0001] 217.

400 Radis, witness statement [DLG.0001.0006.0001_R] [6].

401 Radis, witness statement [DLG.0001.0006.0001_R] [10].

402 Toyne, transcript [TRA.0001.0001.0001] 1031.

403 Del Prete, witness statement [DLG.0001.0013.0023_R] [6a.].

404 Radis, witness statement [DLG.0001.0006.0001_R] [29]; Toyne, transcript [TRA.0001.0001.0001] 999.

405 Witness 12, witness statement [WIT.0016.0001.0001_R] [21].

406 Toyne, witness statement [DLG.0001.0004.0016_R] [13].

407 Toyne, transcript [TRA.0001.0001.0001] 1130.

408 Radis, witness statement [DLG.0001.0006.0001_R] [30].

409 Radis, witness statement [DLG.0001.0006.0001_R] [16].

410 Radis, witness statement [DLG.0001.0006.0001_R] [19].

411 Radis, witness statement [DLG.0001.0006.0001_R] [11], [17]; Radis, transcript [TRA.0001.0001.0001] 1302 – 1303.

412 GWC, minutes (16 April 2002 meeting) [GWC.0007.0011.0192_R] 16 – 20.

413 GWC, agenda papers (16 April 2002 meeting) [GWC.0007.0011.0183_R] 41 – 45.

414 GWC, agenda papers (16 April 2002 meeting) [GWC.0007.0011.0183_R] 44.

415 GWC, agenda papers (25 August 2015 meeting) [GWC.0002.0016.0155_R] 17 – 25; GWC, minutes (25 August 2015 meeting) [GWC.0002.0016.0156_R].

416 The agenda paper incorrectly refers to 20.5 hours, but when you calculate the hours based on shift coverage from 7:30am to 3:00am, it is actually 19.5 hours, excluding any meal breaks.

417 GWC, agenda papers (25 August 2015 meeting) [GWC.0002.0016.0155_R] 17.

418 GWC, agenda papers (25 August 2015 meeting) [GWC.0002.0016.0155_R] 17 – 25; GWC, minutes (25 August 2015 meeting) [GWC.0002.0016.0156_R] 2 – 3.

419 Radis, witness statement [DLG.0001.0006.0001_R] [7].

420 Radis, witness statement [DLG.0001.0006.0001_R] [23].

421 Radis, transcript [TRA.0001.0001.0001] 1312 – 1315.

422 Letter from Department to Crown (1 February 2018) [GWC.0001.0003.0005]; Radis, transcript [TRA.0001.0001.0001] 1315 – 1316.

423 Radis, transcript [TRA.0001.0001.0001] 1306.

424 Radis, transcript [TRA.0001.0001.0001] 1307.

425 See for example: GWC, agenda paper (28 April 2020 meeting) [GWC.0002.0016.0298_R] 185 – 187.

426 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 10.

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Volume II

Contents

VOLUME I

Contents.....	3
Foreword.....	8
Answers to Questions in the Terms of Reference	12
Term of Reference 1.....	12
Term of Reference 2.....	12
Term of Reference 3.....	12
Term of Reference 4.....	12
Term of Reference 5.....	13
Recommendations	14
About this Final Report.....	24
References to documents, people and organisations.....	25
Defined Terms	26
CHAPTER ONE.....	42
Subject Matter of Inquiry and Terms of Reference	42
Purpose of Chapter.....	42
Terms of reference 1 to 4	43
Term of reference 5.....	52
Term of reference 6.....	53
Communications with the Gaming and Wagering Commission.....	54
Meaning of 'adequacy of communications'.....	54
Legislative framework.....	55
Term of Reference 8.....	59
Terms of Reference 9 and 10.....	62
Conflicts of interest.....	63
Term of Reference 11	64
Governance.....	65
CHAPTER TWO.....	72
History of Perth Casino	72
Purpose of Chapter	72
Background to Casino Establishment, Corporate History and Historical Structure	72
Implementation of the casino licence	77
Developments before 1990.....	80
Developments from 1990.....	80
Changes to the structure.....	81
Inquiries into the casino licences.....	82
Perth Casino and Crown Perth Resort.....	83
CHAPTER THREE	90
Overview of Regulatory Framework for Casino Gaming.....	90
Purpose of Chapter.....	90
Reports published prior to the introduction of the Casino Control Act.....	90
The Statutory Regime.....	90
Modification of the statutory regime	96
Industry and legislative reviews	97
Aspects of casino regulation in Western Australia	97

CHAPTER FOUR	110
Corporate Governance	110
Purpose of Chapter	110
Introductory comments.....	111
Perth Casino structure.....	111
The boards.....	120
Activity of the boards	123
Centralisation	129
Risk Management.....	133
BL governance issues	144
The complexity of the Burswood entities structure: analysis	152
BL central management and control.....	158
CRL governance issues	164
Remediation of governance, risk management and culture	169
Issues for future consideration.....	190
CHAPTER FIVE	232
Regulation of Perth Casino	232
Purpose of Chapter	232
Part One: Context for examination of the Gaming and Wagering Commission.....	232
Part Two: Gaming and Wagering Commission members	235
Part Three: Gaming and Wagering Commission governance	238
Part Four: Operational relationship between the Gaming and Wagering Commission and the Department.....	250
Part Five: Financial arrangements	273
Part Six: Regulation of specific risks to the attainment of the regulatory objectives.....	292
Part Seven: Statutory enforcement mechanisms.....	298
VOLUME II	
Contents.....	323
CHAPTER SIX	330
Junkets	330
Purpose of Chapter	330
Part One: Context for examination of junkets	331
Part Two: Regulatory framework and implementation by the Gaming and Wagering Commission.....	332
Part Three: Crown’s governance and risk management of Perth Casino’s junket operations.....	360
Part Four: Crown’s communications with the Gaming and Wagering Commission about junket operations	376
CHAPTER SEVEN	400
The China Arrests.....	400
Purpose of Chapter	400
Part One: Context for examination of China Arrests.....	400
Part Two: Background to the China Arrests.....	402
Part Three: Crown’s governance and risk management of Perth Casino.....	409
Part Four: Communications with the Gaming and Wagering Commission and its response to the China Arrests.....	412
CHAPTER EIGHT	432
Money laundering	432
Part One: Context for the examination of money laundering.....	432
Part Two: Regulatory frameworks relevant to money laundering	439
Part Three: The GWC’s regulation of money laundering at Perth Casino	445

Part Four: Management of money laundering risk at Perth Casino between 2010 and 2019.....	450
Part Five: Communications with the Gaming and Wagering Commission	476
Part Six: Management of money laundering risk from 2019 to present date.....	479
Part Seven: The path ahead in respect of ML/TF risk management	505
CHAPTER NINE.....	532
Other Criminal Activity	532
Purpose of Chapter	532
Part One: Context for examination of other criminal activity.....	533
Part Two: Regulation of criminal infiltration and activity by the Gaming and Wagering Commission	533
Part Three: Perth Casino’s systems, policies and procedures	542
CHAPTER TEN	554
Tax	554
Purpose of Chapter.....	554
Part One: Regulatory framework relevant to casino tax.....	556
Part Two: Non-cashable credits and casino tax.....	557
Part Three: Tournament fees.....	567
Part Four: Regulation of the payment of casino tax.....	572
CHAPTER ELEVEN	584
Conflicts of Interest.....	584
Purpose of Chapter.....	584
Part One: Main concepts.....	584
Part Two: Systems and processes to identify and manage conflicts of interest.....	587
Part Three: Identifying and managing conflicts of interest in practice.....	599
Part Four: Connolly’s friendships with Crown officers.....	603
Part Five: The regulatory relationship.....	614
Part Six: Director General’s Macau trip.....	618
VOLUME III	
Contents.....	633
CHAPTER TWELVE	640
Harm Minimisation	640
Purpose of Chapter.....	640
PCRC’s approach.....	640
Part One: Context for discussion	641
Part Two: Current regulation of harm minimisation	650
Part Three: Crown’s management of the risk of gambling-related harm at Perth Casino.....	666
Part Four: Adequacy of communications	699
Part Five: Recommendations for reform to Perth Casino’s gaming operations.....	702
CHAPTER THIRTEEN	732
Electronic Gaming Machines	732
Purpose of Chapter.....	732
Part One: Electronic Gaming Machines and Poker Machines.....	732
Part Two: The EGMs at Perth Casino	744
Conclusion.....	755
Recommendations	756

CHAPTER FOURTEEN	766
Evaluation of Regulation of Perth Casino	766
Purpose of Chapter	766
Part One: Overview	766
Part Two: Particular deficiencies in the regulatory framework	768
Part Three: Deficiencies in the Gaming and Wagering Commission’s manner of operating	773
Part Four: Department’s support of the Gaming and Wagering Commission.....	777
CHAPTER FIFTEEN	786
Enhancements to the Regulatory Framework	786
Purpose of Chapter	786
Part One: Structural regulatory reform.....	786
Part Two: Legislative reforms.....	792
Part Three: Operational reforms	814
CHAPTER SIXTEEN	822
Financial Capacity	822
Purpose of Chapter	822
Financial Capacity	822
CHAPTER SEVENTEEN	826
Assessment of Crown Suitability and Path Forward	826
Purpose of Chapter	826
Part One: Assessment of present suitability.....	827
Part Two: Pathway to suitability.....	839
External Monitor.....	843
VOLUME IV	
Contents	851
APPENDIX A	858
Commission dated 12 March 2021	858
APPENDIX B	861
Executive Council Minutes	861
APPENDIX C	862
Commission dated 23 July 2021	862
APPENDIX D	868
Methodology	868
Establishment	868
Scope of the inquiry and background.....	868
Other Inquiries into casino gaming and regulation in Australia.....	868
Process of evidence gathering	870
Use of Evidence	875
Procedural fairness.....	876
Record Keeping	879
APPENDIX E	882
Corporate Governance Theory	882
Purpose of Appendix	882
Nature and conduct of a corporation.....	882
Private Sector Governance	883
Public Sector Governance	904

APPENDIX F	923
Regulatory Theory	923
Purpose of Appendix.....	923
Part One: theories of regulation.....	923
Part Two: legislating regulatory objectives	925
Part Three: approaches to attaining regulatory compliance	929
APPENDIX G	940
List of Parties granted leave to appear	940
APPENDIX H	942
List of public hearings	942
APPENDIX I	945
List of Key People	945
APPENDIX J	950
Crowns Resorts Limited Corporate Structure	950
APPENDIX K	951
Significant provisions in the Trust Deed for the Burswood Property Trust	951
APPENDIX L	953
Directors of Crown Entities: September 2004 – 2022.....	953
APPENDIX M	956
Chronology of Gaming and Wagering Commission delegations.....	956
APPENDIX N:	960
Comparative regulatory framework analysis – Australian jurisdictions	960
APPENDIX O	961
Summary of themes discussed in AML expert focus groups with Perth casino employees	961
Summary of themes arising from PCRC AML expert survey completed by Perth Casino employees.....	965
APPENDIX P	981
Public Call for Information	981
APPENDIX Q	982
List of Public Submissions	982
APPENDIX R	986
List of Discussion Papers and Responses.....	986
APPENDIX S	987
Summary of Responses to Regulatory Models.....	987
Responsive submissions: Model One.....	987
Responsive submissions: Model Two.....	988
Responsive submissions: Model Three.....	988
Responsive submissions: Model Four.....	989
APPENDIX T	991
Practice Directions.....	991
APPENDIX U	992
Acknowledgements	992

CHAPTER 6

Junkets

CHAPTER SIX

Junkets

Purpose of Chapter

- 1 This chapter examines:
 - a. the legislative and regulatory framework;
 - b. regulation and oversight by the GWC; and
 - c. the governance and risk management by Crown Resorts Limited (**CRL**) and Burswood Limited (**BL**), Burswood Nominees Ltd (**BNL**) and Burswood Resort (Management) Limited (**BRML**) (together, the **Burswood entities**), relevant to the mitigation of the risk of criminal infiltration of Perth Casino's operations by or through its junket operations.
- 2 Crown's junket operations were examined in detail by the Bergin Inquiry, a circumstance that is relevant to the approach of the PCRC to its own examination of those operations, as explained in more detail later in this chapter.
- 3 Term of Reference (**ToR**) 8 requires the PCRC to inquire into the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address certain extant and emerging strategic risks, including in relation to junket operations.¹
- 4 Junket operations are a focus for regulation as they are particularly vulnerable to money laundering and criminal infiltration. Junket operations typically involve the movement of large sums of money across jurisdictions, often by persons of questionable character and associations, and involve multiple parties, such that the source and ownership of funds ultimately used in the casino is obscured.² It is for these reasons that junket operations are a strategic risk to the attainment of the objectives of casino regulation:
 - a. to ensure the socially responsible, lawful and efficient operation of Perth Casino and casino gaming at Perth Casino; and
 - b. to maintain the confidence and trust the public of Western Australia has in the credibility, integrity and stability of gaming operations at Perth Casino.
- 5 Consequently, the GWC's regulation and oversight of Perth Casino's junket operations are also an appropriate subject of inquiry by the PCRC pursuant to ToR 9 and ToR 10.
- 6 As set out in Chapter One: Subject Matter of Inquiry and Terms of Reference, an assessment of the management by or on behalf of the Perth Casino licensee of the strategic risk associated with junket operations also bears relevantly on the assessment of suitability that the PCRC is required to undertake pursuant to ToR 1 to 5.
- 7 Separately, and in the context of the examination of junket operations by the Bergin Inquiry, this chapter also examines the adequacy of communications by or on behalf of Crown with the GWC on the subject matter of junket operations, as required by ToR 6. Some of those communications arose as a consequence of media allegations adverse to Crown that were published in 2019 concerning its junket operations in Australia, including at Perth Casino. An examination of the appropriateness and effectiveness of the GWC's response to those media allegations is relevant to ToR 9 and ToR 10 and is also included in this chapter.

- 8 Part One of this chapter provides some general context and explanation of junket operations for the discussion which follows. Part Two examines the history of the regulatory framework relevant to junket operations at Perth Casino and its implementation by the GWC. Part Three examines the governance and risk management by Crown and, particularly, the Burswood entities relevant to Perth Casino's junket operations. Part Four examines relevant communications between Crown and the GWC following media allegations regarding junkets in 2019.
- 9 The PCRC notes that on 23 February 2021, the GWC resolved to give effect to a draft amending instrument DA/104, which prohibited the conduct of junkets and similar activity at Perth Casino.³ Since that date, junkets and premium and privileged player activity have been banned at Perth Casino.⁴ As a consequence, Parts Two and Three of this chapter focus largely upon the historical regulation and management of the risks from junket operations.

Part One: Context for examination of junkets

The nature and emergence of junket operations

- 10 Junkets are a well-recognised part of the international casino landscape.⁵ International junkets commenced gaming at Perth Casino in about 1987. Initially they were predominantly from Thailand, Indonesia and Malaysia.⁶ As explained later in this chapter, from about 2012, Perth Casino focussed its junket operations increasingly on junkets from mainland China.
- 11 In general terms, junkets typically involve an arrangement between a casino and a junket operator for a group of players from interstate or overseas to visit a casino and participate in casino gaming.⁷ In Australia, junket players usually come from overseas.⁸ In return for bringing the junket players to the casino, the casino generally pays the junket operator a commission based on the collective gambling activity of the junket players.⁹
- 12 Junkets operate differently depending on the casino, the junket operator and the arrangement made between the two in respect of each junket program. Operations also differ based on the regulatory requirements in the state in which the casino is located.¹⁰ Financial incentives, such as a portion of the commission the casino pays the junket operator, may also be offered to players.¹¹
- 13 Extension of credit is also often a feature of junkets and has been permitted at Perth Casino for International Commission Business (**ICB**) players since 2005.¹² Extension of credit to individuals or corporate bodies is otherwise a contravention of the State Agreement.¹³ By late 2018 or early 2019, the extension of credit to Chinese domiciled players was suspended at Perth Casino.¹⁴
- 14 The emergence of the VIP segment of the casino market has been an important development in many casinos around the world.¹⁵ VIP patrons may be referred to as 'Very, Very Important Persons' or 'VVIPs', 'high rollers', 'rolling chip players', 'rebate players' or 'whales'.¹⁶
- 15 The VIP market in the casino sector is global. Casino operators compete with one another to secure the patronage of individuals willing to place very large bets.¹⁷
- 16 There was significant growth in the VIP market in recent years. Between 2005 and 2015, the number of high-end integrated resorts around the world servicing VIP patrons grew from four to more than 40.¹⁸
- 17 VIP patrons and premium patrons can be distinguished in that VIPs place large bets through junket operators as an intermediary, while premium players deal with the casino directly.¹⁹
- 18 Australian casino operators have typically entered into contractual arrangements with the junket operator rather than an individual junket participant.²⁰ The agreements between

casino operators and junket operators have been based upon the junket operator bringing a certain volume of play into the casino.²¹

- 19 An integral part of the junket program is the deposit by junket operators of 'front money', which enables them to operate a junket program at the participating casino.²² Junket specific chips, often referred to as 'dead' or 'rolling' chips, are provided to the junket operator in exchange for the front money.²³
- 20 Junket tour representatives are responsible for the day-to-day running, coordination and management of VIP players on a junket program.²⁴ They are agents for the junket operators and are authorised to act on the operator's behalf.²⁵
- 21 VIP patrons are typically offered enticements by junket operators to gamble in particular casinos, including free travel and accommodation.²⁶ Sometimes these enticements form part of the agreement between the junket operator and the casino under which the casino operator pays a commission to the junket operator based on the turnover of the junket participants or VIP players (being the sum of money actually wagered by the players) during the period of the junket.²⁷
- 22 Organised crime groups have been reported to be involved in the junket industry for many years.²⁸ In particular, junkets are vulnerable to the risks of criminal infiltration and money laundering. The two functions particular to junkets which expose them to those risks are the provision of credit and debt enforcement.²⁹ There are other matters, such as that junkets involve the cross-border transfer of large sums of money for the purpose of gambling (which is a known way to launder money), which make them attractive to international organised crime groups.³⁰

Part Two: Regulatory framework and implementation by the Gaming and Wagering Commission

Regulation pre-1999

Regulatory framework

- 23 Junkets were first regulated in Western Australia in 1992, through the insertion of dir 20.1 into the directions made under s 24 of the *Casino Control Act 1984 (WA) (CC Act) (Directions)*. Direction 20.1 (**Junket Direction**) required the Perth Casino licensee to 'ensure that the procedures required by the Annexure titled "Junket Operators and Authorised Representatives - Approval Procedures" are implemented'.³¹ The approval process included requiring a junket operator or authorised junket representative to:
 - a. lodge an application form with the Gaming Commission of Western Australia (being the predecessor to the GWC) (**GC**). Application forms needed to include employment history, criminal and civil litigation history, financial history (bankruptcy), character references, a release entitling the GC to make inquiries about the applicant and a photo of the applicant;³²
 - b. attend an interview;³³
 - c. produce their passport for photocopying;³⁴ and
 - d. have their fingerprints taken and recorded by the Western Australia Police Force (**WAPOL**).³⁵
- 24 The Chief Casino Officer appointed under the CC Act (**CCO**) could permit applicants to organise one junket prior to consideration being given to provisional approval. However,

that approval was subject to attending the GC offices for the purpose of completing the requirements referred to at paragraph [23(b) – (c)] above.³⁶

- 25 The Minister for Racing and Gaming's 1996 Review of the *Gaming Commission Act 1987 (WA) (GC Act) (1996 Report)*³⁷ recommended the removal of the Junket Direction part due to doubts about the legality of using Directions to enforce a practice said to not be envisaged by the legislation. The 1996 Report also argued that a further reason to remove the Junket Direction was that there were no restrictions on the same patrons gambling as individuals. The 1996 Report made reference to other mechanisms already in place which, it contended, ensured that all gambling at Perth Casino, including junkets, were conducted properly (for example, security, surveillance and Australian immigration requirements).³⁸
- 26 While the recommendations in the 1996 Report were ultimately not adopted, in 1998 s 25A was inserted into the CC Act which provided for the Governor to make regulations with respect to junkets and junket operators.³⁹ The Deputy Premier's second reading speech for the amending bill referred to the impetus for that move and acknowledged the doubts expressed in the 1996 Report also about the legality of using Directions to regulate junkets. This was advanced as a justification for the insertion of a regulation making power and the comment made that regulations would make the approval process 'more public and subject to the scrutiny of Parliament'.⁴⁰

Implementation of regulatory framework by the Gaming and Wagering Commission

- 27 On 18 December 1992, the GC delegated its powers to approve applications of junket operators or representatives provided they were not objected to by police.⁴¹ Approvals made by delegated authority were reported to the GWC.⁴² There is no evidence before the PCRC as to whom the powers were delegated to or when that delegation ended.⁴³
- 28 Barry Sargeant (**Sargeant**), who was the chair of the GWC from 1992 until mid-2017, gave evidence to the PCRC that junket operators at Perth Casino prior to 1999 were, in effect, unregulated.⁴⁴ Sargeant explained that, when he first joined the Department in 1992, WAPOL conducted probity checks into junket operators and representatives on behalf of the GWC and the Department as part of the approval process.⁴⁵ In explaining why he saw the junket operations as 'unregulated', he referred to instances where the GWC issued 'interim approval' to a junket operator when proper probity could not be carried out by WAPOL to provide 'adequate clearance' on those operators.⁴⁶
- 29 The 1996 Report described the procedure for conducting probity checks of junket operators at that time as follows:⁴⁷
- a. the junket operator submitted a detailed application with photographs of the applicant and a police clearance from the applicant's country of residence;⁴⁸
 - b. an interview was conducted by an officer of the GC during which the passport of the applicant was photocopied, and fingerprints taken by a member of WAPOL;
 - c. WAPOL provided a report as to the character and suitability of the applicant and fingerprints were released to the applicant; and
 - d. at some stage the passport details of junket participants were provided to WAPOL.
- 30 David Halge (**Halge**), an employee of the Department from 1985 until 2007 and the CCO from 1997,⁴⁹ gave evidence that those procedures as described in the 1996 Report were applied consistently across the period from 1998 to 1999.⁵⁰
- 31 A casino departmental inspector during the 1990s elaborated on the involvement of WAPOL. In effect, they described that initially and until about the mid-1990s, two WAPOL officers were specifically assigned to assist the GC in casino-related matters which included the interviewing and fingerprinting of prospective junket operators and their representatives

upon their arrival at the casino.⁵¹ Applicants were often asked for police clearances from their country of origin, but they were often very hard to obtain and were written in a foreign language,⁵² although the Junket Direction required the production of a certified translation.⁵³

- 32** A review of the documentary evidence suggests those clearances did not always provide a complete check on an applicant's recorded criminal history. By way of example, in February 1994, former CCO Michael Egan (**Egan**) reported to the GC, by way of an agenda paper, that Indonesian police clearances were only relevant to the police district from which they originated, rather than the entire country.⁵⁴ In that scenario, he described the possibility that a person could be arrested and charged with murder in Denpasar, but there would be no record of the offence in Jakarta if only that police clearance was requested.⁵⁵ In his paper, Egan explained to the GC that the Department 'd[id] not have the resources to carry out [police] investigations overseas and must ... rely on the advice of [WAPOL]'.⁵⁶
- 33** There is no evidence before the PCRC that the GC:
- a. obtained information about applicants from screening services such as World-Check; or
 - b. required Perth Casino to provide it with information about applicants which it had obtained independently of the junket approval process.
- 34** The PCRC acquired hard copies of all historical junket operator applications retained in storage by the Department.⁵⁷ The PCRC has identified files concerning two separate applicants as case studies of the approval process in the period up to and including 1999.

Junket case study one

- 35** The first case study is from a departmental file created on 8 June 1992 and therefore before the introduction of the Junket Direction which came into effect from 1 December 1992.⁵⁸ The file relates to applications for approval to be a junket operator's representative and contains the following:⁵⁹
- a. an 11-page application form dated 17 May 1992, completed and signed by the applicant. The form included detailed personal information, details of referees, employment and previous junket history, a passport photo and a written authority for the GC and CCO to make inquiries with financial institutions and WAPOL;
 - b. a letter from the Acting CCO to the WAPOL Casino Investigations Unit dated 22 May 1992 enclosing the application form and a copy of the Acting CCO's letter to Perth Casino dated 21 May 1992, notifying that the applicant could undertake one junket visit for the purpose of attending for interview, presenting passports for copying, having fingerprints taken and declaring (signing) the original application;
 - c. a letter from the Acting CCO to the South Australian regulator dated 21 May 1992 seeking confirmation of whether the applicant had operated junkets in Adelaide as described in their application form;
 - d. a letter in reply from the South Australian regulator, undated but noted as received on 29 May 1992, advising that the applicant was an approved operator but had not conducted any junkets;
 - e. a letter from Perth Casino to the Acting CCO dated 29 July 1992 advising that the applicant had made a second application seeking approval to be a representative for another junket operator and enclosing a copy of that authorised representative agreement;
 - f. two facsimiles from Perth Casino to the Acting CCO received on 31 July 1992 and 12 August 1992, being 'junket pre-arrival advice' forms with details of junket participants' names and passport numbers and flight details for some of those participants;

- g. notes of an interview on 17 August 1992 attended by the Deputy Director and an administrative assistant of the Casino Control Division of the Department, a representative of Perth Casino, a Senior Constable from the WAPOL Casino Investigations Unit and the applicant. Amongst other things, the notes record that:
- i. the applicant produced their passport and confirmed they had no offences or convictions to declare;
 - ii. the applicant's fingerprints were taken by the Senior Constable; and
 - iii. the applicant's second application to be approved as a junket operator's representative concerned their father as the junket operator, who was already approved to conduct junkets at Perth Casino;
- h. a letter from the Acting CCO to the WAPOL Casino Investigations Unit dated 18 August 1992 which enclosed the notes of the interview, passport details of the applicant and a 'Junket Masterlist' being the names and some passport details of junket participants. The letter requested that WAPOL continue its investigations, submit a recommendation to the GC in due course and return the fingerprints upon completion. The letter contained the following handwritten annotation:
- Sen[ior] Const[able] ... phoned on 19/8/92 & said police have no objection to grant provisional approval if req[ui]red
- [Signed]
- 20/8/92;
- i. a letter dated 20 August 1992 to Perth Casino from the CCO which advised that provisional approval was granted to the applicant to act as representative for the second junket operator (their father) but not the first, as that operator had not been interviewed and fingerprinted. The letter was copied to the senior casino departmental inspector and WAPOL;
 - j. a letter from WAPOL to the CCO dated 14 October 1992 advising that their inquiries 'revealed nothing considered to be of [a] significant nature' and that the applicant was suitable to be approved only in respect of the second operator and not the first;
 - k. a board paper addressed to the chair of the GC and signed by the Acting CCO with a recommendation in line with WAPOL's recommendation. There is a handwritten notation recording the GC's approval of the recommendation on 20 November 1992;
 - l. a letter dated 20 November 1992 to Perth Casino from the CCO advising of the outcome, namely that approval was granted to the junket operator representative in respect of their representation of their father, but not the first junket operator;
 - m. a certificate signed by an administrative assistant and divisional officer of the Department confirming destruction of the fingerprints of the applicant dated 23 November 1992; and
 - n. a letter from Perth Casino to the second junket operator dated 12 July 1993 and signed by the second junket operator acknowledging that the applicant was still their authorised representative.

Junket case study two

36 The second case study is from a departmental file created on 2 August 1997, after the Junket Direction had come into effect. The file related to an application for approval as a junket operator's representative and contained the following:⁶⁰

- a. a letter from Perth Casino dated 4 August 1997 which:

- i. enclosed an application form dated 2 August 1997 completed and signed by the applicant. The form included detailed personal information, details of referees, employment and previous junket history, a passport photo and a written authority for the GC and CCO to make inquiries with financial institutions and WAPOL;
 - ii. enclosed a copy of the relevant authorised representative agreement dated 2 August 1997; and
 - iii. sought a one-off approval for the applicant to conduct one junket at Perth Casino as a junket operator's representative;
- b. a letter from the Senior Gaming Inspector of the Department to the WAPOL Casino Investigations Unit dated 5 August 1997 enclosing the application form and a copy of the Senior Gaming Inspector's letter to Perth Casino dated 5 August 1997 notifying that the applicant could undertake one junket visit for the purpose of attending for interview, presenting passports for copying, having fingerprints taken and declaring (signing) the original application;
 - c. notes of an interview held on 13 August 1997 attended by two representatives of the Department's Gaming Division, two Senior Constables from the WAPOL Casino Investigations Unit, an individual from 'International Marketing' and the applicant. Amongst other things, the notes record that the applicant had worked as a 'runner' previously for the junket operator, had played at Perth Casino in 1996, the customers would come from Brunei, the junket operator would finance and the applicant had never been arrested, nor been a bankrupt. The note was signed by one of the Gaming Division attendees. The other attendee, the Senior Gaming Inspector, also signed the following note at the end of the page:

After interviewing [the applicant] I found nothing of an adverse nature and no reason not to grant the applicant provisional approval subject to police approval and the applicant forwarding a Police Clearance Certificate;
 - d. a copy of the applicant's passport;
 - e. a letter dated 14 August 1997 to Perth Casino from the Senior Gaming Inspector which advised that provisional approval was granted to the applicant to act as representative for the junket operator, pending a decision of the GC. The letter was copied to the departmental inspectorate and the WAPOL Casino Investigations Unit;
 - f. a letter dated 21 July 1998 from WAPOL to the Manager Licensing and Administration of the Department advising that the applicant had four convictions for running an illegal public lottery which were not disclosed on their application form and therefore the applicant was not suitable to act as a junket representative;
 - g. a board paper dated 11 September 1998 addressed to the chair of the GC and signed by the Manager Gaming Administration and supported by another (unknown name or position). It recommended the applicant's approval be refused in line with the advice from WAPOL but also said:

Although it is not common practice for a Junket Operator/Representative to show cause before the Gaming Commission ... it would be prudent for the [GC] in maintaining the principles of natural justice insofar that [the applicant] be advised of the reason for the refusal ... and that should [the applicant] be aggrieved by the decision ... [the applicant] may make a written submission to the [GC].
 - h. a letter dated 22 September 1998 to the applicant from the Director Gaming of the Department which outlined the discovery of the recorded criminal convictions and noted the GC's resolution that the applicant show cause why their application ought not be refused. It requested any response by 30 October 1998;

- i. a letter dated 22 October 1998 from the applicant to the Director Gaming of the Department which explained that the offences, for which they were fined, occurred 10 years ago, so they had slipped the applicant's mind when they filled in the application form;
- j. a board paper dated 16 November 1998 which was addressed to the chair of the GC and signed by the Department's Acting Manager Gaming Administration and supported by the Director Gaming of the Department on the basis that the conviction was 11 years ago and nothing adverse had occurred since. It recommended approval of the application and attached the correspondence with the applicant in respect of their convictions. A handwritten annotation on the board paper noted that the GC approved the application at the meeting held on 24 November 1998;
- k. a letter of approval dated 1 December 1998 from the Director Gaming of the Department to the applicant;
- l. a letter of approval dated 12 September 2003 from the Department to Perth Casino advising that the junket operator's licence had been terminated and so the applicant had six months to nominate a different operator otherwise her representative approval would be cancelled; and
- m. a letter from the Department to Perth Casino dated 30 March 2004 advising that the applicant's licence to be a junket representative had lapsed.

Documentary evidence outside of case studies one and two and overall conclusions in respect of junket regulation pre-1999

- 37** In addition to the second case study, the PCRC has identified multiple instances in 1993 and 1994 where WAPOL inquiries led to a recommendation that an applicant was unsuitable to act as a junket operator or representative.⁶¹ Reasons varied, but included overseas convictions for illegal gaming and criminal trespass, and associations with persons previously deemed unsuitable.⁶² There were also occasions where a WAPOL officer made themselves available during GC meetings to answer any questions about applications.⁶³
- 38** As to the practice of the GC in respect of the approval of junket operators and their representatives in the period from as early as 1992 (prior to the Junket Direction) and up to but not including the period when Part 3 of the *Casino Control Regulations 1999 (CC Regs)* came into effect in 1999, the PCRC concludes that:
- a. due diligence was undertaken by or on behalf of the GC of persons applying to become junket operators or representatives prior to the introduction of the Junket Direction in December 1992;
 - b. the due diligence typically involved both identification and probity checks and included investigations by WAPOL as to any criminal history and associations of the applicant;
 - c. police clearances obtained from overseas jurisdictions were not always a reliable or comprehensive source of information as to an applicant's criminal history;
 - d. the Department sometimes encountered difficulty in obtaining reliable and timely criminal intelligence in respect of individuals from overseas, and a contributing factor was the lack of departmental resources available;
 - e. the GC did not obtain information about applicants from screening services such as World-Check;
 - f. Perth Casino did not provide the GC with information about the probity of applicants other than that required to support the application pursuant to the junket approval process;

- g. applicants would receive a one-off approval to operate or represent a junket for their first attendance, but there was an established practice whereby proposed junket operators and representatives were vetted through an interview scheduled during that first visit with officers of the WAPOL Casino Investigations Unit and employees of the Department's Casino Control Division (on behalf of the GC);
- h. the standard practice was to issue provisional approval to an applicant shortly after their interview if the interview raised no issues of concern;
- i. the GC made a substantive deliberative decision in respect of each application, affording procedural fairness to the applicant where necessary;
- j. the GC refused some applications due to the criminal history or criminal associations of the applicant, usually on the basis of intelligence received from the WAPOL Casino Investigations Unit; and
- k. approvals were reviewed for a change in circumstances, such as when a person ceased to act as an operator's representative.

39 As to the effectiveness of those practices to mitigate the risks associated with junkets, including money laundering and criminal infiltration, the PCRC concludes that:

- a. the GC was alive to the risk of criminal infiltration of Perth Casino's operations by or through junkets both before and subsequent to the introduction of the Junket Direction in December 1992;
- b. the relationship between the Department, the GC and WAPOL at that time was active, functional and productive for the purpose of giving effect to the GC's practices in respect of approving, or refusing approval of, junket operators and their representatives;
- c. the practice of giving provisional approval to the operator or representative to attend Perth Casino before due diligence processes had been completed increased the risk of criminal infiltration of Perth Casino's operations during the period of the provisional approval;
- d. the fact that the GC did not obtain reliable international criminal intelligence from time to time may have led to applications being approved that should not have been, thus increasing the risk of criminal infiltration of Perth Casino's operations by junkets; and
- e. the balance of the GC's practices were generally effective to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.

40 Overall, the PCRC finds that between 1992 and 1999, despite its sometimes restricted capability in obtaining reliable international criminal intelligence, the established practices of the GC in respect of the approval of junket operators and their representatives were effective to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.

Regulation 1999 to 2010

Regulatory framework

41 On 5 February 1999 the CC Regs commenced operation and in 2003 the GC became the GWC.⁶⁴ Part 3 of the CC Regs required applicants for approval to operate a junket at Perth Casino, or to represent a junket operator, to submit detailed information to the GWC about their background.⁶⁵ The Department had conduct of the process on behalf of the GWC. The CC Regs gave the GWC discretionary powers to require the applicant to permit their fingerprints to be

- taken, to require the applicant to submit to an interview and to conduct other investigative processes.⁶⁶ The CC Regs also required the casino operator to give the GWC at least 24 hours' notice of the commencement of a junket, including the names and passport details of the junket operator or representative and junket participants if they were known.⁶⁷
- 42 The approval process pursuant to the CC Regs differed in a number of respects from the previous process pursuant to the Junket Direction.
- 43 In respect of the involvement of WAPOL, the CC Regs required a written authority to authorise the GWC to make inquiries in Australia or overseas (or both) about the applicant's character and financial standing,⁶⁸ but the collection of fingerprints was not mandatory.⁶⁹ The Junket Direction required the collection of fingerprints, as well as a report from WAPOL as to the character and suitability of the applicant.⁷⁰
- 44 In respect of interviews, under the CC Regs, there was no requirement for an interview with departmental officers,⁷¹ whereas it had been compulsory under the Junket Direction.⁷²
- 45 In respect of police clearances from an applicant's country of residence, the CC Regs required a police clearance to accompany the application, but the applicant could be excused from that requirement if it could not be provided for reasons beyond their control.⁷³ Under the Junket Direction, the police clearance had been mandatory.⁷⁴
- 46 In respect of interim and provisional approval, the CC Regs provided that interim approval could be issued in respect of an operator or representative's first junket, provided the GWC had no reason to believe that an applicant was not of good character or good financial standing.⁷⁵ That approval could then progress to provisional approval provided it still had no reason to believe that an applicant was not of good character or good financial standing, and there was likely to be a delay before the GWC could make its final decision.⁷⁶ That provisional approval remained in force until the application was approved (or not approved), the applicant surrendered the approval, or it was cancelled by the GWC (which it could do at any time).⁷⁷
- 47 Under the Junket Direction, the term 'interim approval' was not used, but a one-off approval to conduct the first junket was given, prior to the issue of provisional approval.⁷⁸ Provisional approval could occur 48 hours after the applicant complied with the requirements for interview, local declaration (signature) of the application, production of their passport and provision of fingerprints.⁷⁹
- 48 The CC Regs specified that final approval could be granted by the GWC if it was satisfied the applicant was an adult of good character and good financial standing.⁸⁰ The Junket Direction contained no such restriction. It only required that the GC's decision was to occur 'on completion of its inquiries'.⁸¹
- 49 In addition to the CC Regs, s 16.2 of the Casino Manual (Operations) (**CM(Ops)**) required 'formal Gaming & Wagering Commission clearance for the approved [j]unket [o]perator, and/or their approved [a]uthorised [r]epresentatives'.⁸² Further, the Perth Casino licensee was required to submit a list of players' names and passport numbers, and a pre-arrival advice form to the GWC upon the players' arrival (or earlier).⁸³

Implementation of regulatory framework by the Gaming and Wagering Commission

- 50 Sargeant gave evidence to the PCRC that after Part 3 of the CC Regs was introduced, the GWC attempted to consider and approve applications for the conduct of junkets in accordance with the regulations, but the GWC was reliant on WAPOL and other domestic and international agencies for criminal history intelligence, and that information was not forthcoming.⁸⁴
- 51 Halge said that during the period after the CC Regs were introduced, initially a WAPOL officer was involved in the approval process and the Department 'made [i]nquiries if and when required'.⁸⁵ In explaining the requirement for 24 hours' notice of the commencement

of a junket, Halge gave evidence to the effect that it was to allow departmental inspectors time to arrange to be present for the 'buy-in' (initial exchange of chips). Departmental inspectors were also there at the end of the junket operation for settlement.⁸⁶ That attendance was partly to prevent the risk of criminal infiltration, and partly for revenue calculating reasons.⁸⁷

- 52 Janine Belling (**Belling**), who was CCO from 2007 until 2012, gave general evidence that the probity assessment of individual operators until 2010 was undertaken by the Department, through WAPOL, on behalf of the GWC.⁸⁸
- 53 Michael Connolly (**Connolly**) was a casino departmental inspector from late 1989 until 2002.⁸⁹ His initial evidence to the PCRC was that he did not hold a view at the time that junkets posed a risk of money laundering and criminal infiltration at Perth Casino.⁹⁰ He therefore did not understand that the GWC's role in approving junkets was related to identifying suspicious transactions.⁹¹ When Connolly gave evidence on the second occasion, however, he conceded that he was aware of the risk of money laundering and criminal infiltration through junkets '[p]robably since [he] started working at the casino' in 1989.⁹²
- 54 Deputy Commissioner Colin Blanch gave evidence to the PCRC that WAPOL involvement in the probity checks for junket operators appeared to have ceased in April 2000 as WAPOL's records showed that there were no further requests from the Department from this time.⁹³
- 55 Three further case studies identified by the PCRC from the Department's files involve applications for approval of junket operators or representatives which were lodged after Part 3 of the CC Regs took effect. Those applications were from Department files which noted a 'created date' of 1 December 2000, 1 July 2004 and May 2010 respectively.

Junket case study three

- 56 In respect of the December 2000 application, the file included the following:⁹⁴
- a. a letter dated 17 November 2000 from Perth Casino addressed to the Director Gaming Division of the Department which enclosed a junket representative application dated 16 November 2000. The covering letter advised the applicant would arrive in Perth on 21 November 2000 and sought to arrange a mutually convenient time to attend the departmental inspectorate. It also said '[a]s per your current procedure, [they] will be granted approval automatically on submission of [their] application, to conduct one junket for the purpose of attending the inspectorate, unless advised otherwise by your office';⁹⁵
 - b. a letter dated 21 November 2000 from the Department to the Chief Executive Officer of Perth Casino which advised that provisional approval for the lodged application was granted pending a decision of the GC and subject to a police clearance certificate from the applicant's country of origin being received within 12 months;
 - c. a copy of the applicant's passport, certified as a true copy on 1 December 2000;
 - d. a fully executed copy of the junket operator and authorised representative agreement dated 23 November 2000;
 - e. a two-page declaration and indemnity signed by the applicant in respect of an 'Authorisation to Make [I]nquir[ies] (Junket Operators and Representatives)'. The first page of that document contains the applicant's signature and is dated 16 November 2000 and the second page is signed and dated 28 November 2000, witnessed by 'M Connolly – Govt Inspector';⁹⁶
 - f. a letter dated 9 July 2001 from Perth Casino, with a stamp indicating it was received by the Department on 6 August 2001, which enclosed a translated police clearance for the applicant stated as valid from 8 May 2001 until 8 August 2001;

- g. a memorandum from a Team Co-ordinator Licensing of the Department dated 7 August 2001 to the CCO. That memorandum referred to 'Principal Direction 20.1' and the requirement for junket representatives to be approved by the GC; that a police clearance from the applicant's country of origin was on the file; and that 'all other matters in respect of the above [application] ha[d] been finalised'. The memorandum then directed:⁹⁷

In accordance with the Gaming Commission's delegation of its power to the Chief Casino Officer (on 18 December 1992) to approve junket operator/ representative applications in respect of those persons not objected to by the police, the [applicant] is submitted for your consideration and approval.

Notice of the approval will be submitted to the Gaming Commission to note at its next meeting.

- h. a letter dated 7 August 2001 to Perth Casino which advised that the GC had approved the application;
- i. a letter dated 17 December 2001 from Perth Casino which advised the Department that the applicant was no longer an authorised representative of the junket operator;
- j. a letter dated 26 July 2002 from Perth Casino to the Director Operations Division of the Department which enclosed a further junket representative application for the same applicant but a different junket operator. The letter sought clarity on whether 'any further approval is necessary for [the applicant] to act as Junket Representative since [they have] been given full approval before'. There was no copy of the authorised representative agreement;
- k. handwritten annotations on the letter dated 26 July 2002 seeking and obtaining approval from the Manager Licensing for the applicant to be a representative of the different junket operator;
- l. a letter dated 29 July 2002 from the Team Co-ordinator Licensing to Perth Casino advising that the applicant was approved to act as a junket representative; and
- m. a letter dated 26 February 2008 from Perth Casino to the Director Operations Division of the Department which advised that the junket representative was no longer authorised by the junket operator.
- 57** There is no record on the file of any interview of the applicant and no evidence on the file of any probity or identification checks being sought or given by WAPOL or any other domestic intelligence agency or private screening agency.
- 58** The PCRC infers that the delegation of power dated 18 December 1992, apparently relied upon by the CCO to approve the first application, was no longer valid at the time of purported approval because that delegation had been issued in respect of the Junket Direction that had since been replaced by the CC Regs.
- 59** In respect of case study three:
- a. Perth Casino viewed an interim approval as automatic, which view was incorrect having regard to the CC Regs, and this was not corrected by the Department;
- b. neither WAPOL, nor any other domestic intelligence agency or private screening agency, were consulted in respect of the application;
- c. the applicant was not interviewed;
- d. the CCO purported to authorise the applicant's first application by relying on a delegation of power by the GC that was no longer valid;
- e. the CC Regs did not permit the GC to approve the second application purely on the

- basis that the applicant had been approved previously on 7 August 2001; and
- f. the second application should not have been approved as the Department had not received a copy of the authorised representative agreement and the applicant's police clearance had expired on 8 August 2001.

Junket case study four

- 60** In respect of the July 2004 application, the file included the following:⁹⁸
- a. a letter from Perth Casino dated 30 June 2004 addressed to the Director Operations Division of the Department which enclosed a junket representative application dated 14 June 2004. The letter sought 'one-off' approval so the applicant could hand their original application to departmental inspectorate staff;
 - b. a letter from the Acting Team Coordinator Licensing to Perth Casino dated 1 July 2004 which advised that the applicant was granted approval to conduct one junket within the next six months so that they could attend the inspectorate to lodge their application, sign the necessary declaration in Western Australia, present their passport for copying and provide passport photographs;
 - c. a certified copy of the applicant's passport;
 - d. a two-page declaration and indemnity signed by the applicant in respect of an 'Authorisation to Make [I]nquir[i]es (Junket Operators and Representatives)'. The first page of that document contains the applicant's signature and is dated 14 June 2004 and the second page is signed and dated 1 July 2004, witnessed by a departmental inspector;
 - e. a fully executed copy of the junket operator and authorised representative agreement dated 3 June 2004;
 - f. a signed authority to obtain details of work rights of the applicant from the Department of Immigration and Multicultural and Indigenous Affairs dated 14 June 2004;
 - g. an original photograph of the applicant;
 - h. a letter from the Acting Team Coordinator Licensing of the Department to Perth Casino dated 7 July 2004 which advised that the application had received provisional approval pending the decision of the GWC and subject to the production within 12 months of a police clearance certificate or certificate of good conduct from the applicant's country of residence;
 - i. an email from Perth Casino's VIP Coordinator of International Operations dated 6 July 2005 which sought an extension of time of two months for the applicant to acquire a police clearance from their country of residence;
 - j. a letter from the Team Coordinator Licensing to Perth Casino dated 7 July 2005 which advised that the two-month extension had been granted; and
 - k. a letter from Perth Casino to the Director Operations Division dated 31 August 2005 which advised that the junket representative was no longer authorised by the junket operator.
- 61** There is no record on the file of any interview of the applicant and no evidence on the file of any probity or identification checks being sought or given by WAPOL or any other domestic intelligence agency or private screening agency.
- 62** In respect of case study four:
- a. neither WAPOL, nor any other domestic intelligence agency or private screening agency, was consulted in respect of the application as there is no documentary evidence of that on the file;

- b. the applicant did not participate in any interview with someone from the Department;
- c. whilst the GWC had authority from the applicant to obtain details from the relevant Commonwealth department about the applicant's Australian work permit, no such details or record of inquiry being made is on the file;
- d. provisional approval was granted seven days after the application was lodged, without any police clearance on the file; and
- e. provisional approval of the applicant lasted until 31 August 2005 when it was no longer required, being a period of almost 14 months.

Junket case study five

- 63** In respect of the May 2010 application (one of the final applications received by the Department), the file included the following:⁹⁹
- a. a faxed application form dated 5 May 2010 for approval of a junket operator, including the 'authorisation to make inquiries' form;
 - b. a letter dated 6 May 2010 to Perth Casino from the Department with approval to conduct one junket so the applicant could attend the inspectorate office to lodge their original application, sign the declaration in Perth attesting to the truth of the application and lodge passport photographs;
 - c. a copy of the applicant's Chinese passport and Australian visa which allowed the applicant to remain in Australia permanently;
 - d. a two-page declaration and indemnity signed by the applicant in respect of an 'Authorisation to Make [I]nquir[i]es (Junket Operators and Representatives)'. The first page of that document contains the applicant's signature and is dated 5 May 2010 and the second page is signed and dated 7 May 2010, witnessed by a departmental inspector at 'Burswood Entertainment Complex';
 - e. a letter from Perth Casino to the Operations Division of the Department dated 8 May 2010 enclosing the original application and a request to '... fax us the provisional approval letter ... once it has been approved';
 - f. original passport photographs; and
 - g. a letter from the Deputy Director Licensing to Perth Casino dated 12 May 2010 advising that the applicant was granted provisional approval, subject to the final approval of the GWC and production of a police clearance from their country of residence.
- 64** There is no record on the file of any interview of the applicant and no evidence on the file of any probity or identification checks being sought or given by WAPOL or any other domestic intelligence agency or private screening agency.
- 65** In respect of case study five:
- a. interim approval was provided the day after the application was faxed;
 - b. the applicant did not participate in a Department interview;
 - c. neither WAPOL, nor any other domestic intelligence agency or private screening agency, was consulted in respect of the application as there is no documentary evidence of that on the file;
 - d. no inquiries were made as to whether the applicant had the necessary work permit to work in Australia;
 - e. provisional approval was granted one day after the original application was received,

- without any police clearance on the file and the applicant was directed to acquire it within 12 months; and
- f. the approval never progressed past provisional status, as in June 2010, Part 3 of the CC Regs was repealed.

Conclusions and findings in respect of junket regulation 1999 to 2010

- 66** The PCRC concludes that, overall, the introduction of Part 3 of the CC Regs permitted a less rigorous probity investigation and approval process, as a number of the processes previously mandated under the Junket Direction were imposed only at the GWC's discretion.
- 67** The discretionary aspects of Part 3 of the CC Regs afforded some flexibility in how probity investigations were undertaken in practice. However, they concentrated the effective management of the risks associated with junkets in the hands of individual departmental officers. Further, the removal of blanket requirements for a police clearance and physical interview, without the requirement to undertake any other form of investigation to identify the applicant, or assess their criminal history or their authority to work in Australia, increased the risk of criminal infiltration of Perth Casino's operations.
- 68** The PCRC finds that the discretionary aspects of Part 3 of the CC Regs were a legislative deficiency that elevated the risk of criminal infiltration of Perth Casino's operations.
- 69** As to the practices of the GWC in respect of the approval of junket operators and their representatives for the period from February 1999 when Part 3 of the CC Regs came into effect until 2010 when those regulations were repealed, the PCRC concludes that:
- a. after April 2000, WAPOL was no longer routinely involved in probity assessments of applicants;
 - b. applicants were no longer interviewed by the Department and WAPOL as part of the approval process;
 - c. provisional approval became an extended 'interim approval', in the sense that provisional approval appears to have been given almost automatically and based only on the application itself, often requiring applicants to produce police clearances within 12 months of the issue of provisional approval;
 - d. the effect of these changes in practice meant that, overall, the GWC's due diligence and probity assessments of applicants were less rigorous than was the case prior to the introduction of Part 3 of the CC Regs; and
 - e. as late as August 2001, being more than two years after Part 3 of the CC Regs came into force, at least one application was approved under a delegated authority which did not exist.
- 70** As to the effectiveness of those practices to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets, the PCRC concludes that:
- a. the Department continued to be alive to the risk of criminal infiltration of Perth Casino's operations by or through junkets;
 - b. after April 2000, the generally less rigorous due diligence into and probity assessments of junket operators and representatives increased the risk of criminal infiltration of Perth Casino's operations by junkets;
 - c. in particular, the lack of involvement of WAPOL in probity assessments meant that there was a greater risk that applicants with a criminal history or with criminal associations would be approved to operate or represent junkets at Perth Casino; and

- d. the established practices of the GWC in respect of the approval of junket operators and their representatives did not adequately mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets and was not therefore effective to achieve that purpose.

Repeal of part of the Casino Control Regulations in 2010

- 71 By letter dated 4 December 2009, the Burswood entities submitted a proposal to the Acting CCO, Connolly, for the removal of the requirement in Part 3 of the CC Regs for junket operators and representatives to be approved by the GWC (**2009 Junket Submission**).¹⁰⁰ The main reasons advanced by the Burswood entities in the 2009 Junket Submission for the proposal were, in substance:
 - a. the necessary integrity checks of persons entering Australia, including junket operators, representatives and players, were being carried out by Federal Government agencies. Those processes included checks under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**); and
 - b. the junket approval process imposed economic costs on the casino operator in the extremely competitive ICB¹⁰¹ market compared to casinos in other jurisdictions where there was no junket approval process administered by the regulator.
- 72 The adequacy of Crown's communications with the GWC in respect of this submission is examined in Part Four of this chapter.
- 73 There was no evidence before the PCRC of the precise processes undertaken by Federal Government agencies to prevent non-citizens from entering Australia. Therefore, no conclusions can be drawn as to the actual efficacy of those processes to prevent inappropriate junket operators and junket representatives from entering Australia; nor is it within the scope of the PCRC's inquiry to do so. However, whatever processes the Federal Government agencies had in place, the evidence before the PCRC indicates that they did not prevent a number of junket operators and junket representatives with links to triads and organised crime groups from entering Australia and conducting junkets at Perth Casino between 2010 and 2020.
- 74 The PCRC considers that a Federal Government agency which processed a tourist or other non-working visa application would not be expected to consider whether the applicant was an appropriate person to participate in a junket at Perth Casino. Junket patrons were not working while at Perth Casino and therefore would not require a visa which authorised them to do so. If a junket operator or representative did not disclose that they intended to work whilst in Australia, the Commonwealth vetting process on which Perth Casino's request relied would not apply. Case studies four and five show how the junket approval processes in place under the CC Regs failed to include inquiries as to whether the applicant had the appropriate Australian work permit, even though authority to make those inquiries was given.
- 75 Even if the correct visa was applied for, the task of a Federal Government agency which processed such an application was different to that of a diligent casino regulator which assessed whether to authorise a person to conduct or represent junkets at Perth Casino. The former had a broad obligation to take into account risks to Australia in accordance with Australian migration legislation. The latter had a specific obligation to take into account risks to the integrity of gaming at Perth Casino and the Western Australian community in accordance with the Western Australian regulatory framework. It was an error to conflate the obligations.
- 76 In advance of the GWC's February 2010 meeting, an agenda paper was prepared in relation to the proposed changes the subject of the 2009 Junket Submission.¹⁰² The author of the agenda paper (a departmental officer) recommended that the GWC consider amending

the CC Regs to remove the requirement for junket operators and representatives to be approved by the GWC.¹⁰³ The rationale for that recommendation, in substance, reflected the reasons advanced in the 2009 Junket Submission.¹⁰⁴

- 77 The agenda paper did not recommend that the GWC approve the repeal of the whole of Part 3 of the CC Regs, being reg 5 to reg 17 inclusive.
- 78 Regulation 16 of the CC Regs concerned the requirement for the Perth Casino operator to give the GWC notice of the commencement of a junket and passport details (where possible) of the junket operator (or operator's representative) and other members of the junket party. That notice requirement was not contingent on any approval.
- 79 The PCRC heard evidence that the Department had not itself, at that time, investigated the nature of checks conducted on junket operators and representatives by Federal Government agencies.¹⁰⁵
- 80 The minutes for the meeting of February 2010 record that the GWC resolved, in line with the recommendation, to approve an amendment of the CC Regs, to 'remove the requirement for junket operators / representatives to be approved by the [GWC]'.¹⁰⁶
- 81 In June 2010, Part 3 of the CC Regs was repealed in its entirety, including reg 16.¹⁰⁷

Sargeant's evidence

- 82 In his evidence, Sargeant accepted that the GWC, as regulator, had a role to play in the prevention of criminal involvement in junket operations and that the approval process for junkets prior to 2010 was for the purpose of preventing such involvement.¹⁰⁸ That is consistent with the GWC's position, as stated to the PCRC, that the risk associated with junket operations was one of the foci of the GWC.¹⁰⁹
- 83 Sargeant was supportive of the 2009 Junket Submission as he did not see that the processes carried out by the Department and WAPOL (which, at that time, appear to have been non-existent) were adding any value, particularly with the difficulties experienced in obtaining overseas police clearances.¹¹⁰ His evidence, in effect, was that, at the time the removal was considered, he was satisfied the risk was adequately mitigated through reliance on border controls and Perth Casino's own internal procedures to determine who could be a patron of the casino. Sargeant understood that those internal procedures at that time, were 'very much a [Perth] decision' as distinguished from 'the latter years [when] it became more that the Crown Group took more control of vetting the junket people coming into Australia'.¹¹¹
- 84 Sargeant could not recall what or if information was given to the GWC to satisfy the members that border processes were going to prevent criminals from being involved in junket operations, and suggested he would have been briefed on it at the time by the Department but could not recall the particular officer who may have done that.¹¹² He accepted the possibility that an individual might be a criminal, but not necessarily have a criminal record, and could therefore enter Australia without being intercepted by border controls.¹¹³ Likewise, he accepted that while a junket operator might be excluded from Australia on the basis of a criminal record, a junket representative without a criminal record could still carry out junket operations on their behalf.¹¹⁴
- 85 As to his satisfaction in respect of Perth Casino's internal procedures, he said that his view was based on the advice of 'my [departmental] officers'.¹¹⁵ He recalled his understanding at the time that Perth Casino used a third party agency to get an independent assessment of background and creditworthiness of junket operators and representatives, combined with Perth Casino's 'normal corporate risk management processes'.¹¹⁶
- 86 He accepted that it was possible that, notwithstanding Perth Casino's own processes, someone who had been convicted of or associated with money laundering could be

approved to participate in junkets at Perth Casino.¹¹⁷ He nevertheless had an expectation that the internal processes of Perth Casino were sufficiently robust to prevent any such approval.¹¹⁸ When asked whether Perth Casino provided information to satisfy him that its processes were sufficiently robust to prevent approval of junket operators with associations to organised crime, Sargeant said that he did not meet with Perth Casino and could not recall 'what the process [of approval] was', nor if he was provided with information.¹¹⁹

- 87 Sargeant agreed that the removal of the requirement for the GWC's approval meant the integrity of the junkets and junket operators in Perth depended almost entirely on Perth Casino's internal controls.¹²⁰ He could not recall that any consideration was given to adopting or imposing a procedure on Perth Casino which required it to carry out particular probity checks and provide those checks to the GWC.¹²¹
- 88 Sargeant was asked why Perth Casino's probity processes were not audited or checked for veracity. He said that there was confidence in Perth Casino and that it 'would apply appropriate standards to their client base, the management [of the] casino, the boards, et cetera, and the risk processes would cover that'.¹²² He accepted that, by that approach, there was an enormous amount of trust and reliance placed in and upon the integrity of the Perth Casino operator.¹²³

Evidence of other Gaming and Wagering Commission members

- 89 The PCRC heard evidence from other GWC members at that time who approved the removal of the regulations which required the approval of junket operators and representatives.
- 90 A longstanding GWC member recalled the justification for the removal of the regulations was 'it was felt ... the [GWC] didn't have the investigative skills to police anything ... within the junket, so there was really no role for it [to continue assessing applications]'.¹²⁴ They agreed that their view was reached as a result of what they were being told in briefing papers by departmental officers.¹²⁵
- 91 One member understood at the time that the proposed amendments were to remove the necessity for the approval of junket operators and representatives, and that the removal of the regulations would mean there would effectively be no remaining powers of the GWC with respect to junkets.¹²⁶
- 92 Another member had a 'very hazy recollection' of the meeting in February 2010, but thought that there was an acceptance amongst the GWC members of the arguments in relation to the ability of other agencies, and little discussion in respect of the economic benefit for Perth Casino compared with other casino operators.¹²⁷ They were also surprised when it was brought to their attention that the GWC's approval of the proposed resolution actually saw the complete removal of Part 3 of the CC Regs.¹²⁸
- 93 The three other members who were present at the 23 February 2010 GWC meeting¹²⁹ had no recollection of the removal of Part 3 of the CC Regs.¹³⁰
- 94 Belling, who was CCO and Director Licensing at the time, recalled the fact of the removal of the approval requirement under the CC Regs, however, could not recall being involved in the matter. Belling believed the amendments related to the introduction of Australian Transaction Reports and Analysis Centre (**AUSTRAC**) legislation.¹³¹
- 95 The PCRC concludes that the Department recommended to the GWC that it approve the removal of the approval requirements under the CC Regs for the same reasons propounded by Perth Casino, but without attempting to substantiate the validity of those reasons. Without the inquiries having been made to validate those reasons, the Department was unable to give adequate consideration to whether the removal was in the public interest.

- 96** The Department concedes that it should have:¹³²
- a. included in the agenda paper other regulation options for the GWC to consider; and
 - b. conducted further checks on the matters propounded by the Burswood entities.
- 97** The PCRC therefore finds that in February 2010 the Department did not adequately support the GWC to discharge its responsibility to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.
- 98** The PCRC concludes that, in respect of the GWC's decision to approve the removal of the requirement under the CC Regs for the GWC's approval of junket operators and representatives, the GWC was not provided with any information about:
- a. the nature of the checks conducted by Federal Government agencies and whether and to what extent those checks approximated the processes and powers available to approve junket operators and representatives under Part 3 of the CC Regs;
 - b. the costs to Perth Casino of the process to approve junket operators and representatives under Part 3 of the CC Regs;
 - c. the regulatory framework in other Australian jurisdictions for the approval of junket operators and representatives; or
 - d. the internal processes of Perth Casino to assess the probity of junket operators and representatives.
- 99** In the absence of that information, the GWC did not have a reasonable basis to decide to approve the removal of the requirement under the CC Regs for the GWC to approve junket operators and representatives and therefore finds that it was an inappropriate exercise of its regulatory powers.
- 100** Consequently, the PCRC finds that in making the decision to approve the removal of the requirement under the CC Regs for the GWC to approve junket operators and representatives, the GWC was not effective in discharging its responsibility to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.
- 101** The PCRC is unable on the evidence before it to reach any conclusions as to why the entirety of Part 3 of the CC Regs was removed, although it notes that it was inconsistent with the resolution of the GWC as recorded in its minutes.

Regulation of junkets after the repeal of Part 3 of the Casino Control Regulations

Gaming and Wagering Commission's oversight and knowledge of junkets after the repeal of Part 3 of the Casino Control Regulations

- 102** Belling gave evidence to the PCRC that after the repeal of Part 3 of the CC Regs in 2010, outside of any obligations in the CM(Ops), the GWC did not impose any other requirements on Perth Casino with respect to junket operators.¹³³
- 103** From at least as early as 2006 and up until 2017, there were provisions in the CM(Ops) with respect to Perth Casino's 'Junket Programme' which required the involvement or notification of the GWC.¹³⁴ In particular, there were provisions which required the Authorised Company Officer of Perth Casino to:¹³⁵
- a. '[o]btain formal clearance' from the GWC for junket operators and representatives,¹³⁶ as contemplated by Part 3 of the CC Regs; and

- b. obtain a list of junket players' names and passport numbers and supply that to the GWC in advance of, or on their arrival to, Perth Casino, as contemplated by reg 16 of the CC Regs.
- 104** These provisions were not removed in 2010 when Part 3 of the CC Regs was repealed, but in August 2010 the former Director Compliance of the Department emailed Paul Hulme (**Hulme**), the former Gaming and Regulatory Compliance Manager at Perth Casino, and said:¹³⁷
- I have spoken to Barry [Sargeant] about the junket details and agreed that there is no need to continue to provide us with pre-arrival advice or details of which junket operators [Perth Casino] does business with. However, we would appreciate being provided with junket settlement sheets on a monthly basis.
- 105** The former Director Compliance also gave evidence to the PCRC that, after the repeal of the regulations in 2010, Perth Casino continued to provide the Department with lists of junket player details, consistent with the provisions of the CM(Ops).¹³⁸ Connolly corroborated that evidence,¹³⁹ and said that the Department did nothing with those details, except perhaps file them.¹⁴⁰ He also conceded that, as at April 2017, the GWC did not perform any audit function in relation to the probity of junket players, operators and representatives.¹⁴¹
- 106** In April 2017, the obligation to provide junket player details to the GWC ceased. The circumstances which led to that are outlined below.

The effectiveness of the Gaming and Wagering Commission in regulating junkets since the repeal of Part 3 of the Casino Control Regulations

- 107** Current and former GWC members, in evidence, generally had no awareness of any GWC policies or procedures about risks associated with junket operations, money laundering or cash and electronic transactions at Perth Casino.¹⁴² There was also a shared belief among those current and former GWC members that Commonwealth authorities and AUSTRAC were responsible for vetting international casino patrons and investigating money laundering.¹⁴³
- 108** Duncan Ord (**Ord**), chair of the GWC from mid-2017 to 2021, gave evidence that throughout his tenure and until the release of the Bergin Report, the GWC's views had been that:¹⁴⁴
- a. the Commonwealth agencies responsible for determining the issue of entry visas into Australia were solely responsible for assessing the background, character and propriety of junket players;
 - b. AUSTRAC was responsible for assessing risks of money laundering, primarily through a system of declarations for foreign currency transactions; and
 - c. AUSTRAC would contact the GWC if it had concerns of identified suspicious transactions at Perth Casino of relevance to the GWC.
- 109** Connolly gave evidence to the effect that from 2014 to the present day, he understood that:¹⁴⁵
- a. the Australian Border Force (**Border Force**) did checks on a person's criminal history to determine whether they should be given a visa and the visa decision was therefore a suitable proxy for a decision about whether or not to allow a junket operator or participant to come Perth Casino; and
 - b. in any event, he considered that the Department and the GWC did not have the means to take on that same responsibility.
- 110** However, Connolly also conceded that:
- a. he did not know what checks Border Force conducted before a person was considered

suitable to enter Australia, nor did he look into whether visa checks would be a duplication of the processes that were previously performed by the Department;¹⁴⁶ and

- b. he did not have any discussions with WAPOL at any point after 2012 as to whether WAPOL would be assisted by having the sort of information it used to receive from the GWC in relation to junket operations.¹⁴⁷

- 111 For the reasons that follow, the PCRC finds that the GWC's reliance primarily on Connolly's advice and guidance in respect of junket regulation compromised the effectiveness of the GWC to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.
- 112 Connolly accepts that as CCO and Deputy Director General (**DDG**) he was responsible for providing advice and guidance to the GWC in respect of junkets and whether the GWC needed to take steps to better mitigate the risk of criminal infiltration.¹⁴⁸
- 113 On 10 February 2017, the Burswood entities requested removal of the requirement in the CM(Ops) to obtain approval from the GWC for junket operators and representatives.¹⁴⁹ However, following discussions between Connolly and Hulme,¹⁵⁰ by 17 March 2017 that request had expanded so that it also sought removal of the provision which required names and passport numbers to be provided to the GWC, to be replaced with a requirement to provide those details to Perth Casino's 'Legal Officer – AML'.¹⁵¹
- 114 In April 2017, the CM(Ops) was amended by Connolly under authority delegated to him as deputy chair of the GWC on 18 December 2012.¹⁵² That amendment saw the removal of the provisions in respect of the authorisation of junkets by the GWC and the provision of names and passport numbers of junket participants. Connolly gave evidence to the PCRC that he understood that the repeal of Part 3 of the CC Regs and the relaxation of the CM(Ops) in 2017 both rested on an assumption that Border Force and AUSTRAC sufficiently mitigated the risk of junkets to Perth Casino.¹⁵³ Connolly accepted in his evidence that the details of junket players collected by the Department could have been provided to law enforcement agencies for the purpose of criminal intelligence gathering, but they were not.¹⁵⁴
- 115 Connolly further gave evidence that there were certain matters in respect of which he exercised delegated authority as he saw fit, that is, without initial approval from the GWC.¹⁵⁵ This was one such matter. Connolly described in his evidence the use of delegated powers to approve the amendments to the CM(Ops) as falling within the category of 'administrative type functions and cleaning up manuals'.¹⁵⁶
- 116 The GWC was notified of Connolly's exercise of delegated authority in its meeting on 23 May 2017,¹⁵⁷ and it was resolved to note those approvals issued under delegation.¹⁵⁸
- 117 By letter dated 11 April 2017, Connolly advised Perth Casino that he had approved those amendments under delegated authority.¹⁵⁹
- 118 Between 10 February 2017 (the date the Burswood entities requested removal of the requirement in the CM(Ops) to obtain approval from the GWC for junkets) and 11 April 2017 (the date Connolly used delegated powers to implement the Burswood entities' request as changed after discussions between Connolly and Hulme), two relevant things happened.
- 119 First, AUSTRAC began corresponding with Connolly (and casino regulators in other jurisdictions) in respect of the regulation of junkets. On 8 March 2017, Connolly received an email enquiry from AUSTRAC which:¹⁶⁰
 - a. set out that AUSTRAC was 'currently undertaking a campaign to look at casino junkets, including the processes employed by the casinos to meet their obligations under the AML/CTF Act'; and

- b. sought information relating to the type of probity, due diligence and ongoing oversight the regulator undertook in respect of junket players, operators and operator representatives, and if any regulatory changes were proposed in that space.
- 120** Connolly replied to AUSTRAC's email on 4 April 2017 and, amongst other things:¹⁶¹
- a. explained that it was 'our' understanding that anti-money laundering and counter-terrorism financing (**AML/CTF**) audits were AUSTRAC's responsibility;
 - b. explained that the Department conducted a range of audits and inspections related to junket play but the focus was on integrity of gaming and 'the identification, verification and collection of revenue and state tax'; and
 - c. did not mention the discussions underway in respect of removing Perth Casino's requirement to provide names and passport numbers of junket participants to the GWC.
- 121** Save for Sargeant, Connolly did not inform the GWC of his correspondence with AUSTRAC.¹⁶²
- 122** Secondly, Connolly was in the midst of planning a fishing trip with Hulme and Claude Marais (**Marais**) (General Manager – Legal and Compliance at Perth Casino and employed by BRML)¹⁶³ for 24 March 2017.¹⁶⁴ While that trip was rescheduled,¹⁶⁵ on 10 April 2017 Hulme invited Connolly to a social function on 13 April 2017.¹⁶⁶ Connolly denied under cross-examination that he exercised his delegated authority on this occasion without reference to the GWC first because of his friendship with Hulme.¹⁶⁷ As set out in Chapter Eleven: Conflicts, Connolly's friendship with Hulme was never formally declared and was not known to GWC members other than Sargeant.
- 123** In addition to these two matters, Connolly was also aware at the time that there were concerns being raised in the media about the risks of criminal infiltration of junkets and the use of casinos by junkets to facilitate money laundering.¹⁶⁸ He was also aware of the arrest of 19 Crown staff residing in China in October 2016 (**China Arrests**).¹⁶⁹
- 124** Connolly maintained in evidence to the PCRC that, as at 2017, despite the concerns aired in the media and his interactions with AUSTRAC, there was no benefit in retaining the practice of providing names and passport details of junket participants to the GWC as he considered AUSTRAC and Border Force were doing probity checks on junket participants.¹⁷⁰
- 125** On 18 April 2017, Connolly replied in detail to AUSTRAC by letter.¹⁷¹ That letter explained that, following the removal of Part 3 of the CC Regs in 2010, there were no due diligence processes for junket representatives, operators or players conducted by officers of the GWC.¹⁷²
- 126** The PCRC concludes that:
- a. having not sufficiently investigated the issue, Connolly had no reasonable basis as at April 2017 to conclude that probity checks by Border Force and the requirements of the AUSTRAC legislation together sufficiently mitigated the risk of criminal infiltration of Perth Casino's operations by or through junkets;
 - b. having not sufficiently investigated the issue, Connolly had no reasonable basis at any time when he held the positions of CCO and DDG, to conclude that Perth Casino's internal processes sufficiently mitigated the risk of criminal infiltration of Perth Casino's operations by or through junkets;
 - c. Connolly should have, within a reasonable time from commencing in the role of CCO and DDG, alternatively, in about March 2017, recommended to the GWC that it:
 - i. investigate if and how other casino regulators in Australia mitigate the risk of criminal infiltration of casino operations by or through junkets;

- ii. properly investigate and audit the adequacy of Perth Casino's internal processes to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets; and
- iii. properly investigate and then implement an appropriate procedure to itself mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets; and
- d. after receiving the AUSTRAC correspondence, knowing of the China Arrests and without making further enquiries referred to in paragraph [126(c)(ii) – (c)(iii)] above, Connolly had no reasonable basis to exercise the delegated authority of the GWC to amend the CM(Ops) in April 2017 to remove the provisions in respect of authorisation of junkets by the GWC and the provision of names and passport numbers of junket participants. The China Arrests should have led a responsible casino regulator to increase its regulation of Chinese junkets so as to ensure that Perth Casino was complying with its international obligations in marketing to China and bringing Chinese citizens to Perth Casino to gamble. The amendment of the CM(Ops) in April 2017 diminished the GWC's ability to do that.

- 127** In that regard and consequently, the PCRC finds that the GWC was not supported by Connolly, as CCO and DDG, or by the Department to enable the GWC to effectively mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.
- 128** The PCRC concludes that, having regard to Connolly's friendships with Hulme and Marais, there is a risk that Connolly did not bring a truly independent mind to bear upon his decision in April 2017 to exercise delegated authority to amend the CM(Ops).
- 129** The PCRC further concludes that, having regard to Connolly's friendship with Hulme and, in particular, their emails exchanged during March and April 2017 and the fact that the friendship and those emails were not disclosed to the GWC at the time, the standard of casino regulation was compromised by Connolly's decision in April 2017 to exercise delegated authority to amend the CM(Ops).

Events following 17 July 2017

- 130** On about 17 July 2017, Connolly received an email from AUSTRAC which attached its eight-page report on the casino junkets campaign first foreshadowed in its email of 8 March 2017 (**2017 AUSTRAC Report**).¹⁷³ Connolly confirmed in evidence to the PCRC that he read the 2017 AUSTRAC Report at the time.¹⁷⁴
- 131** In summary, the 2017 AUSTRAC Report, while commenting that casinos had been generally more compliant with the letter than the spirit of the law, identified:¹⁷⁵
- a. the failure of casinos in Australia to identify and verify the ultimate source and beneficiary of funds associated with junkets is the key money laundering/terrorism financing risk associated with junkets;
 - b. that many junket business models involve international movements of value that circumvent transaction reporting requirements; and
 - c. the over-reliance on the due diligence undertaken by the Department of Immigration and Border Protection (**DIBP**) in processing visa applications of junket participants also poses a money laundering/terrorism financing risk.
- 132** Connolly accepts that, upon reading the 2017 AUSTRAC Report, he understood:
- a. the GWC had been over-reliant on the due diligence of the DIBP to mitigate the risks associated with junket operations at Perth Casino;¹⁷⁶

- b. there was a high risk of junkets coming to Perth Casino being associated with criminality and money laundering;¹⁷⁷
 - c. the risks of money laundering through junkets were not addressed by AUSTRAC's regulatory regime as it only focussed on financial activity of the operator, and not the junket participants, and therefore the GWC's reliance on AUSTRAC had been misplaced since its deregulation of junket activities in 2010;¹⁷⁸ and
 - d. the GWC's reliance on the DIBP's tourist visa process was misplaced as it was unlikely to be sufficiently effective in its identification of high-risk junket participants; this was because there was a reliance on an applicant's self-declaration of criminal history, rather than any requirement to provide a police clearance.¹⁷⁹
- 133** Connolly gave evidence that he did not consider he should revisit the recent amendments to the CM(Ops) in respect of the provision of junket participant information, notwithstanding that the 2017 AUSTRAC Report set out that:¹⁸⁰
- a. the regulators in other states and the Northern Territory had more of an oversight function of junkets and so Western Australia had the least amount of junket regulation (which he already knew);¹⁸¹ and
 - b. in particular, the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) collected the junket participants' information from Melbourne Casino.¹⁸²
- 134** In explaining why, Connolly said, in effect, that he did not turn his mind to it as the DDG nor as the CCO, as he saw it as a very limited role, but he wanted to progress the idea of a national framework to address those inconsistencies.¹⁸³
- 135** Ord could not recall whether Connolly had provided the 2017 AUSTRAC Report to him in July 2017.¹⁸⁴ Connolly said he would have had discussions with Ord about the report in their regular meetings. When it was put to him that Ord said the report was not shared with him, Connolly said: 'I don't know what to say to that'.¹⁸⁵
- 136** There is no evidence that Connolly made any reference thereafter to the 2017 AUSTRAC Report in his communications with the GWC (which are examined below), and the 2017 AUSTRAC Report was not included in any GWC agenda papers after July 2017. On this basis, the PCRC concludes that Connolly did not provide a copy of the 2017 AUSTRAC Report to Ord.
- 137** Connolly also accepted in his evidence to the PCRC that, as a consequence of the media interest at the time, the public was interested in the adequacy of junket regulation in July 2017.¹⁸⁶ Connolly, too, ought to have been concerned about junket regulations given the events described and the convictions in late June 2017 of 16 of Crown's China-based staff (15 of whom were licensed by the GWC) for assembling a crowd to engage in gambling.
- 138** In September 2017, Connolly attended an AUSTRAC conference in Melbourne which was also attended by representatives of other regulators.¹⁸⁷ During that conference, there was a discussion about steps that could be taken to better mitigate the money laundering risks associated with junkets at Australian casinos.¹⁸⁸
- 139** Prior to the conference, Connolly advised the GWC that there was to be a review of compliance activities performed by the Department to assess the effectiveness of current regulatory programs.¹⁸⁹ The GWC agenda papers which were prepared to advise the GWC about the compliance review made specific reference to junket operations and money laundering, as, in respect of the latter, the VCGLR's oversight of that risk had been criticised by the Victorian Office of the Auditor-General.¹⁹⁰
- 140** The first document prepared in the compliance review was a proposed scope and purpose statement for the GWC's review which Connolly provided to the GWC members at their

meeting on 22 August 2017.¹⁹¹ He advised the GWC members at that meeting the review would be provided in parts, on a monthly basis.¹⁹² In September 2017, a report was provided to the GWC in respect of Perth Casino revenue and tax verification procedures,¹⁹³ followed by reports on:

- a. table games integrity in October 2017;¹⁹⁴
- b. security and surveillance in November 2017;¹⁹⁵ and
- c. electronic gaming machine integrity in December 2017.¹⁹⁶

141 The next item for the compliance review was community gaming in February 2018, however that item was withdrawn.¹⁹⁷ Connolly gave evidence that the compliance review ceased from that point.¹⁹⁸ It does appear that the Department did not give priority to a review of the regulation (or lack thereof) of junket operations.

142 Connolly accepts that the content of the 2017 AUSTRAC Report expressly undermined the stated basis for deregulating junkets in 2010.¹⁹⁹

143 Connolly also conceded that he should have prepared an urgent agenda paper for the GWC and advocated for an immediate review of junket regulation in Western Australia but did not do so.²⁰⁰ He accepted that he could have sought Perth Casino's position in respect of the reinstatement of stronger regulations but did not.²⁰¹

144 After receiving the 2017 AUSTRAC Report in July 2017 Connolly:

- a. knew that the basis for the repeal of the junket regulations in 2010 and the amendment of the CM(Ops) in April 2017 to remove the provisions in respect of authorisation of junkets by the GWC and the provision of names and passport numbers of junket participants was, at least, questionable;
- b. should have brought the content of the 2017 AUSTRAC Report to the attention of the GWC on an urgent basis, but did not do so;
- c. should have immediately recommended to the GWC that it urgently investigate the adequacy of the Perth Casino licensee's internal processes to mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets, but did not do so; and
- d. should have immediately recommended to the GWC that it urgently investigate and then implement an appropriate procedure to itself mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets, but did not do so.

145 The PCRC concludes that Connolly, as CCO and DDG, and the Department through Connolly, did not provide adequate support to the GWC to enable it to effectively mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.

146 The Department concedes that, with the benefit of hindsight, it could have done more to support the GWC in 2017 in mitigating the risks posed by junket operations, and that that support would have involved the Department recommending that the GWC direct the Department to conduct a complete review of the way in which junkets were regulated (or not, as the case was) in order to make recommendations about the best way for the GWC to proceed.²⁰²

147 On the basis of that concession and the evidence set out above, the PCRC finds that in 2017, the Department did not provide adequate support to the GWC in respect of its requirement to regulate the risk of junket operations at Perth Casino.

Current situation

148 In December 2020, the GWC approved the issue of a Direction to the Perth Casino licensee to cease junket operations.²⁰³

- 149 On 23 February 2021, the GWC resolved to give effect to a draft amending instrument, DA/104, being a Direction which prohibited the conduct of junkets and similar activity.²⁰⁴
- 150 Against this background, the PCRC finds that:
- a. from at least June 2010 until December 2020 the GWC, inappropriately, exercised no regulatory oversight over the probity of Perth Casino's junket program, despite its capability to do so under s 25A of the CC Act, and was therefore ineffective during that period in its management of the risk of money laundering and criminal infiltration at Perth Casino through junkets; and
 - b. the steps taken by GWC since December 2020 to prohibit junkets have been effective in managing the risks posed by junkets. The PCRC observes however that there is uncertainty as to the validity of DA/104, for the reasons explained earlier in this part.

The 2019 Junket Media Allegations and the Gaming and Wagering Commission's response

- 151 In late July 2019, allegations were published in newspapers,²⁰⁵ and the 60 Minutes episode 'Crown Unmasked' was aired,²⁰⁶ concerning Crown's junket operations (**2019 Junket Media Allegations**). In effect, it was alleged in the 2019 Junket Media Allegations that:
- a. Crown knowingly exposed its China-based staff to the risk of breaking Chinese laws through marketing Melbourne Casino and Perth Casino in mainland China;
 - b. Crown had business relationships with junket operators and junket representatives with links to triads or other organised criminal groups and Crown was wilfully blind or recklessly indifferent to the existence of those links; and
 - c. allowing junket operators and junket representatives with links to triads or other organised criminal groups at its casinos exposed Crown to an increased risk that Melbourne and Perth Casinos would be used to facilitate money laundering.
- 152 The 2019 Junket Media Allegations were of evident concern to members of the GWC, albeit that the focus of the allegations was largely on Melbourne Casino.²⁰⁷
- 153 On the morning of 29 July 2019, a media outlet emailed an officer from the Department of the Premier and Cabinet (**DPC**) requesting a comment on the 60 Minutes episode, which was forwarded to:
- a. the Director, Corporate Communications of the Department shortly after it was received; and
 - b. Connolly that afternoon for input so that a briefing note could be prepared for the Premier's office.²⁰⁸
- 154 Shortly after receiving the email from the DPC, the Department forwarded news articles about the episode to Ord and Connolly.²⁰⁹
- 155 Later that morning, Connolly emailed Ord as follows:²¹⁰

Whilst I haven't seen the television story yet ... from what I have read in the media to date the allegations and the material in the story are largely the same as those that were reported by Four Corners in 2017.

In WA we do not approve or licence junket operators or members of junket groups. It has historically been extremely difficult to conduct any sort of probity assessment of individuals that have come out of some other countries and in particular Indonesia and China. In the late 80's and early 90's the Gaming and Wagering Commission funded a police unit tasked with vetting and gathering intelligence on junket players and operators but this area was discontinued probably 15 or

more years ago. Since that time we have relied on border protection agencies to ensure that people getting into the country are appropriate to do so. They are the agencies that have access to data and intelligence and there is some reliance on their ability to identify criminals before they grant a visa, not unlike many other countries. Once in the country we regulate the gambling activities and ensure the integrity of the gaming that takes place.

We have been criticised for this approach before and I expect will be criticised again but at the end of the day there is not a whole lot we can do to establish the probity of individuals based in China. If the [GWC] wanted to strengthen its regulatory regime in respect of junket groups or players it would require the assistance of Commonwealth and state policing agencies with the access to intelligence and capability to make assessments based on associations and any criminal history. History suggests that even then those efforts can be ineffective in some countries where individuals can exert influence to obtain police clearances and other documents.

...

The [GWC] has been provided with a number of detailed presentations from Crown relating to their anti-money laundering [(AML)] framework and processes and many of the AUSTRAC requirements are incorporated into approved operating policy and procedure manuals. Unfortunately the [Department] is not an authority that AUSTRAC can share information with and Crown are in breach of AML legislation if they provide copies of suspicious transaction reports and other mandatory reporting to us. Interestingly we may also be in breach if we ask for or require it to be provided. AUSTRAC is the entity with the overriding responsibility when it comes to AML.

Unfortunately the story seems to be making the most out of the bleeding obvious, that Crown were/are trying to attract high net worth individuals to their properties in Australia.

- 156** Connolly conceded in his evidence to the PCRC that, given his knowledge of the content of the 2017 AUSTRAC Report, in particular, that since that time the GWC's reliance on Border Force was misplaced, his email to Ord did not set out the complete picture.²¹¹
- 157** Connolly had no explanation as to why his email to Ord did not explain that Western Australia offered the least amount of regulatory oversight of junkets in Australia, nor that AUSTRAC had conveyed in the 2017 AUSTRAC Report that there was a significant money laundering vulnerability because transactions reported to AUSTRAC did not identify the names of junket participants.²¹² He further conceded that a possible interim arrangement to address the risks from junkets would be to reimpose the requirements for Perth Casino to provide names and details of junket participants and pass them to WAPOL for review, but he made no such recommendation to the GWC.²¹³ The content and tone of Connolly's advice to Ord was inappropriately defensive and dismissive of the 2019 Junket Media Allegations.
- 158** In the afternoon of 29 July 2019, Connolly replied to the initial request for information for the briefing note from the DPC.²¹⁴ In addition to relaying information to the DPC, Connolly stated '[i]t's important to note that we are yet to establish that Crown have done anything wrong'. During evidence at the PCRC, he conceded that the comment did not display an appropriate precautionary attitude in the public interest.²¹⁵
- 159** Late in the evening of 29 July 2019, a GWC member emailed Connolly and enquired whether there was anything which GWC members should be briefed on in respect of the 2019 Junket Media Allegations.²¹⁶
- 160** On the morning of 30 July 2019, Connolly emailed the GWC members and set out, in effect (and in very similar wording to his email to Ord), that it was asserted that Crown had business

dealings with individuals who were alleged to be involved in significant criminal activity, including drug trafficking and money laundering, and reiterated the GWC's reliance on Border Force for probity checks and AUSTRAC for monitoring potential money laundering, in the absence of any process of greater utility.²¹⁷ Connolly said that he would 'provide a detailed briefing on these issues at the next meeting and/or as things progress' and also attached a copy of his briefing note to the Minister and the VCGLR's media release.²¹⁸ Amongst other things, the media release stated that the 'VCGLR [was] continuing to consider the well-publicised events regarding Crown's [ICB] and its international sales team in China'.

- 161 Connolly's email did not disclose to the GWC that its reliance on Border Force and AUSTRAC was misplaced; a fact he knew, having received and read the 2017 AUSTRAC Report. Connolly accepted that his failure to convey that misplaced reliance was unfair to the GWC members.²¹⁹
- 162 Connolly's email to the GWC members of 30 July 2019 was supplemented on 31 July 2019 with proposals for suggested wording for a media release from the Minister's office. In response, Carmelina Fiorentino (**Fiorentino**), a current GWC member, indicated that she was available to meet with her fellow GWC members from 11 August 2019, ahead of the GWC's scheduled meeting on 27 August 2019.²²⁰ The PCRC has no evidence that anyone replied to her email.
- 163 The PCRC acknowledges that Connolly's emails to Ord and the GWC members on 29 July 2019 and 30 July 2019 respectively were sent soon after the 2019 Junket Media Allegations and were not intended to be a complete briefing. However, the PCRC concludes that the emails were not sufficiently fulsome as neither email disclosed that:
- a. AUSTRAC had conveyed in the 2017 AUSTRAC Report that there was a key money laundering vulnerability associated with junkets because transactions reported to AUSTRAC did not identify the names of junket participants;
 - b. there was no reasonable basis for the GWC to conclude that probity checks by Border Force and the requirements of AUSTRAC legislation together sufficiently mitigated the risk of criminal infiltration of Perth Casino's operations by or through junkets;
 - c. there was no reasonable basis for the GWC to conclude that Perth Casino's internal processes sufficiently mitigated the risk of criminal infiltration of Perth Casino's operations by or through junkets; and
 - d. Western Australia offered the least amount of regulatory oversight of junkets in Australia.
- 164 Consequently the Department, through Connolly, did not adequately support the GWC to effectively mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.
- 165 In the afternoon of 29 July 2019, Joshua Preston (**Preston**), former Chief Legal Officer – Australian Resorts, emailed Connolly a copy of a media release from Crown.²²¹ It included the following statement:
- Crown has a robust process for vetting junket operators with whom it deals and undertakes regular ongoing reviews of these operations in ... light of new or additional information that comes to its attention[.]
- 166 Connolly gave evidence that at that time he knew that Perth Casino vetted junket operators, in that they did World-Checks and other checks, but he thought that the use of the descriptor of 'robust' 'might be a stretch'.²²² However, he did not question the assertion, nor did he ask for it to be substantiated.²²³
- 167 Connolly emailed, without substantive comment, a copy of Crown's media release to the GWC on 1 August 2019.²²⁴

168 In response to Connolly's email, Andrew Duckworth (**Duckworth**), a GWC member from 2008 to 2020, circulated to GWC members a link to an article published by newspaper,²²⁵ which dissected the media statement line by line, stated that the publication declined to run a Crown advertisement which sought to set 'the record straight in the face of a deceitful campaign against Crown', and reiterated concerns regarding money laundering and criminal associations involved with junket operations and casino gaming.²²⁶

169 On 14 August 2019, Fiorentino emailed Connolly and the other GWC members again. She provided a link to a radio interview with the Chief Executive Officer of the VCGLR that aired on 2 August 2019. The email stated:²²⁷

I think similar questions are relevant to ask regarding our GWC's casino probity in WA too. In particular, questions are raised about whether our casino compliance is sufficiently risk based (this was a criticism raised by the Victorian [A]uditor-[G]eneral of the VCGLR) and whether our current compliance approach meets the legislative requirements for gambling harm minimisation.

Mick – perhaps GWC can meet before our next meeting on 27th August to discuss this further? Interested in your thoughts.

170 Ord replied, only to Fiorentino, stating:²²⁸

We need to be cautious about [overreacting] to east coast gaming issues as WA is significantly more restrictive on gambling and as a result we have less gambling related harm ...

If there are significant problems we are not addressing I would place gambling schools in remote Aboriginal communities right at the top but this doesn't attract 60 minutes['] interest ...

I would support a special meeting of the GWC but after we receive outcomes of current federal investigation and Crown probity audit ...

171 Fiorentino replied '[s]ounds like a good plan'.²²⁹

172 The agenda papers for the GWC meeting on 27 August 2019 contained a paper authored by Connolly entitled 'Junket Processes'.²³⁰ The paper stated, amongst other things:²³¹

Western Australia is not the only gambling jurisdiction reviewing its current practices and a number of State and Federal inquiries have been established to investigate allegations made relating to players and funds. In Victoria, the VCGLR is still yet to publish the details of its investigation into the events leading up to the arrest of Crown staff in China in [2016]. The [New South Wales] Independent Liquor [& Gaming] Authority (ILGA) has recently announced that it will be conducting an inquiry ... into the recent acquisition of shares in Crown by Melco as well as allegations relating to junkets and players; terms of reference are expected shortly ...

The [GWC] has, in the past, relied on the work conducted by other authorities to make some of its determinations. A more recent example was reliance on work conducted by the VCGLR in respect of the approval of PBL when it purchased a significant shareholding in Crown. In respect of the current issues relating to Crown I would recommend the [GWC] again rely on the work conducted by other regulatory authorities whilst requiring regular reporting and progress updates. The Department does not have the level of resourcing and specific investigation expertise available to the VCGLR, OLGR [NSW], ILGA [Bergin Inquiry] and Federal Authorities[.] [A]ll of these authorities are established, reputable and reliable agencies and, in my view, their work can be relied on as a basis to make decisions in respect of suitability and enforcement.

173 The paper also reiterated the GWC's reliance on Border Force for probity checks on junket

players and AUSTRAC's regulatory process for mitigating money laundering risks and recommended that the GWC:

- a. note that Federal border protection agencies process and approve visas for overseas players;
- b. note that AUSTRAC administers AML legislation;
- c. note that there are a number of inquiries being conducted in relation to Crown and broader junket activity by State and Federal agencies that may be relied upon as a basis to make suitability and enforcement determinations; and
- d. authorise the Department to explore the idea of a national framework for the approval and management of junket activities.²³²

- 174** While the agenda paper made several references to ongoing State and Federal inquiries, the paper did not refer to any specific inquiries, save for brief references to the VCGLR's ongoing inquiry into the China Arrests and the then-recently announced Bergin Inquiry.
- 175** Consistent with Connolly's recommendations, the GWC noted, amongst other things, that there were a number of inquiries being conducted in relation to Crown and broader junket activity by State and Federal agencies that could be relied on as a basis to make suitability and enforcement determinations.²³³
- 176** The PCRC concludes that Connolly's agenda paper for the GWC meeting of 27 August 2019 fell short of the standard of candour and accuracy expected of the Department in that it:
- a. ought to have disclosed that:
 - i. AUSTRAC had conveyed in the 2017 AUSTRAC Report that there was a key money laundering vulnerability associated with junkets because transactions reported to AUSTRAC did not identify the names of junket participants;
 - ii. there was no reasonable basis for the GWC to conclude that probity checks by Border Force and the requirements of AUSTRAC legislation together sufficiently mitigated the risk of criminal infiltration of Perth Casino's operations by or through junkets;
 - iii. there was no reasonable basis for the GWC to conclude that Perth Casino's internal processes sufficiently mitigated the risk of criminal infiltration of Perth Casino's operations by or through junkets; and
 - iv. Western Australia offered the least amount of regulatory oversight of junkets in Australia; and
 - b. should not have recommended that the GWC rely on inquiries being conducted by other State and Federal agencies into Crown and broader junket activity as a basis for the GWC to make suitability and enforcement determinations because:
 - i. the GWC was still waiting on the VCGLR's report in respect of the China Arrests which occurred in October 2016 (not 2017 as referenced in the agenda paper);
 - ii. the Bergin Inquiry had only recently been announced and Connolly did not yet know what its terms of reference were, or whether it would properly investigate and address the issues of relevance to the GWC in respect of Perth Casino; and
 - iii. Connolly did not know what, if any, relevant inquiries were to be undertaken by the New South Wales Office of Liquor Gaming & Racing or Federal authorities as none were specifically mentioned in the agenda paper.
- 177** The PCRC finds that, consequently and in this regard, the Department, through Connolly, did not adequately support the GWC to enable it to effectively mitigate the risk of criminal infiltration of Perth Casino's operations by or through junkets.

Part Three: Crown's governance and risk management of Perth Casino's junket operations

PCRC's approach

- 178** Crown acknowledged to the PCRC its failings as they relate to Crown's relationship with junket operators and does not dispute that corporate governance and risk management failures occurred regarding its relationships with junket operators.²³⁴ Crown also accepts that, in the past, it did not do enough to scrutinise junket operators and prohibit those found to be problematic.²³⁵
- 179** Crown's position is that the governance and risk management failings are historical and do not bear upon the suitability of the Burswood entities and CRL as relevant to ToR 1 to 5 because junkets are currently banned at Perth Casino.²³⁶ The significance of Crown's relationship with junket operators and actions in regard to Crown's junket operations to the question of suitability is considered in Chapter Seventeen: Suitability.
- 180** Paragraph (d) of the operative part of the PCRC's Commission states that the PCRC is not required to inquire into a particular matter to the extent that it is satisfied that the matter has been sufficiently and appropriately dealt with by another inquiry, investigation or proceeding.
- 181** Crown's junket operations were examined in detail in the Bergin Inquiry. Oral evidence (including evidence given under cross-examination) was taken from Crown witnesses about the relevant events and their involvement in those events.
- 182** Two show cause notices were also issued by the VCGLR in late 2020 alleging certain breaches of the *Casino Control Act 1991* (Vic) (**Victorian CCA**) relating to Crown's relationship with junket operators. The VCGLR inquired into whether there were grounds to take disciplinary action against Crown Melbourne Limited (**CML**) under s 20 of the Victorian CCA (**VCGLR Junket Inquiry**). The VCGLR identified numerous issues in respect of Crown's junket processes in its reasons for decision published 27 April 2021 (**VCGLR Junket Report**).
- 183** Numerous concessions were made by Crown to the Bergin Inquiry, the VCGLR Junket Inquiry and the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**) in regard to its junket operations. These concessions will be considered in detail throughout this part.
- 184** Taking into consideration the Bergin Inquiry's extensive inquiry and analysis of facts and circumstances with respect to junkets and the concessions on that topic made by Crown in the Bergin Inquiry, the VCGLR Junket Inquiry and the RCCOL, Crown's junket operations and the deficiencies in them, including the operation of the International Business Unit (**IBU**), have been sufficiently and appropriately dealt with by other inquiries and investigations.
- 185** The PCRC has therefore limited its own inquiry into Crown's junket operations and the operation of the IBU to an examination of the extent they involved or related to the operation of Perth Casino or the directors of the Burswood entities.
- 186** The PCRC relies upon relevant conclusions of the Bergin Inquiry and relevant concessions made by Crown in the Bergin Inquiry, the VCGLR Junket Inquiry and the RCCOL, to provide background context for its factual analysis and findings. The PCRC is cognisant that other interested parties have not made the concessions made by Crown.

Development of Crown's junket business

- 187** In the Bergin Report it was observed that:
- a. in order to conduct his own due diligence and form an understanding of the operation of the casino industry in Macau, James Packer (**Packer**), CRL executive chair, travelled to Macau at least six times prior to entry into the joint venture with Melco Resorts & Entertainment Limited in 2004;²³⁷
 - b. during those visits to Macau, Packer formed the view that junkets were an important component of the VIP side of the business in Macau;²³⁸
 - c. it was Packer's understanding that dealing with junkets was advantageous from the casino operator's perspective because it transferred the credit risk and allowed the casino operator to enforce debts against the junket operator rather than the patron;²³⁹ and
 - d. Packer intended, 'subject to regulatory approvals', to bring the Macau casino operator model to Crown's Australian resorts.²⁴⁰
- 188** In 2012, the Chinese government announced a corruption crackdown which led to a downturn in the VIP market in Macau and Crown saw it as an opportunity to capture a greater share of the international VIP market.²⁴¹
- 189** Crown became increasingly reliant upon junkets to generate turnover in the IBU from about 2013.²⁴²
- 190** In October 2014, Crown's VIP international vision was to become the dominant long-haul integrated resort destination brand for Asian gaming customers.²⁴³ Crown reported in its 2015 annual report that it had put additional resources into VIP International marketing that had helped to deliver strong growth in VIP program play turnover of 41.8%.²⁴⁴
- 191** Between 2016 and 2019, Crown implemented its 'platform junket strategy' that included the alignment of Crown's IBU sales team with major junkets, with the aim of lowering Crown's credit risk and expediting the growth of the VIP International business.²⁴⁵
- 192** The VIP program play earnings contribution from 2013 to 2019 is set out in the table below.²⁴⁶ After the financial year ending 2016, the VIP program play earnings contributed a smaller percentage to Crown's overall revenue. The table indicates that as a percentage of overall revenue, Crown's VIP revenue at both Melbourne Casino and Perth Casino peaked in 2015 at 31.63% and 25.56% respectively.²⁴⁷ The table also indicates that the VIP program play revenue for Perth Casino during the years 2014 to 2019 was significantly less than that of Melbourne Casino.

Australian Resorts - VIP program play earnings contribution

					Normalised at 1.35%		
		Total	VIP program play	VIP as a % of	Total	VIP contribution	VIP as a % of
		revenue	revenue	total	contribution		total
2014	Melbourne	1,931.2	501.2	25.95%	561.8	59.8	10.65%
	Perth	883.6	173.1	19.59%	241.6	(1.6)	(0.67%)
	Aus Resorts	2,814.7	674.3	23.96%	803.4	58.2	7.24%
2015	Melbourne	2,233.9	706.6	31.63%	662.1	130.6	19.73%
	Perth	975.3	249.3	25.56%	254.4	4.7	1.84%
	Aus Resorts	3,209.2	955.9	29.79%	916.5	135.3	14.76%
2016	Melbourne	2,312.5	676.5	29.25%	673.3	110.1	16.35%
	Perth	922.0	202.8	21.99%	259.9	(1.4)	(0.55%)
	Aus Resorts	3,234.4	879.2	27.18%	933.2	108.7	11.64%
2017	Melbourne	1,994.8	340.3	17.06%	588.8	36.2	6.15%
	Perth	830.1	109.3	13.17%	244.8	0.3	0.11%
	Aus Resorts	2,824.9	449.7	15.92%	833.7	36.5	4.37%
2018	Melbourne	2,279.1	591.8	25.97%	645.0	84.6	13.11%
	Perth	844.5	103.0	12.20%	248.8	7.2	2.89%
	Aus Resorts	3,123.6	694.9	22.25%	893.8	91.8	10.27%
2019	Melbourne	2,155.4	441.4	20.48%	589.5	50.1	8.51%
	Perth	799.4	72.0	9.00%	221.8	(0.3)	(0.13%)
	Aus Resorts	2,954.9	513.4	17.38%	811.3	49.9	6.14%

- 193 Crown's 2019 annual report documented that VIP program turnover was down by 26.1% from the previous year. The challenging trading conditions in the international VIP market were reflected in the drop in the overall revenue of Perth Casino of 30.1%.²⁴⁸

The operation of Crown's junket business

- 194 The business of Crown in China was managed by the IBU. The executive ultimately responsible for VIP International business was Rowen Craigie (**Craigie**) (among other positions, the Managing Director and Chief Executive Officer of Crown between 2007 and 2017).²⁴⁹
- 195 In March 2013, while still the Chief Executive Officer of Perth Casino, Barry Felstead (**Felstead**) took over responsibility for Crown's VIP International business. He was appointed as Chief Executive Officer in August 2013 of the centralised governance and management function that included Perth Casino, Melbourne Casino, Aspinalls and intended to include the Barangaroo Casino (**Australian Resorts**) and became the most senior executive directly responsible for the IBU. Felstead was also a director of CML, and director of each of the Burswood entities.²⁵⁰
- 196 Craigie and Felstead were also directors of Crown Resort Pte Ltd, a subsidiary of CRL (through CML) incorporated in Singapore (**Crown Singapore**).²⁵¹
- 197 Jason O'Connor (**O'Connor**) was the Group Executive General Manager of VIP International Gaming from 2011 to 2016, based in Melbourne,²⁵² and ultimately reported to Felstead.²⁵³
- 198 Michael Chen (**Chen**), Crown's President of International Marketing, was based in Hong Kong. He reported directly to O'Connor and was in regular phone contact with him between 2014 and 2016.²⁵⁴ According to Crown's position description, Chen was responsible for the provision of broad leadership and strategic direction in order to advance Crown's VIP market segment, as well as relationship management and the development and growth of Crown's VIP client base.²⁵⁵
- 199 By 2012 and up to October 2016, Crown Singapore employed staff living in mainland China to conduct sales and marketing activities. Those activities involved:²⁵⁶
- the identification and development of relationships with customers to travel to, and gamble at, Crown casinos in Australia;

- b. assisting customers to apply for lines of credit issued by Crown to be used at its casinos in Australia;
 - c. assisting customers with their travel arrangements to Australia for the purpose of visiting Crown casinos, including relevant visa applications; and
 - d. encouraging customers to settle any debts owed to Crown.
- 200** Neither Crown nor any subsidiary held a licence or authorisation from the Chinese government to conduct business activities in China.²⁵⁷
- 201** From 2012 to at least 2015, the senior management of the IBU operated an unofficial Guangzhou office in a rented residential apartment to support its business activities and to process visa applications for its Chinese customers. The office held equipment, gifts, and confidential documents and carried no Crown signage.²⁵⁸
- 202** It is not necessary for the PCRC to determine whether the establishment of the Guangzhou office was contrary to the laws of China, or Crown's understanding of those laws. Whatever the legalities of the arrangement, Crown has conceded that the Guangzhou office should not have been operating.²⁵⁹

The VIP International Business, leadership team and the VIP working group

- 203** Crown's IBU was primarily responsible for Crown's junket operations. Jacinta Maguire (**Maguire**) (General Manager of Commercial), Roland Theiler (**Theiler**) (Senior Vice President of International Business) and Ishan Ratnam (**Ratnam**) (Vice President of Entertainment, Vice President of Capital Golf Course and President of VIP Development), together with Felstead, O'Connor and Chen, constituted the IBU leadership team.²⁶⁰
- 204** Felstead, O'Connor, Chen and Ratnam regularly travelled to China to undertake roadshows.²⁶¹ These roadshows included lunch, dinner and other social events with new and existing VIP players aimed at the promotion of Crown's lifestyle and non-gaming events as well as the Melbourne and Perth Casinos.²⁶²
- 205** In 2013, a VIP working group was established which comprised members of the IBU including Felstead, O'Connor and Chen together with individuals from Consolidated Press Holdings Pty Ltd (**CPH**); Michael Johnston (**Johnston**) (among other positions, the Finance Director of CPH, a CPH Executive and a non-executive director of CRL), Brad Kady (CPH Group Investment Manager) and Steve Bennett (CPH Treasurer).²⁶³
- 206** The purpose of the VIP working group was to provide guidance and advice relating to the VIP International business although it did not have a managerial role.²⁶⁴ Felstead gave evidence to the Bergin Inquiry that the VIP working group endorsed various decisions or strategies for the VIP International business, such as the approach to staffing, before implementation.²⁶⁵
- 207** During the first 12 months after its establishment, the VIP working group met monthly; in the following years it met less frequently.²⁶⁶
- 208** The VIP working group was superseded by a committee formed following the China Arrests with the purpose of reviewing existing junket operators, reviewing other related activities of ICB and assessing new applications by prospective junket operators, sometimes referred to as the VIP Committee (**VIP Committee**).²⁶⁷ Members of the VIP Committee included Craigie (until early February 2017),²⁶⁸ Felstead, Johnston and Preston (former Executive General Manager Legal Services at Perth Casino and from March 2017 the Chief Legal Officer – Australian Resorts).²⁶⁹
- 209** This VIP Committee was an informal management committee, not a CRL board committee.²⁷⁰

- 210** During the period that he was Chief Executive Officer – Australian Resorts, Felstead assisted in the preparation and presentation of the ‘CEO’s Report’ to the CRL board which included, among other things, a report on trading figures for Perth and Melbourne Casinos and the VIP International business.²⁷¹
- 211** Pursuant to the CRL Risk Management Policy dated February 2008 (**2008 CRL Risk Policy**), the management of risk for the IBU was supposed to be reported formally through to the board of CML. The 2008 CRL Risk Policy was in force up to the time of the China Arrests.²⁷² The extent to which that reporting happened in practice is unclear.

Bonuses and incentives

- 212** The sales staff of Crown based in China, and the IBU senior executives to whom they reported, were incentivised for their performance.²⁷³
- 213** In the period up to October 2016, IBU sales staff were paid bonuses or commissions from Crown based on turnover targets, including the total turnover of VIP customers in their region and the collection of gambling debts from customers.²⁷⁴
- 214** The bonus arrangements paid to sales staff were to encourage the performance of the sales team in the IBU.²⁷⁵
- 215** The CRL board Nomination and Remuneration Committee (as it was then known) made recommendations to the CRL board in relation to the remuneration to be paid to executives. The CRL board set the remuneration of executives such as Felstead and O’Connor.²⁷⁶
- 216** In 2015, Felstead received a short-term incentive payment of \$864,000 which represented 40% of his total employment cost.²⁷⁷
- 217** Chen participated in long and short-term incentive plans which were based on the revenue of the IBU. Chen was eligible for a yearly bonus capped at 250% of his total annual remuneration under his short-term incentive plan. He was eligible for a maximum bonus of 200% of his commencing annual remuneration paid across four years under his long-term incentive plan.²⁷⁸
- 218** For the financial year ending 2015, Chen received a ‘VIP Bonus’ of USD \$1,823,649.55.²⁷⁹

CEO Meetings

- 219** Packer was the executive chair of CRL between 2007 and 2015. At some point during that time, regular ‘CEO Meetings’ were established and were attended by Packer, Craigie and John Alexander (**Alexander**). Alexander was, relevantly here, executive deputy chair of CRL between 2007 and 2017. CPH personnel also attended these meetings, including Johnston, Guy Jalland (formerly an employee of CPH) and Mark Arbib (an employee of CPH in a business development role). The purpose of the CEO Meetings was to brief Packer (and possibly others) on relevant Crown business prior to Crown board meetings.²⁸⁰
- 220** The papers prepared for the CEO Meetings largely comprised papers to be tabled at the next CRL board meeting and included the CEO’s Report, management accounts and development updates. In addition, Felstead prepared VIP updates which were also presented at these CEO Meetings and included information about the key debts owed to Perth Casino by junkets or individual premium players.²⁸¹

The junket approval process

- 221** A number of conclusions were reached in the Bergin Report regarding Crown’s corporate governance and risk management processes generally in respect of the assessment and approval of junket operators. The PCRC relies on the conclusions of the Bergin Inquiry that:

- a. people who were tasked with the decision to approve or reject junket applicants had no clear guidance about the proper approach to be taken regarding publicly available information and allegations about the junket operator;²⁸²
- b. that guidance should have come from the board of CRL;²⁸³
- c. there was no bar against which the decision-makers could test the information and allegations about junket operators;²⁸⁴
- d. a tension, or a perceived tension, could exist in having operational employees make decisions about junket operators;²⁸⁵
- e. the compliance and AML teams should have had greater input into the due diligence assessment of junket operators;²⁸⁶
- f. at least until mid-2017 the focus of the checks on junket operators was on creditworthiness of the junket operator rather than their probity;²⁸⁷ and
- g. the CRL board was ultimately prevented from knowing anything about the IBU, other than the profitability of the business unit.²⁸⁸

222 Further, in the Bergin Report a number of conclusions were reached regarding the risk profile of the VIP International business. The PCRC relies on the conclusions of the Bergin Inquiry that:²⁸⁹

- a. the incentives provided by Crown to management of the IBU encouraged them to take inappropriate risks in the pursuit of success in this strategically important business;
- b. there were deficiencies in various documents designed to capture risks, including the corporate risk profiles that did not properly or in sufficient detail identify the real nature of risks associated with the VIP International business; and
- c. the VIP International team had historically taken on a higher risk appetite than the rest of Crown's business.

223 Crown made concessions during the Bergin Inquiry regarding its due diligence processes for the assessment of junket operators, including that:²⁹⁰

- a. there had been shortcomings in Crown's junket due diligence processes which meant all risks associated with junkets had not been eliminated;²⁹¹
- b. its due diligence processes had been too narrowly focussed on the junket operator and did not sufficiently address the risk that individuals connected with junkets might hide behind corporate structures;²⁹²
- c. there was a need to have clearer defined escalation points and triggers for further investigation and for clearer guidelines, and education for persons responsible for collecting and collating relevant information from across the business, including those in sales and services roles;²⁹³ and
- d. there was a need for greater input from Crown's compliance and AML teams into the due diligence for junkets.²⁹⁴

224 It was further conceded by Crown that in the case of a number of junket operators the subject of the Bergin Inquiry, there was material which suggested a link to organised crime and some of those junket operators may fairly be described as having questionable reputations.²⁹⁵

225 After the GWC's deregulation of junket operations in 2010 (as discussed in Part Two above), Crown's junket operator approval process (the subject of the conclusions in the Bergin Inquiry and the concessions made by Crown) can be understood by reference to three discrete periods:

- a. Period 1: between 2010 and October 2016;
- b. Period 2: between November 2016 and mid-2017 when a broad review of the VIP International business was conducted in the aftermath of the China Arrests;²⁹⁶ and
- c. Period 3: between mid-2017 and August 2020 after which time all junket relationships were suspended by Crown pending review of its junket operations.²⁹⁷

Period 1: between 2010 and October 2016

Internal approval processes

- 226** Crown's junket operator approval process during Period 1 (and particularly up to September 2014) was described by O'Connor to the Bergin Inquiry in this way:²⁹⁸
- a. an application for approval was submitted by one of Crown's in-market sales team members based in Asia,²⁹⁹ who were also responsible for collecting identification documents;
 - b. the application would then be sent to the VIP International team which was based in Melbourne and led by O'Connor, who would test the applicant's bona fides. This would include verification as to whether the applicant was a junket operator established in other jurisdictions and the legitimacy of their request to be established as a junket operator with Crown;³⁰⁰
 - c. a VIP International team member would then seek evidence of the applicant's ability to perform the expected function of a junket operator;³⁰¹
 - d. once the applicant's bona fides had been established, the application was provided to Crown's compliance team, for preparation of a formal licence document and completion of a further background check against the World-Check database;³⁰² and
 - e. the ultimate decision to approve an application by a prospective junket operator rested with O'Connor within the VIP International team. It was not subject to sign-off from anyone at Crown senior executive level.³⁰³
- 227** Generally speaking, information regarding the IBU during the period 2013 to 2016 was reported in a variety of ways which included:
- a. weekly trading reports which were sent from Felstead to Craigie, Kenneth Barton (**Barton**) (Chief Financial Officer of CRL), Michael Neilson (**Neilson**) (Company Secretary and General Counsel of CRL), Johnston and Packer;³⁰⁴
 - b. CEO Meetings, which took place up to the end of 2015³⁰⁵ and which involved Packer (at least up to late 2013),³⁰⁶ Crown management and selected CPH personnel³⁰⁷ (as discussed at paragraph [219] above); and
 - c. VIP working group meetings.³⁰⁸
- 228** In September 2014, a Four Corners episode entitled 'High Rollers – High Risk? Australian casinos and the threat posed by organised crime' (**2014 Four Corners Episode**) was broadcast. In the 2014 Four Corners Episode, it was alleged that Australian casinos ran a serious risk of exposure to organised crime through the targeting of Asian VIP gamblers. It was further alleged that Melco Crown Entertainment Limited had dealt with a number of junkets which had links to organised crime including Suncity and named individuals associated with the Suncity and Neptune junkets. In the episode it was further noted that the Neptune Group and Suncity junkets brought high rollers to Perth Casino, among others.³⁰⁹
- 229** As to Crown's junket approval process in Period 1 generally, the Bergin Inquiry concluded that:³¹⁰

- a. documentary evidence shows that in conducting the above checks the focus was more on the creditworthiness of the junket operator than on his or her probity;
- b. during this period there was very little due diligence conducted on junket operators; and
- c. after the 2014 Four Corners Episode aired, in October 2014, there was a small change to the junket approval process and on some occasions information from additional databases was obtained. Those additional searches were often limited to World-Check searches.

What happened on the ground in Perth

230 It is to be inferred from the conclusions of the Bergin Inquiry and the evidence of O'Connor to the Bergin Inquiry that during Period 1 the Burswood entities did not have any substantive involvement in the assessment or approval of junket operators who came to Perth Casino or oversight of the assessment and approval function.

231 Additional evidence received by the PCRC supports that conclusion. During this period, Neil De Lima (**De Lima**) (Senior Vice President International and Interstate Business) was responsible for the on-ground servicing or hosting of VIP customers at Perth Casino.³¹¹ The expression 'hosting' or 'on-ground servicing' describes the assignment of an individual to be the direct point of contact between premium players or junket players and Perth Casino for non-financial requirements.³¹²

232 Until mid-2013, De Lima reported to Lonnie Bossi (**Bossi**) (former Chief Operating Officer – Gaming at Perth Casino).³¹³ Until late 2013, Bossi had oversight of the members of the VIP team at Perth Casino.³¹⁴ This oversight was limited to hosting and management of the Perth experience.³¹⁵ Bossi gave evidence that due diligence, credit evaluations and sales teams were the responsibilities of CML.³¹⁶ Felstead, in his evidence, agreed that the majority of international sales support was all coming out of Melbourne.³¹⁷

233 When Felstead became responsible for the IBU in 2013, Bossi no longer had any direct responsibility over any of the operations of the VIP team at Perth Casino.³¹⁸ Between 2013 and 2020 as Chief Operating Officer of Perth Casino,³¹⁹ Bossi's role in relation to the management of VIP players was limited to matters such as staffing, ensuring the integrity of the games, and approving the release of credit to pre-approved players.³²⁰

234 During this period, credit decisions in respect of junket operators were made in Melbourne,³²¹ although the credit department at Perth Casino had an administrative role in considering the creditworthiness of junket operators intending to operate junkets at Perth Casino.³²²

235 Historically, it was Crown's practice to contract with individual junket operators only, rather than corporate entities.³²³ On 19 May 2015, at a meeting of the Perth Executive Risk and Compliance Committee (**Perth ERCC**), Preston advised the committee that Perth Casino had made a decision to allow junket operators to be in a company name.³²⁴ It is not clear who specifically within Perth Casino was responsible for that decision, which is not recorded in any board minutes around this time.³²⁵

236 Despite the decision to allow junket operators to be in a company name, Preston gave evidence to the Bergin Inquiry of only one example of approval of a corporate junket operator at Perth Casino, which he said operated only for a brief period of time.³²⁶

237 As to oversight by the Burswood entities, Packer, Alexander, Barton, Craigie and Felstead were all directors of BL during Period 1.³²⁷ However, there is no evidence before the PCRC to suggest that knowledge or information any of them had relating to the junket approval process, or the risks associated with Crown's junket operations more generally, were formally notified to the BL board for consideration and action.

- 238** In May 2011, Felstead reported to the BL board on 'key management issues' which included a section on VIP gaming.³²⁸ In that report, agreements with two key junket operators were noted, but did not call for the board's approval of those agreements or substantive consideration by the board as to their appropriateness. Instead, Felstead's report focussed on decreased volume of international turnover.³²⁹
- 239** In a 'VIP report' dated 12 February 2014 which was attached to an email circulated by Neilson to, amongst others, Alexander, Barton, Craigie and Felstead,³³⁰ information was provided about Crown's relationship with certain junkets including Suncity and the Guangdong Group (or Neptune Group).³³¹ It also noted that negotiations were progressing with a Macau-based junket operator to establish a significant Perth-based junket business, and also that meetings had been held with two other Macau-based junket operators about their Perth-based junket businesses.³³²
- 240** Further, in a VIP report attached to an email from Neilson to Alexander, Felstead, Craigie and others dated 14 May 2014,³³³ an update was provided on developments with junkets, again including the Guangdong Group, seeking to operate at Perth Casino.³³⁴ It was noted in that report, in regard to the Guangdong Group, that key leaders were currently avoiding China due to recent government scrutiny.
- 241** On the documentary evidence before the PCRC, each of Alexander, Barton and Craigie received the papers for the CEO Meeting on 26 June 2015,³³⁵ in which the VIP International business update included a report on Crown's platform junket initiative and identified eight platform junkets which were described as being large, reputable, deemed creditworthy and able and prepared to finance customers. The junkets identified in this VIP report included Suncity and the Guangdong Group.³³⁶ No details were provided about the junkets or their respective operators.
- 242** Each of Suncity and the Guangdong Group were referred to in the 2014 Four Corners Episode.
- 243** There is no evidence before the PCRC to suggest that any of Alexander, Barton or Craigie brought to the BL board's attention for consideration and action, the information they had received to the effect that two of the junket operators that Crown was encouraging to bring junkets to Crown's casinos, including Perth Casino, had been mentioned in the 2014 Four Corners Episode or that one of those operators was under scrutiny by the Chinese government.
- 244** Compliance with processes and procedures, including those stipulated in the CM(Ops) for junket gaming operations, formed part of the internal audit reports submitted to the Perth ERCC. Those audit reports did not include any information on the junket approval process.³³⁷ The Perth Casino internal audit team had no visibility over the way the VIP International business operated and was not involved in any of its internal audits.³³⁸

Conclusions as to governance and risk management of junket operations in Period 1

- 245** The PCRC concludes that from the time of commencement of the IBU in 2013 until October 2016:
- a. Crown's junket assessment and approval process was substantively conducted by a centralised group function which operated out of Melbourne;
 - b. the deficiencies in Crown's corporate governance and risk management processes culminated in an elevated risk to Perth Casino of money laundering and criminal infiltration through the operation of the IBU and its assessment and approval of junket operators;

- c. Perth Casino management had no involvement in or oversight of the assessment and approval process in regard to the junket operators that came to Perth Casino, nor did they seek to have involvement or oversight, save for an administrative role performed by Perth Casino's credit department in relation to credit checks;
- d. Felstead and Craigie as the senior executives responsible for Crown's VIP International business were not accountable to any of the Burswood entities in that role;
- e. there was only very limited reporting to the whole of the BL board with respect to the IBU and none with respect to the assessment and approval processes for junket operators;
- f. some of the directors of BL, being Alexander, Craigie and Barton received information from Felstead (also a director of BL during this period) in regard to Crown's junket program and junket operators, including certain risks associated with particular junket operators, through other roles they held within Crown;
- g. none of Felstead, Alexander, Craigie or Barton took steps to provide that information to the BL board, for its consideration and action, or at all;
- h. the BL board exercised no oversight of the assessment and approval process in regard to the junket operators that came to Perth Casino;
- i. nevertheless, as the board of the direct parent company of the Perth Casino licensee and as the body charged with the responsibility to oversee the Perth Casino licensee, the board of BL should have taken proactive steps to satisfy itself that the junket operations of Perth Casino were being managed in a way that adequately mitigated the risk of criminal infiltration of Perth Casino through those junket operations; and
- j. the board of BL did not do that.

Period 2: between November 2016 and mid-2017

Internal approval processes

- 246** In Period 2, the VIP Committee was responsible for conducting reviews of junket operators and issuing internal approvals for both Perth Casino and Melbourne Casino. The new junket approval process meant that, instead of the approval decisions being made by the VIP International team and in particular O'Connor, they were made by the newly formed VIP Committee.³³⁹
- 247** Preston joined the VIP Committee in March 2017.³⁴⁰ At this time Preston had been appointed to the role of Chief Legal Officer – Australian Resorts which incorporated responsibilities in relation to Perth Casino and Melbourne Casino, including legal, regulatory and compliance, risk, responsible gaming and AML/CTF.³⁴¹ Preston reported to Felstead.³⁴²
- 248** Preston gave evidence that the purpose of the VIP Committee was to review existing junket operators, assess new applications for prospective junket operators and other matters related to the VIP International business.³⁴³ That committee decided to cease dealing with over 100 junket operators domiciled in China, except for perhaps one.³⁴⁴
- 249** As to Crown's junket approval process in Period 2 generally, the Bergin Inquiry further concluded that third party diligence reports³⁴⁵ remained the exception rather than the rule.³⁴⁶ In addition it was further concluded by the Bergin Inquiry that the patron credit profiles maintained by Crown contained very limited reference to due diligence information and those credit profiles were focussed on creditworthiness rather than probity.³⁴⁷
- 250** Neilson gave evidence also that while the CRL board was aware of the formation of the

VIP Committee, he did not think that the detail of what happened at the VIP Committee meetings was reported to the board.³⁴⁸

What happened on the ground in Perth

- 251** Felstead gave evidence to the PCRC to the effect that during Period 2, the IBU remained a centralised group function which operated out of Melbourne.³⁴⁹
- 252** De Lima, who had previously been responsible for the Perth VIP team during Period 1, was no longer employed by Crown after 2016 and the Perth-based hosts then reported to Maguire in Melbourne.³⁵⁰
- 253** As examined in Chapter Seven: China Arrests, O'Connor was detained by the Chinese authorities in October 2016 and accordingly was no longer a member of the VIP operations. Following O'Connor's arrest, Felstead assumed operational oversight for the VIP International business.³⁵¹
- 254** Credit approval functions for junket operators continued to be run out of Melbourne. There was no longer a credit control operative on the ground in Perth after 2016.³⁵² Bossi continued to be responsible for approving the release of credit to pre-approved players but he was not otherwise exercising management of junkets or VIP business at Perth Casino.³⁵³
- 255** During this period, Preston was the chair of the Perth ERCC and regularly attended VIP Committee meetings with Felstead and others.³⁵⁴ The documentary evidence before the PCRC does not reveal any role of the Perth ERCC with respect to junket assessment or approval, nor was it notified of those junket operators who had been approved by the VIP Committee to operate at Perth Casino.³⁵⁵
- 256** Following the China Arrests, the VIP working group was disbanded. CEO Meetings appear to have been discontinued with effect from December 2015.³⁵⁶
- 257** On 14 December 2016, Felstead informed the BL board that the IBU was not proactively marketing into China or South-East Asia.³⁵⁷
- 258** At the end of 2016, after the completion of the review of junket operators by the VIP Committee, there was no report made to the BL board about the suitability of junkets.³⁵⁸ Similarly, there continued to be no reporting to the BL board about which new junket operators had been approved to operate at Perth Casino or the reasons for that approval.³⁵⁹

Period 3: between mid-2017 and August 2020

Internal approval processes

- 259** From mid-2017, there was a change in the review process of prospective junket operators so that it focussed on the creditworthiness and probity of the junket operator.³⁶⁰ During this period, the junket approval process involved the following steps:³⁶¹
- a. a prospective junket operator was required to complete a 'New Junket Operator Application' and provide a range of information and documentation. Sales operation staff in the VIP International team typically assisted the prospective applicant to complete the details on this document;³⁶²
 - b. due diligence profiles were prepared by the Credit Control Team (a team within the IBU) and were circulated by email to each of Johnston, Felstead and Preston for review and approval. This due diligence process involved the collation of internal information held by the IBU as well as a range of externally sourced information from third party providers;³⁶³

- c. the Credit Control Team obtained credit and due diligence reports from third party providers, including Dow Jones, Acuris, WealthInsight and Wealth-X (but no longer World-Check);³⁶⁴
 - d. a due diligence profile for the applicant was prepared by the Credit Control Team if they decided to recommend that the applicant be approved to enter into a junket arrangement;³⁶⁵
 - e. the junket operator would not be granted approval unless each of Johnston, Felstead and Preston unanimously agreed;³⁶⁶
 - f. if Felstead, Johnson and Preston provided approval, a non-exclusive gaming agreement would be entered into between the licensee, CML and the junket operator. That agreement was an ongoing agreement rather than an agreement for a fixed term.³⁶⁷ Accordingly, it was not necessary for a junket operator to 'renew' their agreement after a given period.³⁶⁸ The rationale for approval was not documented;³⁶⁹
 - g. existing junket relationships were reviewed on an annual basis by the Credit Control Team. This team would collate new copies of the kinds of information brought in at the application stage and conduct new searches;³⁷⁰ and
 - h. if 'material new information' was received by the Credit Control Team or there was a material change in the junket operator's profile, then the review was escalated to Johnston, Felstead and Preston for a final decision on whether Crown should continue to engage with the junket operator.³⁷¹
- 260** Other than the change to the review process described above, the only significant change during this period was that the decision to approve new junket operators and junket representatives at Perth Casino was made by Felstead, Preston and Johnston.³⁷²
- 261** Preston gave evidence that due diligence profiles were circulated to Felstead, Johnston and himself via email for review and approval; the prospective junket operator would not be approved unless each of the three members of the VIP Committee unanimously agreed.³⁷³ Upon approval, the Perth gaming management systems were updated to ensure the details of the junket operator were captured in advance of any gaming activity occurring.³⁷⁴
- 262** The management of the IBU continued to be based in Melbourne and group function employees were employed by CML.³⁷⁵

What happened on the ground in Perth

- 263** The on-ground operation of the VIP International business at Perth Casino appears to have remained the same during this period and those engaged in the hosting activities continued to report to Maguire.³⁷⁶
- 264** On 6 March 2017, the Four Corners program broadcast an episode entitled 'Crown Confidential: Packer's Losing Hand', which alleged that CRL dealt with the Neptune junket, which was connected to an alleged Triad member, Cheung Chi Tai (**2017 Four Corners Episode**).³⁷⁷
- 265** At the 18 July 2017 meeting of the Perth ERCC, Preston in his role as chair informed the committee that AUSTRAC had a heightened interest in junket activity.³⁷⁸ This heightened interest did not, however, precipitate a change to the reporting practices of the VIP Committee in respect of junket operator approval.
- 266** On the evidence before the PCRC, no independent steps were taken by the board of BL regarding the allegations the subject of the 2017 Four Corners Episode or the 2019 Junket Media Allegations.
- 267** The 2019 Junket Media Allegations are further examined in Part Four of this chapter.

- 268** On 31 July 2019, the CRL board issued a media release entitled 'Setting the Record Straight in the Face of a Deceitful Campaign Against Crown'. It also published a further four-page advertisement in very similar terms on 6 August 2019.³⁷⁹
- 269** In the Bergin Inquiry, it was noted that the directors' response to the 2019 Junket Media Allegations was a 'strident and powerful public denial' of the alleged corporate failings.³⁸⁰
- 270** Felstead and Preston were tasked by Crown to undertake an investigation into the 2019 Junket Media Allegations. As observed in the Bergin Report, the 2019 Junket Allegations required a serious independent assessment and review of the conduct of Felstead and Preston, being the very people who had been tasked to provide the CRL board with information in response to those allegations.³⁸¹
- 271** The minutes of the meeting of BL held on 8 August 2019 record that John Poynton (**Poynton**) (among other positions, a director of BL between 2004 and 2021) enquired about the effects of the media commentary on staff and discussion was held about what the business was going to do to re-establish its reputation.³⁸²
- 272** During Period 3, there was no reporting made to the BL board about which junkets were suitable to continue to do business with at Perth Casino, which new junket operators had been approved to operate at the casino or the reasons for that approval, or as to junket management practices at Perth Casino.³⁸³

Conclusions as to governance and risk management of junket operations in Periods 2 and 3

- 273** The PCRC concludes that, from November 2016 until August 2020:
- a. Crown's junket assessment and approval process continued to be conducted by a centralised group function which operated out of Melbourne;
 - b. the deficiencies in Crown's corporate governance and risk management processes within that centralised group function culminated in an elevated risk to Perth Casino of money laundering and criminal infiltration through the operation of the IBU and its assessment and approval of junket operators;
 - c. the Burswood entities were not involved in and had no oversight of the assessment and approval process in regard to the junket operators that came to Perth Casino;
 - d. although Craigie and Perth-based executives Preston and Felstead were, at various times, members of the VIP Committee, they were not accountable to any of the Burswood entities in that role;
 - e. none of Felstead, Preston or Craigie (who departed Crown in early 2017) shared with any of the Burswood entities information known to them from their participation in the VIP Committee regarding junket assessment and approval;
 - f. there was only very limited reporting to the whole of the BL board with respect to the IBU and none with respect to the assessment and approval process for junket operators;
 - g. nevertheless, as the board of the direct parent company of the Perth Casino licensee and the body charged with the responsibility to oversee the Perth Casino licensee, the board of BL should have taken proactive steps to satisfy itself that the junket operations of Perth Casino were being managed in a way that adequately mitigated the risk of criminal infiltration of Perth Casino through those junket operations; and
 - h. the board of BL did not do that.

The Burswood Limited board's understanding of the risks and benefits of ICB to Perth Casino

- 274** The introduction of ICB to Perth Casino brought with it the recognised attendant risks of money laundering and criminal infiltration, although those risks were not necessarily appreciated by the BL board.
- 275** Neither Poynton nor Timothy Roberts (**Roberts**) (a non-executive director of BL between 2005 and June 2019) had any specific understanding of the risks associated with junket operations at the time of their appointment.³⁸⁴ Any understanding that they gained arose during the course of their directorships. Poynton stated he did not gain any acute understanding of the risks of junkets until, at the earliest, a decade after his appointment.³⁸⁵
- 276** Packer did not appreciate that junket operators posed a higher risk than other parts of Perth Casino's gaming business, of either attracting criminal elements or the facilitation of money laundering, at the time of his appointment. He believed those risks could be managed.³⁸⁶
- 277** Alexander had a variety of concerns regarding people with dubious backgrounds being let into Perth Casino through ICB, although he did not personally do anything about those concerns.³⁸⁷ Alexander was not involved in the management of ICB and his understanding of it was limited to what he learnt from updates given to the board.³⁸⁸ His perception was that ICB was only a very small part of Crown's earnings, especially in Perth, and the responsibility for the vetting of junket operators and international players rested with the IBU and particularly, Felstead.³⁸⁹ Outside of those matters he stated he was unaware of the operations of ICB at Perth Casino.³⁹⁰
- 278** Barton had some, but no deep, understanding of the way junkets operated and ICB.³⁹¹
- 279** Reference has already been made earlier in this part to the 2014 Four Corners Episode. On the evidence before the PCRC, it can be inferred that the BL board (excluding Roberts) either saw or were aware of the 2014 Four Corners Episode.³⁹²
- 280** In addition, the 2019 Junket Media Allegations, referred to earlier in this chapter, should have alerted the BL board to the possible risk of criminal infiltration of Perth Casino through junket operators.
- 281** On 17 November 2020, CRL announced that it had decided to permanently cease dealing with international junket operators, subject to any licensing or authorisation from the regulators within the jurisdictions in which it operates.³⁹³
- 282** The PCRC infers that possibly as early as 2014 (at the time of the 2014 Four Corners Episode), but at least by the time of the 2019 Junket Media Allegations and the announcement of the Bergin Inquiry (on 14 August 2019), and certainly by August 2020, when CRL first decided to suspend junket operations, the BL directors were aware of the inherent risks posed by junket activities to the operation of Perth Casino.³⁹⁴
- 283** In order to entice VIPs, Perth Casino invested in a luxury yacht 'Infinity' which it made available to VIP customers.³⁹⁵ In Poynton's view this investment in yachts, to attract junkets to Perth Casino, was made without much success.³⁹⁶
- 284** In order to cater to ICB patrons, the Perth Casino's high-roller room, the Pearl Room, was fitted out with three private salons.³⁹⁷ A private salon at the top of the Crown Metropol hotel and four to five other private salons within the Crown Towers hotel also accommodated international VIPs.³⁹⁸
- 285** As an example of the significant costs associated with operating ICB,³⁹⁹ during March 2015, Perth Casino hosted and paid for a large wedding for friends of one of the five largest junket operators for CRL, whose turnover was in the billions of dollars.⁴⁰⁰ Some of the wedding guests also travelled to Melbourne Casino. The total costs of the wedding exceeded

\$2.75 million of which the junket operator contributed \$1.8 million, leaving a deficit of \$950,000 which was paid for by Perth Casino.⁴⁰¹ Alexander agreed in evidence given to the PCRC that the gambling associated with the wedding (which had a total turnover exceeding \$3 billion dollars, across both properties) resulted in a loss of \$3.1 million to Crown. The conduct of the wedding and the losses incurred as a result of it were reported in the 'International Business Update' to the CEO Meeting in April 2015; it was not discussed at BL board level.⁴⁰²

- 286** Poynton's understanding was that the maximum amount of profit ever contributed by junkets to the revenue of Perth Casino was 3%.⁴⁰³ Alexander considered that it was difficult to support the contention expressed by Preston to the GWC that the VIP business was critical to Perth Casino's business.⁴⁰⁴ The lack of criticality of ICB to the financial success of Perth Casino can readily be seen by reference to the table extracted earlier in this part, and is discussed further in Part Four of this chapter.
- 287** While he was cognisant of its high-risk and marginal profitability, Alexander considered the continuation of ICB was related to the earlier significant commitment of resources by Crown to the area and the belief that the business would continue to grow.⁴⁰⁵
- 288** Packer also accepted that financial risks attached to ICB, specifically in respect of bad and doubtful debts, and described the commercial rationale for the operation of ICB through Perth Casino as probably used to pay for an allocation of overheads of the VIP business.⁴⁰⁶ He said that even though the Perth component of the international business was not profitable, it probably paid for some of the fixed costs of that business.⁴⁰⁷
- 289** Felstead considered ICB was worthwhile on the basis that it was still a profitable part of Crown's business, although never on the scale of local gambling.⁴⁰⁸
- 290** The PCRC concludes that:
- a. Perth Casino's junket operations were a high-cost, low profit business which made a relatively small contribution to Perth Casino's overall revenue, while at the same time posing significant risks to the operations and reputation of Perth Casino;
 - b. the management of Perth Casino did not adequately manage the risks of criminal infiltration of Perth Casino through junkets or report on those risks to the BL board; and
 - c. until about mid-2019 or late 2020 the directors of BL did not as a group have an adequate appreciation of those risks.

Cessation of junket business

- 291** In March 2020, Australia's international borders closed as a result of the COVID-19 pandemic. There has been no junket activity at Perth Casino from mainland China since November 2016 and no international junket activity since the closure of Australia's international borders.⁴⁰⁹
- 292** Australia's international borders were reopened to fully vaccinated travellers on 21 February 2022 and at the time of writing this Final Report, they remain open.
- 293** In August 2020, the CRL board decided to suspend its operations with junkets pending a review of its operations and future relationships with junket operators generally.⁴¹⁰
- 294** In September 2020, the suspension of junket operations was extended until 30 June 2021.⁴¹¹
- 295** The minutes of meeting of the CRL board held on 11 November 2020 record a resolution by the board to procure that each of the Melbourne, Barangaroo and Perth Casinos permanently cease dealing with all junket operators, subject to regulatory approval in each State.⁴¹²

- 296 As noted above, on 17 November 2020, CRL announced the permanent cessation of its dealings with international junket operators.
- 297 In a Legal, Risk and Compliance report submitted to the BL board meeting on 3 December 2020, it was stated that 'The casino shutdowns, as well as the ban on international travel, which is expected to last some time in the new year, has further impacted the VIP business. The Board has also resolved not to carry on any junket business until at least 30 June 2021'.⁴¹³ It is unclear whether the reference to the 'Board' was intended to refer to the board of CRL or BL.
- 298 The PCRC observes that, at the time of the BL board meeting on 3 December 2020, the permanent cessation of international junket activities had already been announced by CRL, yet the Legal, Risk and Compliance report referred only to the earlier announcement in September 2020 to suspend those activities until 30 June 2021. This is not explained.
- 299 There is no record in the minutes of the BL board meetings between August 2020 and December 2020 of a decision by BL to either suspend or cease junket operations. Poynton gave evidence to the PCRC that he understood the BL board had considered whether to suspend junket operations at Perth Casino in August 2020.⁴¹⁴ Crown in its closing submissions to the PCRC stated that 'Crown Perth', defined in Crown's submissions to be the Burswood entities, 'has determined to cease dealing with junkets'.⁴¹⁵ Save for Poynton's evidence and the reference in the Legal, Risk and Compliance report, there is no evidence before the PCRC of information being provided to the BL board or a decision being made by the BL board to suspend or cease junket operations.
- 300 As noted earlier in this chapter, at a meeting on 23 February 2021, the GWC recommended that a Direction be issued to Perth Casino that it shall not participate in the conduct of junkets, premium player activity, or privileged player activity.⁴¹⁶
- 301 Evidence was given by some of the directors of the Burswood entities that Crown has no intention to resume junket operations at Perth Casino.⁴¹⁷ The same sentiment was expressed by some of the directors of CRL.⁴¹⁸ Helen Coonan (**Coonan**), as the former chair of CRL, was of the view that junkets had 'gone to God'.⁴¹⁹
- 302 In respect of premium or privileged player activity, while Packer could not identify any commercial rationale for the resumption of ICB at Perth Casino,⁴²⁰ Alan McGregor (**McGregor**) (Chief Financial Officer of CRL and Secretary of BL, among other positions) and Jane Halton (**Halton**) (director of CRL appointed in 2018) have both expressed an appetite to resume premium or privileged player activity if permitted by the GWC.⁴²¹ McGregor gave evidence to the PCRC that, while the GWC Direction remains in place there would be no promotion of gaming at Perth Casino to international players because Perth would have no programs to offer.⁴²² He said further that, if the GWC changed their view to permit premium or privileged player activity, that would be something Crown would 'probably be interested in' in respect of Perth Casino.⁴²³ Stephen McCann (**McCann**) (Chief Executive Officer and Managing Director of CRL) has also left the door open to engage with, for example, 'a very innocuous group of people', with no links to financial or organised crime.⁴²⁴ However, he accepted that this would only happen by working closely with the regulators and subject to compliance with AML obligations.⁴²⁵
- 303 The PCRC concludes that:
- a. the decision of the CRL board to permanently cease junket activity in advance of a regulatory prohibition on such activity is consistent with good governance and effective risk management;
 - b. the BL board should have taken proactive steps to itself consider and determine to suspend and then cease junket operations at Perth Casino;
 - c. there was limited (if any) consideration of the issue of whether to suspend or cease

- junket operations by the BL board prior to the Direction issued by the GWC on 23 February 2021; and
- d. Crown may consider resuming international gaming operations by way of premium or privileged player activity at Perth Casino in the future. However, this would require the approval of the GWC.

Part Four: Crown's communications with the Gaming and Wagering Commission about junket operations

2009 Junket Submission

- 304** The repeal in 2010 of Part 3 of the CC Regs, examined in Part Two of this chapter, was precipitated by a submission from Perth Casino to the GWC.
- 305** As already explained in Part Two, in December 2009, the Burswood entities made the 2009 Junket Submission to Connolly as the acting CCO.⁴²⁶
- 306** The 2009 Junket Submission represented that there were compelling reasons that the historical junket approvals process was no longer required, including that:
- the entry of any person into Australia was overseen by the Commonwealth Department of Immigration and Citizenship (now the Department of Home Affairs).
 - the Department of Immigration and Citizenship worked closely with the Australian Customs and Border Protection Service (now Border Force) and the Australian Federal Police (**AFP**) to prevent inadequately documented and inappropriate persons from entering Australia; and
 - the AML/CTF Act required Perth Casino to have in place an AML/CTF Program that required it, amongst other things, to 'know their customer' and report any suspect transactions to AUSTRAC.
- 307** The 2009 Junket Submission included statements in the following terms:⁴²⁷
- The details of all junket players involved in a junket program are forwarded to Burswood's designated AML & Compliance Officer;
- Burswood subscribes to an organisation known as "World-Check" and has taken upon itself to conduct its own "due diligence" review of junket operators, junket representatives and the players who participate in junket activity and premium players;
- Burswood's AML & Compliance Officer checks the personal particulars of each of the above persons against World-Check's database which provides a comprehensive profile of high risk and "potentially" heightened risk individuals and entities and those associated with them. Politically exposed persons, terrorists and organised crime; money launderers and fraudsters amongst many other categories are profiled and linked to offer a complex network of public information to [its] subscribers.
- 308** The PCRC considers that these statements, read in the context of the 2009 Junket Submission as a whole, conveyed the impression that, if a check against the World-Check database indicated that a person was (amongst other things) high-risk due to associations with organised crime or money laundering, the Burswood entities would not approve that person as a junket operator or junket representative.
- 309** At the time the 2009 Junket Submission was made and at all material times until approval

of the Perth and Melbourne Casino joint AML/CTF Program on 2 November 2020, the applicable AML/CTF program for Perth Casino contained a provision that conferred a discretion on it to continue providing designated services (casino gambling services) to patrons considered 'high-risk' even where such patrons were known money launderers.⁴²⁸ The provision was in the following terms:⁴²⁹

The AML/CTF Compliance Officer should consider whether a High Risk customer who is known to have engaged in money laundering or terrorism financing, or is currently at extreme ML/TF Risk, should cease to be a customer and be the subject of an Exclusion Order issued under Casino law or Notice Revoking Licence.

- 310** Preston, who recalled the 2009 Junket Submission being made in his name,⁴³⁰ could not recall the GWC being given an explanation, at any time, of the process whereby Perth Casino continued to do business with patrons it considered to be high-risk.⁴³¹
- 311** The Burswood entities, in the 2009 Junket Submission, did not inform the GWC that Perth Casino had the discretion under its AML/CTF Program to continue to provide designated services to such persons, or that it in fact approved and maintained relationships with junket operators and junket representatives that it had assessed to be 'high-risk' from a money laundering perspective.⁴³²
- 312** The PCRC concludes that the 2009 Junket Submission conveyed the impression that the processes of Federal Government agencies named in the letter, together with Perth Casino's checks and processes, were an adequate and sufficient substitute for the then-existing approval process for junket operators and junket representatives under the CC Regs, so as to ensure that junket operators and representatives did not use junkets to launder money at Perth Casino and that inappropriate people did not enter Australia through junket operations at Perth Casino.
- 313** Hulme was requested by Preston to 'prepare a written submission to the GWC seeking approval to dispense with relevant legislation associated with junkets', as the VCGLR 'had dispensed with regulations associated with junkets and [Perth Casino] was keen to align the regulatory process with Victoria'.⁴³³
- 314** Hulme understood from what Preston told him that there was some difficulty with junket operators coming to Western Australia, when in Melbourne and other jurisdictions, the requirements for junket operators to be approved had been relaxed.⁴³⁴ In effect, Preston told him that other casinos such as Melbourne Casino did not have the pre-approval requirement and junket operators were unwilling to come to Perth Casino or were choosing not to do so because they did not want to go through the administrative processes of filling in forms and going to interviews.⁴³⁵
- 315** There was a brief discussion between Preston and Hulme as to 'the expected role and responsibility of other Government agencies determining the suitability of person[s] entering Australia'⁴³⁶ and they thought there would be 'robust processes' in place to vet the integrity of junket operators and representatives seeking to enter Australia.⁴³⁷
- 316** Hulme went to the websites of the Australian authorities listed in the letter, and included information drawn from those websites in the letter.⁴³⁸ Preston was his primary point of contact and he did not seek any advice or information from anyone else before drafting the letter, other than from Perth Casino's AML team with respect to due diligence processes.⁴³⁹ Hulme then drafted the letter.⁴⁴⁰ Other than confirming some information with Perth Casino departments, if his instinct told him that assertions were correct because they 'looked reasonable', he used them because he did not have the time to personally check and gather all the data.⁴⁴¹
- 317** The PCRC infers that neither Hulme nor Preston were aware of the precise processes

undertaken by the Department of Immigration and Citizenship, the Australian Customs and Border Protection Service and the AFP to prevent inappropriate persons who intended to be involved in a junket operating at Perth Casino from entering Australia. Nor were they aware of the manner in which such processes could be expected to prevent persons who had links to triads or organised crime, but who had not been convicted of an offence, from entering Australia.

- 318** As set out in Part Two of this chapter, the agenda paper prepared in advance of the GWC's February 2010 meeting largely mirrored the 2009 Junket Submission and recommended that the GWC consider amending the CC Regs to remove the requirement for junket operators and representatives to be approved by the GWC.⁴⁴² At the February 2010 GWC meeting, the GWC resolved to approve an amendment of the CC Regs, to 'remove the requirement for junket operators / representatives to be approved by the [GWC]'⁴⁴³ on the basis, relevantly and as set out in Part Two, that the risks were adequately catered for by checks by Federal Government agencies on entry into Australia, and by the casino operator's compliance with its AML/CTF Program.⁴⁴⁴
- 319** The PCRC concludes that the members of the GWC were influenced by the principal submissions made by the Burswood entities in the 2009 Junket Submission.

Conclusions about the 2009 Junket Submission

- 320** The PCRC has already concluded, in Part Two of this chapter, that the processing of a visa application by a Federal Government agency would not be expected to involve a consideration of whether the applicant was an appropriate person to operate or participate in a junket at Perth Casino.
- 321** A competent casino licensee discharging its duties to the GWC and the Western Australian public would have undertaken a more extensive investigation and obtained advice as to the precise processes undertaken by those agencies to prevent inappropriate persons from entering Australia, in order to take reasonable steps to ensure that the assertions made in the letter to the GWC were accurate. Alternatively, the assertions should not have been made.
- 322** Hulme and Preston did not have a reasonable basis for making the implicit representation in the 2009 Junket Submission about the processes of the Federal Government agencies, to the effect that the processes were an adequate and sufficient substitute for the then-existing approval process for junket operators and junket representatives under the CC Regs.
- 323** The 2009 Junket Submission did not disclose that Perth Casino retained a discretion under its AML/CTF Program to approve or continue relationships with junket operators or junket representatives that were 'high-risk' and that were known to have engaged in money laundering or that were at extreme risk of money laundering. While there was no express obligation on the Burswood entities to disclose the existence of the discretion, the PCRC is of the view that an open and accountable casino licensee would have done so, given its potential relevance to the GWC's consideration of the 2009 Junket Submission and whether to approve the removal of the requirement for junket operators and representatives to be approved.
- 324** Consequently, the PCRC concludes that the Burswood entities were not open, competent or accountable in their communications in the 2009 Junket Submission.
- 325** The PCRC concludes that in drafting or approving the implied statements in the 2009 Junket Submission about the adequacy of the Federal Government agencies' processes, Hulme and Preston facilitated a communication that was not of a type that a reasonable casino operator would make in the circumstances. A reasonable casino operator would have foreseen the possibility that the GWC might rely on their statements and as a result junket

operators and junket representatives with links to criminal organisations and (or) with their own criminal tendencies would be permitted to operate and represent junkets at Perth Casino.

- 326** Overall, the PCRC finds that the Burswood entities did not communicate adequately with the GWC with respect to the 2009 Junket Submission.

2018 Swee Choy See junket request

- 327** At the 27 July 2018 Operations Division meeting, Preston (who was by this time Chief Legal Officer – Australian Resorts) gave an overview of a proposed request from a particular junket operator in relation to conducting junkets at Perth Casino.⁴⁴⁵ Connolly, as CCO and DDG, requested that ‘Crown Perth’ provide a formal submission on the matter, which he intended to refer to the GWC for review and consideration.⁴⁴⁶
- 328** On 17 August 2018, Bossi, who at the time was the Chief Operating Officer, Perth Casino, sent a letter on behalf of the Burswood entities to Connolly regarding an operator of the Swee Choy See junket.⁴⁴⁷ It stated, in effect, that:⁴⁴⁸
- a. VIP program play at Perth Casino had declined by 5.8% in the last financial year, while Melbourne Casino had increased its program play by 73.9%;
 - b. this was largely attributed to international patrons preferring to travel to Sydney and Melbourne;
 - c. in addressing the decline, Perth Casino recognised the ‘important role’ junket operators continued to play in attracting patrons, and ‘the need for Crown Perth to improve the level of facilities and services’ available to junket operators to conduct their business; and
 - d. Perth Casino had been approached by the junket operator, requesting that they provide a number of facilities to assist him with conducting his business and servicing patrons.
- 329** The Burswood entities requested that they be authorised to provide the requested facilities including dedicated gaming salons, with telephone and internet connections, temporary signage identifying the salons as being used by the Swee Choy See junket and staff wearing uniforms and badges identifying them as representatives of the junket.⁴⁴⁹
- 330** At the GWC meeting on 28 August 2018, Preston gave a PowerPoint presentation to further explain the Burswood entities’ request.⁴⁵⁰ The PowerPoint slides contained a statement that ‘VIP program play (international gaming) is critical to Crown Perth’s business and significantly benefits the State economy and tourism’ (emphasis in original).⁴⁵¹
- 331** At the Operations Division meeting on 3 September 2018, Connolly advised that ‘the GWC had provided it had no objections’ to the request, and a letter would be sent to the Burswood entities in due course.⁴⁵² On 19 September 2018, Connolly sent a letter to Bossi advising that the GWC had ‘resolved to note Crown Perth’s advice’ in relation to the junket operator.⁴⁵³ At the following Operations Division meeting, on 25 October 2018, Hulme thanked the Department for its approval.⁴⁵⁴
- 332** Notwithstanding the statement in the PowerPoint slide that VIP program play ‘is critical to Crown Perth’s business’,⁴⁵⁵ a number of Crown witnesses gave evidence to the PCRC to the effect that ICB has in the past and continues to account for a comparatively small proportion of Perth Casino’s business.⁴⁵⁶ In particular, Alexander stated that he understood ICB was ‘only a very small part of the Crown [g]roup’s earnings, especially in Perth’.⁴⁵⁷ He gave oral evidence that by 2017 there was ‘very, very little ICB ... in Perth’,⁴⁵⁸ and that by late 2018 ‘the junket business, such as it was, to the best of my knowledge, [was] almost non-existent

in Perth'.⁴⁵⁹ He said that it was difficult to support the proposition to the contrary in the submission.⁴⁶⁰

- 333** Barton confirmed that Perth Casino was a financially profitable business even in difficult times, and that this remained the case even without ICB.⁴⁶¹ Similarly, McGregor gave evidence to the PCRC that the financial impact of not conducting VIP program play at Perth Casino would effectively be negligible.⁴⁶²
- 334** As indicated in the table in Part Three of this chapter, the evidence before the PCRC indicates that as at 2018, VIP program play accounted for approximately 2.89% of the total revenue of Perth Casino.

Conclusions about the 2018 Swee Choy See junket request

- 335** The PCRC concludes, and Crown concedes, that the use of the word 'critical' in the PowerPoint slides was too strong in describing the importance of the VIP program to Perth Casino's business and ought not to have been used.⁴⁶³
- 336** The PCRC further concludes that the statement made by the Burswood entities to the GWC that 'VIP program play (international gaming) is critical to Crown Perth's business':
- overinflated the importance of VIP program play to Perth Casino's business, relative to its actual contribution to Perth Casino's total revenue at that time;
 - conveyed the misleading impression that International VIP program play at Perth Casino was of significant importance to its financial success, which was not open; and
 - was objectively incorrect at the time it was made.
- 337** The PCRC finds that the statement that 'VIP program play (international gaming) is critical to Crown Perth's business' was not an adequate communication by the Burswood entities to the GWC.

The 2019 Junket Media Allegations and Crown's August 2019 presentation to the Gaming and Wagering Commission

- 338** Reference has already been made to the 2019 Junket Media Allegations in Part Two of this chapter, which allegations included that Crown had partnered with seven junket operators who had links to organised crime groups: The Company; Roy Moo; the Hot Pot junket; the Suncity junket; the Neptune Group; the Chinatown junket and the Song junket.⁴⁶⁴
- 339** It was further alleged in the 2019 Junket Media Allegations that Crown had failed to conduct appropriate due diligence regarding junket operators and that Crown was wilfully blind or recklessly indifferent to links between junket operators and organised crime groups.⁴⁶⁵
- 340** The PCRC relies on the Bergin Inquiry finding that the veracity of the allegation that Crown had partnered with junket operators that had 'links' to organised crime was established.⁴⁶⁶ Here, it is relevant to note that the expression 'link', in the context in which it was used in the Bergin Report, meant that it was *alleged* that the junket operator had connections, relationships or associations with organised crime.⁴⁶⁷
- 341** The seven junkets (or their operators) the subject of the 2019 Junket Media Allegations were at various times approved to operate at Perth Casino.⁴⁶⁸
- 342** The Bergin Inquiry made conclusions and recorded concessions by Crown in respect of some of those junkets as follows:
- much of the business of The Company was connected to drug trafficking and money laundering. It had tentacles throughout numerous operations and organisations in

various international jurisdictions, however Crown could not have reasonably been alerted to any link between any of its junket operators and The Company before October 2019;⁴⁶⁹

- b. Roy Moo was convicted of money laundering in 2013 and imprisoned. He was barred from attending Melbourne Casino shortly after Crown became aware of his criminal conduct;⁴⁷⁰
 - c. Crown accepted that it dealt with the Hot Pot junket through its operator Ng Chi Un. A 'suspected silent partner' in the Hot Pot restaurant business in Macau, Tse Chi Lop, was described in an October 2019 article as being 'in the league of El Chapo or maybe Pablo Escobar', and was arrested in the Netherlands in January 2021 pending extradition to Australia to face charges in respect of his involvement in 'multiple billion-dollar drug importations into Australia'. Crown ultimately accepted that it could not have been satisfied that its operator Ng Chi Un was of good repute;⁴⁷¹
 - d. apart from its former own Cheung Chi Tai, there were numerous individuals connected with the Neptune Group, including Lin Cheuk Chiu, Nicholas Niglio, Wang Chi Hung, and Chan Yan To, with whom Crown dealt as junket operators. Crown conceded that information in respect of some of those individuals would have been enough to disqualify them as junket operators;⁴⁷²
 - e. Song Zezhai became a junket operator at Perth Casino in 2010 and his risk rating was recorded in May 2013 as 'significant'. Crown became aware he was charged with running an illegal gambling syndicate in China in 2016 and conducted a review of the Song junket in 2017, but continued its relationship with him until suspension of all junket operations in 2020;⁴⁷³ and
 - f. Prior to Crown's suspension of all junket relationships, Suncity was one of Crown's largest platform junkets.⁴⁷⁴ It is controlled by Alvin Chau (**Chau**) (also known as Chau Cheok Wa).⁴⁷⁵ The 2019 Junket Media Allegations alleged that Suncity was affiliated with The Company and that Chau was a member, or former member, of the 14K Triad.⁴⁷⁶ Crown first reviewed its relationship with Suncity in 2017 and conducted annual reviews in 2018 and 2019.⁴⁷⁷ Information was held by Crown that Chau was a former triad member, had continued associations with other triad members and had links to organised crime.⁴⁷⁸ There was no documentation before the Bergin Inquiry of the rationale for Crown's continued relationship with Chau.⁴⁷⁹
- 343** On 21 August 2019, Connolly emailed Preston, requesting that he present at the GWC meeting on 27 August 2019.⁴⁸⁰ Connolly specifically requested that the presentation cover several issues, including promotions to attract patrons in China, risk management processes in relation to junkets and arrangements with Federal agencies regarding visas.
- 344** At the GWC's meeting on 27 August 2019, a presentation was made by Preston and Marais on behalf of the Burswood entities in response to the 2019 Junket Media Allegations (**August 2019 Presentation**).
- 345** The August 2019 Presentation, which was led by Preston,⁴⁸¹ was given by way of PowerPoint slides. Preston confirmed he reviewed the slides before the presentation and that the information contained in them reflected his view at that time.⁴⁸² The evidence of the members of the GWC present at the 27 August 2019 meeting was broadly to the effect that the PowerPoint slides and the minutes of that meeting were an accurate record of the substance of the August 2019 Presentation.⁴⁸³
- 346** In the presentation, Crown rejected allegations of illegality or improper behaviours and said it had zero tolerance for unlawful activities, whether by its staff, contractors or customers.⁴⁸⁴ Crown assured the GWC that compliance and the integrity of gaming operations 'has always been maintained and are of paramount importance to Crown'.⁴⁸⁵

- 347** The PowerPoint slides contained the following statements relevant to junkets:
- at 'the relevant time', the GWC and the VCGLR were 'provided [with] advanced notification and information' relating to junket operators and key players;⁴⁸⁶
 - Crown has 'a robust process for vetting junket operators, including a combination of probity, integrity and police checks, and Crown undertakes regular reviews of these operators' in light of new or additional information;⁴⁸⁷
 - 'International junket operators and players are subject to law enforcement checks (Border Force, Customs and AFP) before being permitted entry into Australia and ongoing monitoring';⁴⁸⁸ and
 - in April 2017, the GWC approved 'the ceasing of procedures requiring Crown to give advanced notice and detailed information (including copies of passports) of junket operators and key players arriving at Crown'.⁴⁸⁹
- 348** The August 2019 Presentation also provided, by way of flow charts, an overview of Crown's risk management processes in relation to junket operator establishment (including determining suitability), activity, and ongoing probity and monitoring.⁴⁹⁰
- 349** The PowerPoint slides did not disclose that Perth Casino retained a discretion to approve and maintain relationships with junket operators and junket representatives considered a 'high-risk' or 'extreme risk' from a money laundering perspective and that it had a discretion to continue relationships with persons who had committed money laundering offences.
- 350** It was not disclosed to the GWC that Perth Casino had approved Chau as a junket operator in June 2010,⁴⁹¹ that it had information in its possession to the effect that Chau had been the subject of multiple requests for information from the Victorian Police, AUSTRAC and the Australian Crime Commission,⁴⁹² had been alleged (among other things) to have a relationship with organised crime parties (noting that the due diligence report considered those allegations to be unfounded at the time),⁴⁹³ had been reported by the United States government as an organised crime figure,⁴⁹⁴ and had been alleged to have received stolen funds from Bangladesh's central bank.⁴⁹⁵ Further, that Melbourne Casino had assessed Chau as high-risk from a money laundering perspective,⁴⁹⁶ and that, despite due diligence being undertaken on him and a senior management review (involving, among others, Preston and Felstead) being conducted in respect of Crown's relationship with him,⁴⁹⁷ he remained an approved junket operator in June 2017.⁴⁹⁸ By that date, a key patron associated with the Suncity junket owed Perth Casino millions of dollars.⁴⁹⁹

Gaming and Wagering Commission's reliance on the August 2019 Presentation

- 351** The GWC members gave consistent evidence to the effect that, from the August 2019 Presentation, they understood that:
- Crown categorically refuted all of the 2019 Junket Media Allegations;⁵⁰⁰
 - the 60 Minutes episode concerned Melbourne Casino, and Perth Casino was not subject to similar allegations or risks of money laundering and criminal infiltration;⁵⁰¹
 - the allegations were largely historic, unsubstantiated, untruthful and, in effect, a 'media beat-up';⁵⁰² and
 - Crown had taken and was taking action to correct the risks, including reviewing their policies, practices and activities around high rollers entering the casino.⁵⁰³

- 352** The GWC members gave consistent evidence that they were generally reassured by the August 2019 Presentation, that they believed that they were being told the truth, and that they had no reason to question the presentation's accuracy.⁵⁰⁴ In particular, Duckworth gave evidence that they were initially sceptical, but Preston was 'extremely persuasive' and he was ultimately convinced by the explanation given by Crown in the August 2019 Presentation.⁵⁰⁵
- 353** The GWC members also gave consistent evidence that, following the August 2019 Presentation, the GWC determined not to take any action, but to await the outcome of other inquiries.⁵⁰⁶ Duckworth gave evidence that Preston's explanation about the 2019 Junket Media Allegations was at least part of the reason the GWC was persuaded to wait until other inquiries were completed.⁵⁰⁷

Conclusions about the August 2019 Presentation

- 354** The PCRC concludes that:
- a. the statement in the August 2019 Presentation to the effect that Crown had a 'robust process' for vetting junket operators, and undertook 'regular reviews of these operators' in light of new or additional information was incorrect;
 - b. the information provided by Crown to the GWC in the August 2019 Presentation in respect of junkets was not open and competent;
 - c. the GWC relied on that information in the discharge of its functions under the CC Act and the *Gaming and Wagering Commission Act 1987 (WA)*;
 - d. taken as a whole, the August 2019 Presentation was not open or competent in that it conveyed the inaccurate impression that there was no substance in the 2019 Junket Media Allegations;
 - e. the GWC was persuaded to take no action following the August 2019 Presentation; and
 - f. the GWC's decision was influenced by Crown's representation that there was little or no substance in the 2019 Junket Media Allegations.
- 355** The PCRC therefore finds that the August 2019 Presentation was not an adequate communication with the GWC.
- 356** Despite these issues being raised through the course of the PCRC's inquiry, it was not until late January 2022 that CRL or the Burswood entities acknowledged and apologised for the inaccuracies and omissions in the information conveyed in the August 2019 Presentation.⁵⁰⁸

Endnotes

- 1 Western Australia, Government Gazette, 'Commission Terms of Reference' No 45 (12 March 2021) 1079 [PCRC.0026.0001.0001] 1080 [8].
- 2 Bergin Report vol 1 [BGN.0001.0001.0001] 45, 60 – 68.
- 3 GWC, agenda papers (23 March 2021 meeting) [GWC.0002.0016.0367_R] 10; GWC, minutes (23 February 2021 meeting) [GWC.0002.0016.0369_R] 5.
- 4 *Burswood Casino – Amendment Directions* (23 February 2021) [GWC.0001.0006.0019_R] dir 5.
- 5 Bergin Report vol 1 [BGN.0001.0001.0001] 16 [22].
- 6 Witness 12, witness statement [WIT.0016.0001.0001_R] [22] – [23].
- 7 AUSTRAC, 'Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment', report (2020) [PUB.0001.0001.0001] 8.
- 8 AUSTRAC, 'Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment', report (2020) [PUB.0001.0001.0001] 9.
- 9 AUSTRAC, 'Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment', report (2020) [PUB.0001.0001.0001] 8.
- 10 AUSTRAC, 'Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment', report (2020) [PUB.0001.0001.0001] 9.
- 11 AUSTRAC, 'Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment', report (2020) [PUB.0001.0001.0001] 9.
- 12 AUSTRAC, 'Junket Tour Operations in Australia: Money Laundering and Terrorism Financing Risk Assessment', report (2020) [PUB.0001.0001.0001] 9; *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 3F.
- 13 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 21(d)(iv).
- 14 Perth Executive Risk and Compliance Committee, agenda papers (1 February 2019 meeting) [CRW.701.001.3347_R] 30.
- 15 Bergin Report vol 1 [BGN.0001.0001.0001] 14 [5].
- 16 Bergin Report vol 1 [BGN.0001.0001.0001] 14 [8].
- 17 Bergin Report vol 1 [BGN.0001.0001.0001] 14 [5] – [6].
- 18 Bergin Report vol 1 [BGN.0001.0001.0001] 15 [13].
- 19 Bergin Report vol 1 [BGN.0001.0001.0001] 14 [7].
- 20 Bergin Report vol 1 [BGN.0001.0001.0001] 16 [23].
- 21 Bergin Report vol 1 [BGN.0001.0001.0001] 16 [17].
- 22 Bergin Report vol 1 [BGN.0001.0001.0001] 17 [24].
- 23 Bergin Report vol 1 [BGN.0001.0001.0001] 15 [15] – [16].
- 24 Bergin Report vol 1 [BGN.0001.0001.0001] 68 [27].
- 25 Bergin Report vol 1 [BGN.0001.0001.0001] 68 [27].
- 26 Bergin Report vol 1 [BGN.0001.0001.0001] 16 [22].
- 27 Bergin Report vol 1 [BGN.0001.0001.0001] 16 [22].
- 28 Bergin Report vol 1 [BGN.0001.0001.0001] 66 [18].
- 29 Bergin Report vol 1 [BGN.0001.0001.0001] 63 [3].
- 30 Bergin Report vol 1 [BGN.0001.0001.0001] 64 – 65 [7], [9].
- 31 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] cl 6.
- 32 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 1.
- 33 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 2(i).
- 34 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 2(iii).
- 35 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 2(iv).
- 36 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 2.
- 37 Hon M Evans, 'Review of the Gaming Commission Act 1987', report (1996) [PUB.0004.0002.0129].

38 Hon M Evans, 'Review of the Gaming Commission Act 1987', report (1996) [PUB.0004.0002.0129] 106 – 108.
39 *Acts Amendment (Gaming) Act 1998* (WA) [PUB.0005.0003.0016] s 21.
40 Western Australia, Parliamentary Debates, Legislative Assembly, 21 May 1998, 3041 (Mr Cowan, Member for Merredin) [PUB.0016.0013.0219] 3043.
41 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 93.
42 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 93 – 95.
43 The PCRC has not received evidence of the delegation instrument.
44 Sargeant, transcript [TRA.0001.0001.0001] 186 – 187.
45 Sargeant, witness statement [GWC.0003.0019.0001_R] [51].
46 Sargeant, transcript [TRA.0001.0001.0001] 186 – 187.
47 Hon M Evans, 'Review of the Gaming Commission Act 1987', report (1996) [PUB.0004.0002.0129] 107.
48 The subject of the application could have been the junket operator or their representative.
49 Halge, witness statement [WIT.0004.0001.0001] [1].
50 Halge, transcript [TRA.0001.0001.0001] 923.
51 Witness 12, witness statement [WIT.0016.0001.0001_R] [25].
52 Witness 12, transcript [TRA.0005.0001.0001] 16.
53 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 3(i).
54 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 97.
55 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 97.
56 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 97.
57 Letter from the PCRC to the Department (31 May 2021) [PCRC.0002.0037.0015] 5; Department, statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8B (21 June 2021) [PCRC.0002.0005.0001] 8.
58 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] 4.
59 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0030_R].
60 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0182_R].
61 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 93 – 115.
62 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 100 – 104, 109, 112 – 113.
63 GWC, agenda papers (22 February 1994 meeting) [GWC.0007.0011.0082_R] 112.
64 *Racing and Gambling Legislation Amendment and Repeal Act 2003* (WA) [PUB.0033.0011.0448] s 124.
65 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 5.
66 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 10.
67 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 16.
68 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 6(1)(c).
69 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 10(1)(d).
70 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 2(iv).
71 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 10(1)(a).
72 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 2(i).
73 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 6(1)(c), reg 6(1)(d), reg 6(3).
74 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 1(iv).
75 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 8.
76 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 9(2), reg 9(3).
77 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 9(3).
78 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 1, dir 2.
79 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 3.
80 *Casino Control Regulations 1999* (WA) [PUB.0004.0005.0476] reg 11.
81 *Burswood Casino – Amendment Directions (No. 2)* (20 November 1992) [GWC.0007.0005.0025] dir 5.
82 Casino Manual (Operations) (22 August 2006) [CRW.708.007.0001_R] 61 [16.2.1].

83 Casino Manual (Operations) (22 August 2006) [CRW.708.007.0001_R] 61 [16.2.3].
84 Sargeant, witness statement [GWC.0003.0002.0001_R] [79].
85 Halge, transcript [TRA.0001.0001.0001] 925.
86 Halge, transcript [TRA.0001.0001.0001] 926.
87 Halge, transcript [TRA.0001.0001.0001] 934 – 935.
88 Belling, witness statement [DLG.0001.0005.0001_R] [43].
89 Connolly, witness statement [MCN.0001.0001.0001_R] [10].
90 Connolly, transcript [TRA.0001.0001.0001] 306.
91 Connolly, transcript [TRA.0001.0001.0001] 306 – 307.
92 Connolly, transcript [TRA.0001.0001.0001] 3515 – 3516.
93 Blanch, witness statement [WIT.0017.0001.0001_R] [35], [37].
94 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0381_R].
95 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0381_R] 41.
96 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0381_R] 58 – 59.
97 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0381_R] 35.
98 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0481_R].
99 DRGL Operations Division, Casino Licensing – Junket Application [DLG.8501.0003.0526_R].
100 Letter from Preston to Connolly (4 December 2009) [DLG.0001.0007.0002_R].
101 A term defined in the State Agreement to mean ‘Junket Activity’, ‘Premium Player Activity’ and ‘Privileged Player Activity’, the latter of two of which are defined in the State Agreement so as to be limited to players who are non-residents of Australia.
102 GWC, agenda papers (23 February 2010 meeting) [GWC.0002.0016.0001_R] 337 – 346.
103 GWC, agenda papers (23 February 2010 meeting) [GWC.0002.0016.0001_R] 337 – 346.
104 GWC, agenda papers (23 February 2010 meeting) [GWC.0002.0016.0001_R] 337 – 338, 345 – 346.
105 Toyne, transcript [TRA.0001.0001.0001] 1119 – 1120.
106 The minutes of the 23 February 2010 meeting were adopted at the 23 March 2010 meeting and record the resolution as having been agreed: GWC, minutes (23 February 2010 meeting) [GWC.0002.0016.0020] 10; GWC, minutes (23 March 2010 meeting) [GWC.0002.0016.0022] 1.
107 Western Australia, Government Gazette, No 100 (4 June 2010) 2469 [PUB.0005.0003.0146] 2483 – 2484.
108 Sargeant, transcript [TRA.0001.0001.0001] 3725.
109 GWC, statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (22 April 2021) [QNE.0001.0001.0001] 16.
110 Sargeant, transcript [TRA.0001.0001.0001] 3724 – 3725.
111 Sargeant, transcript [TRA.0001.0001.0001] 3725 – 3726.
112 Sargeant, transcript [TRA.0001.0001.0001] 3726 – 3727.
113 Sargeant, transcript [TRA.0001.0001.0001] 3728 – 3729.
114 Sargeant, transcript [TRA.0001.0001.0001] 3728 – 3729.
115 Sargeant, transcript [TRA.0001.0001.0001] 3726.
116 Sargeant, transcript [TRA.0001.0001.0001] 3727.
117 Sargeant, transcript [TRA.0001.0001.0001] 3727 – 3728.
118 Sargeant, transcript [TRA.0001.0001.0001] 3728.
119 Sargeant, transcript [TRA.0001.0001.0001] 3728.
120 Sargeant, transcript [TRA.0001.0001.0001] 3729.
121 Sargeant, transcript [TRA.0001.0001.0001] 3730.
122 Sargeant, transcript [TRA.0001.0001.0001] 3730 – 3731.
123 Sargeant, transcript [TRA.0001.0001.0001] 3731.
124 Harrison, transcript [TRA.0001.0001.0001] 702.

- 125 Harrison, transcript [TRA.0001.0001.0001] 702.
- 126 Duckworth, transcript [TRA.0001.0001.0001] 1238 – 1239.
- 127 Carr, transcript [TRA.0001.0001.0001] 986.
- 128 Carr, transcript [TRA.0001.0001.0001] 986.
- 129 GWC, minutes (23 February 2010 meeting) [GWC.0002.0016.0020] 1.
- 130 Cogan, transcript [TRA.0001.0001.0001] 728; Dullard, transcript [TRA.0001.0001.0001] 742; Hayward, transcript [TRA.0001.0001.0001] 841.
- 131 Belling, witness statement [DLG.0001.0005.0001_R] [43].
- 132 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] [317].
- 133 Belling, transcript [TRA.0001.0001.0001] 1180.
- 134 Casino Manual (Operations) (22 August 2006) [CRW.708.007.0001_R] 61 – 66 [16].
- 135 Casino Manual (Operations) (22 August 2006) [CRW.708.007.0001_R] 61 [16.2.3].
- 136 Casino Manual (Operations) (22 August 2006) [CRW.708.007.0001_R] 61 [16.2.1].
- 137 Email from the Director Compliance of the Department to Hulme (13 August 2010) [CRW.705.003.4416_R].
- 138 Del Prete, transcript [TRA.0001.0001.0001] 5618; Casino Manual (Operations) (22 August 2006) [CRW.708.007.0001_R] 61 [16.2].
- 139 Connolly, transcript [TRA.0001.0001.0001] 3519 – 3520.
- 140 Connolly, transcript [TRA.0001.0001.0001] 3520.
- 141 Connolly, transcript [TRA.0001.0001.0001] 3547.
- 142 Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [47]; Sargeant, witness statement [GWC.0003.0002.0001_R] [19] – [20], [75]; Cogan, witness statement [GWC.0003.0010.0001_R] [22], [24]; Duckworth, witness statement [GWC.0003.0005.0001_R] [29]; Hayward, witness statement [GWC.0003.0004.0001_R] [29]; Prowse, witness statement [GWC.0003.0006.0004_R] [22]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [45]; Dobson, witness statement [GWC.0003.0009.0022_R] [40]; Meadows, witness statement [GWC.0003.0007.0015_R] [58].
- 143 Ord, witness statement [WIT.0002.0001.0001_R] [75]; Connolly, witness statement [MCN.0001.0001.0001_R] [215]; Hodson-Thomas, witness statement [WIT.0001.0001.0023_R] [47.2]; Sargeant, witness statement [GWC.0003.0002.0001_R] [20]; Duckworth, witness statement [GWC.0003.0005.0001_R] [31]; Hayward, witness statement [GWC.0003.0004.0001_R] [30]; Prowse, witness statement [GWC.0003.0006.0003_R] [25]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [44]; Harrison, witness statement [GWC.0003.0008.0003_R] [41]; Dobson, witness statement [GWC.0003.0009.0022_R] [41]; Meadows, witness statement [GWC.0003.0007.0015_R] [59] – [60]; Carr, witness statement [WIT.0005.0001.0001_R] [11b]; Toyne, witness statement [DLG.0001.0004.0016_R] [27]; Belling, witness statement [DLG.0001.0005.0001_R] [42], [49]; Hayward, witness statement [GWC.0003.0018.0001_R] [17]; Ord, transcript [TRA.0001.0001.0001] 44; Sargeant, transcript [TRA.0001.0001.0001] 180 – 181.
- 144 Ord, witness statement [WIT.0002.0001.0001_R] [75].
- 145 Connolly, transcript [TRA.0001.0001.0001] 3525 – 3526.
- 146 Connolly, transcript [TRA.0001.0001.0001] 312.
- 147 Connolly, transcript [TRA.0001.0001.0001] 311 – 312.
- 148 Connolly, transcript [TRA.0001.0001.0001] 3634.
- 149 Letter from Preston to Connolly (10 February 2017) [GWC.0004.0008.0005_R] 1.
- 150 Connolly, transcript [TRA.0001.0001.0001] 3530.
- 151 Letter from Hulme to Connolly (16 March 2017) [CRW.708.008.7829_R] 7, 28.
- 152 Letter from Connolly to Preston (11 April 2017) [GWC.0004.0008.0004] 2; GWC, delegation (18 December 2012) [GWC.0004.0003.0011].
- 153 Connolly, transcript [TRA.0001.0001.0001] 3634.
- 154 Connolly, transcript [TRA.0001.0001.0001] 3544 – 3545.
- 155 Connolly, transcript [TRA.0001.0001.0001] 3536 – 3538.
- 156 Connolly, transcript [TRA.0001.0001.0001] 3538 – 3539.
- 157 GWC, agenda papers (23 May 2017 meeting) [GWC.0002.0016.0222_R] 93.
- 158 GWC, minutes (23 May 2017 meeting) [GWC.0002.0016.0220_R] 4.

159 Letter from Connolly to Preston (11 April 2017) [GWC.0004.0008.0004].
160 Email from AUSTRAC to Connolly (8 March 2017) [GWC.0004.0019.0026_R] 3.
161 Email from AUSTRAC to Connolly (4 April 2017) [GWC.0004.0019.0026_R] 1 – 2.
162 Email from Connolly to Sargeant (8 March 2017) [DLG.8001.0046.1403].
163 Marais, witness statement [CRW.998.002.0349_R] [1].
164 Email from Marais to Connolly and Hulme (1 March 2017) [CRW.709.132.6194].
165 Connolly, transcript [TRA.0001.0001.0001] 3531 – 3532.
166 Email from Hulme to Connolly and others (10 April 2017) [CRW.709.118.5925_R].
167 Connolly, transcript [TRA.0001.0001.0001] 3539.
168 Connolly, transcript [TRA.0001.0001.0001] 3534.
169 Connolly, transcript [TRA.0001.0001.0001] 327.
170 Connolly, transcript [TRA.0001.0001.0001] 3539.
171 Letter from Connolly to AUSTRAC (18 April 2017) [GWC.0004.0019.0008_R].
172 Letter from Connolly to AUSTRAC (18 April 2017) [GWC.0004.0019.0008_R] 3.
173 Email to Connolly from AUSTRAC (17 July 2017) [GWC.0004.0019.0011_R]; AUSTRAC, 'Casino Junkets Campaign', report (14 July 2017) [GWC.0004.0019.0012].
174 Connolly, transcript [TRA.0001.0001.0001] 3552.
175 AUSTRAC, 'Casino Junkets Campaign', report (14 July 2017) [GWC.0004.0019.0012].
176 AUSTRAC, 'Casino Junkets Campaign', report (14 July 2017) [GWC.0004.0019.0012] 1; Connolly, transcript [TRA.0001.0001.0001] 3553.
177 AUSTRAC, 'Casino Junkets Campaign', report (14 July 2017) [GWC.0004.0019.0012] 1; Connolly, transcript [TRA.0001.0001.0001] 3553 – 3554.
178 AUSTRAC, 'Casino Junkets Campaign', report (14 July 2017) [GWC.0004.0019.0012] 3; Connolly, transcript [TRA.0001.0001.0001] 3554, 3559.
179 AUSTRAC, 'Casino Junkets Campaign', report (14 July 2017) [GWC.0004.0019.0012] 6 – 7; Connolly, transcript [TRA.0001.0001.0001] 3557 – 3559.
180 Connolly, transcript [TRA.0001.0001.0001] 3555 – 3556.
181 Connolly, transcript [TRA.0001.0001.0001] 3555.
182 AUSTRAC, 'Casino Junkets Campaign', report (14 July 2017) [GWC.0004.0019.0012] 4.
183 Connolly, transcript [TRA.0001.0001.0001] 3555 – 3556.
184 Ord, transcript [TRA.0001.0001.0001] 3413 – 3414.
185 Connolly, transcript [TRA.0001.0001.0001] 3559 – 3560.
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268 VIP Committee, minutes (8 February 2017 meeting) [CRL.567.001.0001_R] 32.

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284 Bergin Report vol 1 [BGN.0001.0001.0001] 302 – 303 [25].
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286 Bergin Report vol 1 [BGN.0001.0001.0001] 318 [128].
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288 Bergin Report vol 2 [BGN.0001.0001.0334] 559 [95]; Felstead, transcript [TRA.0001.0001.0001] 2131.
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- 357 BL, minutes (14 December 2016 meeting) [CRL.627.001.0587_R] 2.
- 358 Felstead, transcript [TRA.0001.0001.0001] 2157.
- 359 Felstead, transcript [TRA.0001.0001.0001] 2157 – 2158.
- 360 Bergin Report vol 1 [BGN.0001.0001.0001] 317 [123].
- 361 Bergin Report vol 1 [BGN.0001.0001.0001] 317 – 318 [123] – [126].
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- 370 Preston, witness statement [JRP.0001.0001.0006_R] [103(s)].
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- 372 Felstead, transcript [TRA.0001.0001.0001] 2157.
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CHAPTER 7

The China Arrests

CHAPTER SEVEN

The China Arrests

Purpose of Chapter

- 1 This chapter examines the events leading to the arrest of 19 Crown staff residing in China in October 2016 (**China Arrests**) and the extent to which the corporate risk management structures of **Crown**, including the **Burswood entities**, appropriately managed the risks associated with the activities of the China-based staff members.
- 2 An assessment of the management of the strategic risks associated with the activities of China-based staff, particularly if they promoted gaming activities at Perth Casino, is relevant to the assessment of suitability that the PCRC is required to undertake pursuant to ToR 1 to 5.¹
- 3 Relevantly to ToR 6, this chapter examines the adequacy of communications by Crown to the GWC in respect of the China Arrests, being a matter inquired into and reported on by the Bergin Inquiry. Communications subsequent to the China Arrests about the charging and convictions of the China-based staff will also be examined, as these are matters reasonably incidental to the China Arrests and therefore fall within the scope of ToR 7.
- 4 As part of its inquiries into ToR 9 and ToR 10, this chapter also considers the actions of the GWC and the Department in the aftermath of the China Arrests.
- 5 Part One of this chapter provides the basic context for, and approach of the PCRC to, the discussion which follows. Part Two sets out the relevant factual background to the China Arrests. Part Three examines the governance and risk management by Crown and particularly the Burswood entities relevant to the China Arrests. Part Four examines relevant communications between Crown and the GWC and evaluates the role and response of the Department in supporting the GWC, and the response of the GWC itself, with respect to the China Arrests and associated matters.

Part One: Context for examination of China Arrests

- 6 Crown has acknowledged to the PCRC its failings as they relate to the China Arrests and that those failings may reveal deficiencies in the risk management structure of the Crown group, which may impact on suitability if left unrectified.²
- 7 Crown's position is that the failings are historical and do not bear upon current suitability as relevant to ToR 1 to 5.³ The significance of the China Arrests, and actions related to them, to the question of suitability is considered in Chapter Seventeen: Suitability.
- 8 Paragraph (d) of the operative part of the PCRC's Commission stipulates that the PCRC is not required to inquire into a particular matter to the extent that it is satisfied that the matter has been sufficiently and appropriately dealt with by another inquiry, investigation or proceeding.
- 9 Crown's operations in China were examined in detail in the Bergin Inquiry. Oral evidence was taken from Crown officers about the relevant events and their involvement in those events.
- 10 A further investigation into the China Arrests was conducted by the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) (as it then was) under s 24(1) – (2) of the *Casino Control Act 1991* (Vic) (**VCGLR China Arrests Investigation**), which resulted in a

report published in February 2021 (**VCGLR China Arrests Report**). The VCGLR China Arrests Investigation was confined to determining the extent to which the China Arrests may be relevant to the operation of **Melbourne Casino**.

- 11 The China Arrests were again examined in the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**). Reliance was placed in the RCCOL on the findings and conclusions in the **Bergin Report** to reach its own conclusions with respect to the China Arrests.
- 12 Numerous concessions were made by Crown to the Bergin Inquiry, the VCGLR China Arrests Investigation and the RCCOL. These concessions will be considered in detail throughout this chapter.
- 13 The Burswood entities and CRL accept each of the principal conclusions from the Bergin Inquiry with respect to the China Arrests and that the PCRC may rely on those conclusions.⁴ The Burswood entities accept that they should have taken steps to investigate independently the events leading to the China Arrests and assumed responsibility for communications with the GWC on the issue.⁵
- 14 Taking into consideration the Bergin Inquiry's extensive inquiry and analysis of facts and circumstances with respect to Crown's operations in China and the concessions on that topic made by Crown (including the Burswood entities), the PCRC is satisfied that the China Arrests have been sufficiently and appropriately dealt with by other inquiries and investigations.
- 15 The PCRC relies upon conclusions of the Bergin Inquiry in respect of the China Arrests, relevant concessions made by Crown to the PCRC, as well as concessions made in the Bergin Inquiry, VCGLR China Arrests Investigation and to the RCCOL, to provide background context for its factual analysis and findings with respect to the China Arrests. The PCRC acknowledges that other interested parties have not made the same concessions made by Crown.
- 16 The PCRC has therefore limited its own inquiry into the China Arrests to an examination of the extent to which they involved or related to the operation of Perth Casino or officers of the Burswood entities.
- 17 The Bergin Report concluded that there was no proper evidentiary basis on which to conclude that Crown knew that its China-based employees were breaching gambling laws.⁶ The PCRC does not opine on this issue, and nor does it opine on the accuracy of the advice received by Crown from its external advisors (some of which is discussed below).
- 18 At the time of the four main escalation events relevant to the China Arrests discussed in Part Two below, the executive directors of the Burswood entities were:
 - a. James Packer (**Packer**) (director of BL from 2004 to May 2016);
 - b. Rowen Craigie (**Craigie**) (director of BL and BNL from 2004 to March 2017);
 - c. John Alexander (**Alexander**) (director of BL from 2006 to January 2020);
 - d. Barry Felstead (**Felstead**) (director of the Burswood entities from 2007 to 2021, and from 2013 also the CEO of the centralised governance and management function that included Perth Casino, Melbourne Casino, Aspinalls and intended to include the Barangaroo Casino (**Australian Resorts**)); and
 - e. Kenneth Barton (**Barton**) (director of BL and BNL from 2010 to 2021 and BRML from 2014 to February 2021).
- 19 In addition, the two non-executive directors of the Burswood entities were John Poynton (**Poynton**) (non-executive director of BL between 2004 and February 2021) and Timothy Roberts (**Roberts**) (non-executive director of BL between 2005 and June 2019).

Part Two: Background to the China Arrests

- 20** Crown's operations in China and the conduct of the International Business Unit (**IBU**) up to February 2015 are explained in Chapter Six: Junkets.
- 21** At the relevant time, Article 303 of the Criminal Law of the People's Republic of China relevantly provided:⁷
- Whoever, for the purpose of profit, gathers a crowd to gamble, or undertakes gambling as a business shall be sentenced to fixed-term imprisonment of three years or less, detention or surveillance and shall be subject to a fine.
- 22** Article 1 of Interpretation No 3 [2005] of the Supreme People's Court entitled the 'Interpretation of the Supreme People's Court and Supreme People's Procuratorate about Some Issues Concerning the Application of Law in Gambling Criminal Cases' provided (effective from 13 May 2015):⁸
- Any of the situations set out below, if undertaken for the purpose of profit, will constitute 'gathering a crowd to gamble' as provided by Article 303 of the Criminal Law:
- (1) Organising three or more persons to gamble and generating illegitimate profits by taking a cut of the winnings in amounts that equal 5,000 yuan or more in aggregate;*
- (4) Organising 10 or more persons who are citizens of the People's Republic of China to go abroad to gamble, from which kickbacks or referral fees are collected.*
- 23** A further interpretation was issued by the Supreme People's Court's Criminal Division in May 2005.⁹ It was accepted by Crown and the Bergin Inquiry that the key passage of that interpretation provided that:¹⁰
- First the number of persons organised is not calculated on an aggregate basis. It is necessary that 10 or more PRC citizens are organised at one time to go abroad to gamble ... The phrase "at one time" can be translated as on a single occasion.
- 24** Relevantly, by 2012 and up to October 2016, Crown Resort Pte Ltd, a subsidiary of CRL (through Crown Melbourne Limited (**CML**)) incorporated in Singapore (**Crown Singapore**) employed staff living in mainland China to conduct sales and marketing activities for Melbourne Casino and Perth Casino. Neither Crown nor any subsidiary had any form of authorisation from the Chinese government to conduct business activities in China.¹¹
- 25** From 2012 to at least 2015, the senior management of the IBU operated an unofficial Guangzhou office in a rented residential apartment to support its business activities and to process visa applications for its Chinese customers. The office held equipment, gifts and confidential documents, and carried no Crown signage.¹²
- 26** In late 2012, the Chinese government announced a crackdown on corruption.
- 27** Between June 2012 and February 2013, Crown obtained advice from an international law firm, WilmerHale, on the impact of doing business in China.¹³ WilmerHale advised Crown that:
- a. there was little risk of Crown's staff receiving 'a criminal charge' for the existing activities in China and there was little risk of them being detained;
 - b. Crown could 'decrease risks' by ensuring that its employees did not refer customers to particular 'money moving agents';
 - c. it was not 'illegal to be selling offshore gaming within China', however there were laws that prohibited the marketing of gaming onshore for more than ten people;

- d. Crown should be 'cautious and avoid openly marketing' given that gaming is a 'sensitive topic'; and
- e. a normal employee of a casino is unlikely to be deemed a 'principal' or found guilty under criminal law by merely marketing or participating in casino operation, if such employee is not directly making a profit from doing so.¹⁴
- 28** In 2012, WilmerHale provided 'reception guidelines' to Crown, which were instructions for Crown's staff in China in the event government authorities arrived to conduct a surprise investigation.¹⁵
- 29** On 25 March 2013, Michael Chen (**Chen**), Crown's former President of International Marketing, sent an email to Felstead and Jason O'Connor (**O'Connor**) (Group Executive Manager of VIP International Gaming from 2011 to 2016), informing them that two of Crown's staff in Chengdu had been sighted with customers who had been detained recently. It was observed that the two employees were at risk of being called in for questioning by the Chinese authorities.¹⁶
- 30** The next day, Chen wrote to Felstead and O'Connor and attached the reception guidelines. Chen said:¹⁷
- This is one thing that is important to understand when it comes to the China team. They are living in constant fear of getting tapped on the shoulder. In a country where due process is inconsistently applied, it is a risky place to be for all of our team...
- ...
- Most folks in the industry just think it is in [a] [grey] area and that they are at risk of arrest. The truth is they are [not] engaging in any criminal activity; however, because of the variety of reasons one may still be detained without due process, staff have cause to take precautions.
- 31** In around 2013, Crown also engaged the Mintz Group, a global investigations and risk advisory firm. On 12 July 2013, the Mintz Group sent an article to Crown entitled 'China: Signs of Economic Reform But Challenges Remain for Foreign Players' which stated:¹⁸
- ... [t]he same underlying challenges to doing business in China remain – systemic lack of transparency, inconsistent application of fairness and uneven accountability under the rule by law ...
- While the draw of China's large and growing market might be worth the risk, foreign companies must enter with full anticipation of a lack of transparency, fairness and accountability under the country's laws.
- 32** On 1 October 2013, the Mintz Group provided Crown with an article which indicated that the aggressive stance being taken by Chinese authorities was not 'business as usual'.¹⁹
- 33** By October 2013, CML included foreign political policy as a 'significant risk' in its risk register.²⁰ On the documentary evidence before the PCRC, it does not appear the same change was included in the risk register for Perth Casino.²¹
- 34** On hearing rumours of a Chinese government crackdown on corruption targeting gambling, Crown requested further advice from WilmerHale, who advised that it was unable to confirm a campaign particularly targeting gambling, however, the crackdown on corruption was continuing. WilmerHale further advised that Crown should put in place more robust internal controls, particularly when dealing with government officials. This advice was shared with Felstead.²²
- 35** On 28 June 2014, Felstead received an email from Chen informing him of a 'serious shakedown' about to occur in China, with a 'target list of top junket folks' held by the Beijing government, and further noting that people were being 'dragged in' to 'squeal on the

money movements' of certain persons. On 30 June 2014, Felstead forwarded this email to Michael Johnston (**Johnston**) (among other positions, the Finance Director of Consolidated Press Holdings Pty Ltd (**CPH**), a CPH executive and a non-executive director of CRL) stating 'let's hope this is just speculation'.²³

- 36 In December 2014, President Xi Jinping visited Macau to highlight the far reach of his anti-corruption campaign and urged the Macanese government to diversify its economy from casino revenue.²⁴
- 37 On 5 February 2015, Felstead wrote to Chen and O'Connor and informed them that they both needed to grow the VIP business whilst Chinese high rollers were avoiding Macau.²⁵
- 38 Against that general background, the China Arrests can be framed by reference to four main escalation events and Crown's response to those events, namely:
- a. the announcement on 6 February 2015 by the Chinese Ministry of Public Security that China was cracking down on foreign casinos seeking to attract and recruit Chinese citizens to travel abroad for gambling;²⁶
 - b. the arrest and detention of employees of Paradise and Grand Korea Leisure (two South Korean casino operators) by Chinese authorities in June 2015;²⁷
 - c. the questioning of two members of the VIP International team by Chinese police in July 2015 in relation to their involvement in gambling activities;²⁸ and
 - d. the program broadcast in October 2015 on Chinese national television channel CCTV which addressed the subject of foreign casinos and their networks within China and highlighted South Korean casino operations.²⁹
- 39 These escalation events are considered below.

Crackdown announcement – February 2015

- 40 On 6 February 2015 the Chinese Ministry of Public Security announced that China was cracking down on foreign casinos seeking to attract and recruit Chinese citizens to travel abroad for gambling (**Crackdown on Foreign Casinos Announcement**).
- 41 The day after the Crackdown on Foreign Casinos Announcement, media reported that President Xi had 'officially declared war on the global gambling industry' and warned casinos that Chinese citizens would be gambling much less in China, neighbouring countries and in the United States.³⁰
- 42 The same day, Chen and O'Connor circulated news articles regarding the Crackdown on Foreign Casinos Announcement and copied in Felstead, who replied that the crackdown was 'another good challenge for you both'. In turn, Chen said that it raised the alert level for the safety of their staff.³¹
- 43 Media reports regarding the Crackdown on Foreign Casinos Announcement were sent to a number of Crown executives and directors, some of whom were also directors of the Burswood entities, including Packer, Alexander, Craigie and Johnston.³²
- 44 Following the Crackdown on Foreign Casinos Announcement and the media reports, Crown took a number of steps, which included obtaining further advice from WilmerHale and the Mintz Group, ceasing executive travel to China and re-circulating the reception guidelines. These steps are discussed below.
- 45 On 9 February 2015, Chen sent an email to the 'VIP International Offices' and, among other things, re-circulated the reception guidelines.³³
- 46 On 10 February 2015, Chen requested advice from WilmerHale about whether there had been any changes in the laws and regarding employees assisting and making referrals for

remittances of money. WilmerHale advised there had been no change in the laws and that it would be prudent for employees not to be involved in money-moving activities. Chen forwarded this advice to Felstead and others with a comment that he thought Crown should push forward with the establishment of offices in China.³⁴

- 47 Felstead responded to Chen's email of 10 February 2015 and said that opening offices in China was 'too big a risk' and having them operate as non-gaming offices did not seem practical to him.³⁵
- 48 During a group discussion on 11 February 2015 between Felstead, O'Connor, Chen and Ishan Ratnam (**Ratnam**) (Vice President of Entertainment, Vice President of Capital Golf Course and President of VIP Development), the group agreed to avoid travel to mainland China 'for a while' and that the opening of an office in China be deferred. O'Connor was tasked with preparing a list of options and recommendations to avoid China-based staff providing sensitive information to customers.³⁶ Travel to China by some Crown staff, including Felstead, resumed by around May 2015.³⁷
- 49 On 12 February 2015, Ratnam sent an email to Matthew Csidei of CPH copying in Felstead and proposed the removal of Crown logos from private jets to be used to transport high rollers from China to Crown's properties in Australia. Ratnam noted in his email that '[t]hey can always go back at a later stage'. The logos were subsequently removed from Crown's private jets.³⁸
- 50 In about March 2015, Crown's Five Year Plan for the IBU was presented to the boards of CRL and CML and incorporated into CRL's Strategic Business Plan Executive Review – VIP International for the financial years ending 2016 to 2020.³⁹ The plan stated that uncertainty was the 'prevailing feature of the current international market place' and identified the 'ongoing corruption crackdown in China and weakening economic conditions in China' as an opportunity for growth. The plan also referred to the legal constraints preventing Crown from marketing gaming in most of Asia and noted that the 'platform junket strategy gains traction and delivers growth'.⁴⁰ The draft of this plan referred to the Crackdown on Foreign Casinos Announcement. The final versions presented to the CRL board and the CML board did not refer to that announcement,⁴¹ nor was it referred to in the plan presented to the Burswood entities for the financial years ending 2016 to 2019.

South Korean Arrests in June 2015

- 51 In June 2015, employees of two South Korean casino operators were arrested and detained by Chinese authorities (**South Korean Arrests**).⁴²
- 52 On 20 June 2015:
- a. Chen emailed Felstead, Ratnam and O'Connor, and told them he was obtaining further advice about the South Korean Arrests and was trying to 'determine the facts and whether the level of risk has changed'.⁴³ In response to that email, Ratnam confirmed that the trip for the August roadshow would be an important sign of support to staff,⁴⁴ and
 - b. Felstead emailed Johnston and attached a copy of an email from Chen entitled 'Arrests in China'. The attached email contained an extract of a media report which confirmed the South Korean Arrests.⁴⁵
- 53 On 24 June 2015, Barton (also Chief Financial Officer of CRL) sent an email to Robert Rankin (**Rankin**) (the former CEO of CPH) and Craigie and provided a copy of a publication entitled 'China Sets No-Marketing Tone with South Korean Casinos' which reported the South Korean Arrests. Rankin responded that '[w]e should be on high alert' and 'the training of new in country sales staff should be reviewed and be extensive'.⁴⁶

- 54 Also on 24 June 2015, Craigie forwarded Rankin's response to Felstead who replied, 'Word is that there have been long-term issues with the Korean properties around currency movements and compliance which has upset the Chinese authorities.' Craigie forwarded Felstead's response to Rankin. Craigie did not notify the CRL Risk Management Committee of the risk of arrest.⁴⁷
- 55 On 28 June 2015, the Mintz Group further advised that a Chinese Public Security Bureau contact had advised that the Koreans were being 'extremely aggressive in the way they approached the business' and the 'core issue' was that they were taking cash out of China for new clients.⁴⁸ The Mintz Group concluded that the Korean sales staff had been acting in contravention of Chinese currency laws for some time and their arrest was a relatively isolated case. Chen forwarded this advice to Felstead, O'Connor and Ratnam and commented '[t]his should give us a good degree of comfort to continue with business as usual, but ensuring we are low profile and remaining in small groups while in China.' Felstead forwarded this advice to Barton and others within Crown.⁴⁹
- 56 On 28 June 2015, Felstead provided Debra Tegoni (**Tegoni**), (General Counsel – CML) Michael Neilson (**Neilson**), and Johnston, with the advice given to Chen in relation to the South Korean Arrests.⁵⁰ Felstead also briefed Johnston on the same day in regard to the Mintz Group's advice.⁵¹
- 57 The PCRC observes that it was integral to the success of Crown's marketing in China to ensure that the funds of Chinese patrons to be used for gaming at Crown's casinos in Australia, if held in China, were moved out of China. The same observation applies to funds to be used to repay debts of Chinese patrons incurred at Crown's casinos in Australia. Crown and the patrons used money remitters to transfer the funds of international gamblers to Australia. At this point Crown was on notice that the Chinese authorities were investigating the transfer of funds for casino gaming out of China using money remitters.

Questioning of Crown Staff and request for letter of employment

- 58 On 9 July 2015, a member of the VIP International staff in Wuhan was approached and questioned by Chinese police who requested a letter confirming his employment.⁵²
- 59 Around the same time, Chinese police also questioned a second Crown employee⁵³ (together, the **Questioning of Crown Staff**).
- 60 In response to the Questioning of Crown Staff the following occurred:
- a. WilmerHale advised Chen about the proposed letter requested by the Chinese police and provided a template letter, which did not state that Crown operated casinos in Australia;⁵⁴
 - b. following email exchanges between Chen, Tegoni and Jan Williamson (**Williamson**) (CML legal team),⁵⁵ Chen requested advice from the Mintz Group who confirmed that the request from the Chinese police should be complied with but they 'must also consider that the request for the letter has the effect of contributing to an evidentiary pile that the Chinese Public Security Bureau could decide to draw upon in the future';
 - c. Chen forwarded the Mintz Group's advice to Williamson and said 'based on this, the suggested draft by Wilmer[Hale] seems appropriate. It is factual about his employment with Crown, and does not get into anything about role, which could be used in the future';⁵⁶
 - d. on 10 July 2015, Williamson obtained WilmerHale's confirmation that the proposed letter to the Chinese police should be from the employee's direct employing entity which was Crown Singapore;

- e. Felstead authorised the letter to be signed on behalf of Crown Singapore and also emailed Johnston, attaching the advice from WilmerHale of 9 July 2015 and stated 'what we will be up against in China at the moment';⁵⁷ and
 - f. the same day, the signed letter on behalf of Crown Singapore was provided to Chinese police.⁵⁸
- 61** On 12 August 2015, there were two CRL board meetings. During a break in these meetings, Johnston raised the South Korean Arrests and the legal advice obtained from WilmerHale with some of the CRL board members, including Helen Coonan.⁵⁹

CCTV Program

- 62** In October 2015 a program was broadcast on Chinese national television channel CCTV which addressed the subject of foreign casinos and their networks within China and highlighted South Korean casino operations (**CCTV Program**).⁶⁰
- 63** On 15 October 2015, Chen sent an email to the 'VIP International Offices' (which was forwarded to Felstead)⁶¹ in relation to the CCTV Program, informing staff that advice was being obtained and requesting staff to continue to take sensible safeguards and precautions, including to meet with guests in small groups with no more than three to four Crown staff in any one meeting and avoid any overt sales and marketing activity.⁶²
- 64** Chen sought advice from both the Mintz Group and WilmerHale on the current position regarding Crown's activities in China ahead of the VIP International team marketing roadshow the following week.⁶³
- 65** On 15 October 2015, the Mintz Group advised Chen that 'all seems to be pointing to a dedicated effort against these Korean targets rather than a broad-based effort, though the backdrop remains as we've identified earlier that there is interest in monitoring all foreign casino marketing in the mainland. We'll have more for you tomorrow, but as of now, your team should not feel overly concerned'.⁶⁴
- 66** On 19 October 2015, the Mintz Group provided further advice to Chen to the effect that the arrests were directed at the Korean entity in question, the arrests were not part of a broader crackdown and the team 'should be in good shape for activities this week, though the same ground rules are suggested as we discussed earlier'.⁶⁵
- 67** In regard to WilmerHale:
- a. on 15 October 2015, WilmerHale advised that Chinese law had not changed and highlighted the reasons for the South Korean Arrests.⁶⁶ WilmerHale also advised that Crown's marketing materials should not expressly promote the casino business and employees should not get involved in activities which may potentially raise money laundering or foreign exchange evasion issues;⁶⁷ and
 - b. on 16 October 2015, WilmerHale further advised Chen that the team in China should not refer guests to money changers.⁶⁸
- 68** On 20 October 2015, Chen provided Felstead and O'Connor with the advice from WilmerHale and the Mintz Group.⁶⁹

Events in early 2016

- 69** Throughout early 2016, Crown continued its operations in China. On 21 January 2016, an article was published in the Australian Financial Review regarding China's tightening on currency movements offshore.⁷⁰
- 70** On 25 February 2016, Craigie and Felstead received a draft presentation which was to be

delivered to the VCGLR and Felstead instructed the removal of the slide relating to the corruption crackdown in China.⁷¹

- 71 On 18 April 2016, Chen sent a document entitled 'Crown Strategy Workshop April 2016' to Felstead and others in which China's policy was described as unfavourable. The document also referred to the corruption crackdown, the Chinese government's 'intense scrutiny of money movements' and contained a number of proposals for future operations.⁷²
- 72 The 22 May 2016 Crown Financial Plan & Budget for the financial years ending 2017 to 2020 recognised the highly uncertain state of the market, particularly in China and Macau, although it did not expressly refer to the corruption crackdown by the Chinese government.⁷³ The plan committed to driving the platform junket strategy (which strategy included the alignment of Crown's IBU sales team with major junkets with the aim of lowering Crown's credit risk and expediting the growth of the VIP International business),⁷⁴ enhancing senior sales capability, advancing debt security and recovery initiatives in mainland China and increasing the presence in the region from senior management.⁷⁵

The arrest and detention of Crown staff

- 73 On 13 and 14 October 2016, there were coordinated raids on the homes of Crown staff in mainland China. During those raids, 19 Crown employees were arrested and questioned by Chinese authorities, including O'Connor who at that time was conducting a roadshow.⁷⁶
- 74 On 26 June 2017, 16 of the 19 Crown employees who were arrested were sentenced to fixed terms of imprisonment and fined; five were sentenced to 10 months' imprisonment and 11 were sentenced to nine months' imprisonment.⁷⁷ Three were exempt from criminal penalty.⁷⁸ All 19 pleaded guilty to a charge of assembling a crowd to engage in gambling in breach of Article 303 of the Criminal Law of the People's Republic of China.⁷⁹
- 75 15 of the Crown employees who were arrested held casino key employee or casino employee licences issued under the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA) (CCBILE Regs)*.⁸⁰ There is no evidence before the PCRC that any of the licensed staff had worked at Perth Casino.

What did Crown do after the arrests?

- 76 The changes implemented by Crown following the China Arrests regarding aspects of its IBU and the due diligence process for junket operators are examined in Chapter Six: Junkets.
- 77 After the China Arrests, the lease of the office in Guangzhou was put in the name of Crown employees. An employee of Crown Singapore attended the building to pay bills and maintenance fees but was instructed not to enter the office.⁸¹
- 78 Following the appointment of Alexander as Chair of CRL and the restructure of the VIP International business (as discussed in Chapter Six: Junkets) in April 2017 the CRL board resolved to close overseas offices other than in Hong Kong.⁸² The board also resolved to adopt a new operating model for future business in Asia.⁸³
- 79 In early July 2019, and following receipt of the draft report of the VCGLR China Arrests Investigation, the CRL board directed Alexander to seek an explanation from Felstead in respect of failures in relation to the risk involved in Crown operating in China.⁸⁴ With respect to the passage of time between the China Arrests and this request, it was observed in the Bergin Report that Crown had failed to conduct any rigorous or systemic corporate analysis of the many failures that led to the China Arrests.⁸⁵

Part Three: Crown's governance and risk management of Perth Casino

- 80** A number of conclusions were reached in the Bergin Report regarding CRL's corporate governance, risk management processes and cultural failings with respect to its China operations, which included the following:
- a. some of the CRL board knew of the targeted crackdown on foreign casinos;⁸⁶
 - b. a small group of CRL senior management set CRL's risk appetite in relation to its operations within mainland China;⁸⁷
 - c. despite the CRL board being obliged to set, monitor and communicate its risk appetite in China, it did not do so;⁸⁸
 - d. to the extent the CRL board informally communicated a risk appetite, it was excessive and inappropriate for a casino licensee;⁸⁹
 - e. the failure of all CRL directors to set the risk appetite of Crown had consequences in China in 2016;⁹⁰
 - f. the controls used by the IBU 'on the ground' were not documented in the risk management controls and were incapable of being monitored and revised as to whether they were appropriate;⁹¹
 - g. the failure to prudently assess and escalate developments in China was a core failure which led to the China Arrests;⁹²
 - h. however, it was by no means the only significant failure; a number of corporate and cultural failures within CRL gave rise to a situation where the risks to the China-based staff were not adequately assessed, managed or escalated because:
 - i. the risk management and compliance structures were ineffectual and underutilised;
 - ii. legal advice was mismanaged;
 - iii. there were blurred reporting lines; and
 - iv. there was a lack of effective governance of the IBU;⁹³
 - i. in the period 2014 to 2016 CRL disregarded the welfare of its China-based staff putting them at risk of detention, pursued an aggressive sales policy in China and failed to escalate risks to Crown employees in China through the appropriate risk management structures;⁹⁴
 - j. CRL's lack of effective governance of the IBU, including blurred lines of reporting between that group and directors of CRL, was a significant failing;⁹⁵
 - k. it was a corporate failing that risks to the safety of staff working in China were not properly appreciated and (or) averted;⁹⁶
 - l. CRL's ineffectual corporate governance is the responsibility of all directors;⁹⁷
 - m. CRL's ineffectual and underutilisation of its risk management and compliance structures was a significant failing;⁹⁸
 - n. the CRL board encouraged management to take inappropriate risks in the pursuit of success in its VIP International business;⁹⁹
 - o. CRL's corporate risk profiles were deficient and did not properly or in sufficient detail identify the real nature of the risks associated with the VIP International business or the risks relating to a breach of gaming laws and regulatory change;¹⁰⁰ and

- p. it was CRL's responsibility to give appropriate consideration to the welfare of its employees.¹⁰¹

81 The PCRC relies on the above conclusions reached in the Bergin Report, and the concession by Crown that the China Arrests were a cultural and risk management failure.¹⁰²

The knowledge of the Burswood entities about the China Arrests and steps taken after those arrests

82 Each of the directors of the Burswood entities in the period 2015 to 2016, with the exception of Craigie, gave evidence to the PCRC.

83 Both Poynton and Roberts said that they had no contemporaneous knowledge of the China Arrests.¹⁰³

84 Felstead was aware of the Crackdown on Foreign Casinos Announcement. Craigie received information about it.¹⁰⁴

85 Each of Felstead, Packer, Barton and Craigie knew of the South Korean Arrests.¹⁰⁵

86 Felstead received or knew the contents of WilmerHale and Mintz Group advice examined at paragraphs 30, 46, 55, 60, 63 and 65 – 68 above.

87 Felstead was the only director of the Burswood entities who knew of three, possibly four, of the relevant escalation events preceding the China Arrests and the arrests themselves.¹⁰⁶

88 Felstead gave evidence to the PCRC that:

- a. he was the person who had the most information available to him about what was happening on the ground in China in 2015 and 2016;¹⁰⁷
- b. he knew and understood the risk that the law may be enforced inconsistently in China;¹⁰⁸
- c. there was a risk in China of Chinese authorities taking arbitrary action;¹⁰⁹
- d. he knew and understood that the Crown sales staff in China were being urged by Chen to make greater sales on behalf of Crown and the **ICB**;¹¹⁰
- e. there were discussions around the management of risks associated with the VIP operations in China but those discussions were limited to within the IBU;¹¹¹ and
- f. the independent non-Crown executives would have 'broadly understood that China was a riskier place to do business' (implicitly, because of b and c above).¹¹²

89 Felstead testified that he believed in 2015 and 2016 that adequate measures had been taken to look after Crown's China-based staff.¹¹³ The PCRC does not make a finding about Felstead's belief in this regard but an analysis of the facts is required.

90 Despite Felstead's knowledge of the events in China and the risks identified at paragraphs 88.b and 88.c above, he did not 'in a specific sense' inform the boards of the Burswood entities of the escalation events, nor did he raise them at the Perth Executive Risk and Compliance Committee (**Perth ERCC**) of which he was a member at the relevant times.¹¹⁴ Felstead regarded the China Arrests as a Melbourne Casino matter because the staff reported to management at Melbourne Casino.¹¹⁵

91 The minutes of the 14 December 2016 BL board meeting record two matters of relevance:

- a. first, a report by the Legal, Risk and Compliance Committee was considered. That report stated:¹¹⁶

With regards to the current detention of Crown Group employees by the Chinese Government, the safety and wellbeing of the employees and their families is of

paramount concern. Accordingly, related risk implications and responses are to be considered at a later date pending further developments.

- b. secondly, Felstead provided a verbal update to the board as to the 'China Matter'.¹¹⁷
- 92 Save for the reference in the minutes of 14 December 2016, there is no reference in the minutes of BL board meetings between 2015 and April 2017 of any discussion regarding the work being undertaken by Crown staff in China, the risks to the safety of staff working in China, the management of those risks, or the China Arrests.¹¹⁸
- 93 On the evidence before the PCRC,¹¹⁹ the directors of the BL board did not have any oversight or understanding of the sales and marketing programs undertaken by Crown staff in China, which programs were ultimately undertaken, at least in part, for BL's benefit. None of Packer, Alexander, Felstead and Craigie knew of the existence of the Guangzhou office.¹²⁰ Roberts gave evidence he had no knowledge of the events leading to the China Arrests.¹²¹ Barton considered the operation of the IBU was the responsibility of the CEO— Australian Resorts.¹²² Poynton stated that, as a member of BL, that board was not provided operational or strategic information about the IBU.¹²³
- 94 Poynton said he was concerned about the effects of the arrests on Perth Casino's reputation in the eyes of the Western Australian public.¹²⁴ He said he spoke to Felstead and monitored work being done at the group level to secure the release of those arrested and not have it happen again.¹²⁵
- 95 Poynton gave evidence to the PCRC that he did not consider specific action was necessary to reassure the Western Australian public about casino operations as there was no diminution of activity at Perth Casino.¹²⁶
- 96 Roberts gave evidence to the PCRC that he recalled a briefing by Felstead during a BL board meeting soon after the arrests to the effect that the employees may have been detained illegally.¹²⁷ He was comfortable that an appropriate explanation of the circumstances had been given to him.¹²⁸
- 97 The PCRC's conclusions with respect to the Burswood entities' management and governance of the risk of criminal infiltration from junkets are made in Chapter Six: Junkets. The particular conclusions relating to the China Arrests are that:
- a. at least some of the work being done by Crown staff in China was done to promote gambling at, and to organise Chinese patrons to visit, Perth Casino;
 - b. as the body charged with responsibility to oversee the Perth Casino licensee, the board of BL should have taken proactive steps to satisfy itself that the marketing of gambling at Perth Casino, including by Chinese patrons and through junkets, was being undertaken in a lawful and socially responsible manner; and
 - c. the board of BL did not do that at least between early 2015 and April 2017.
- 98 The PCRC concludes that in the aftermath of the China Arrests, as the body charged with responsibility to oversee the Perth Casino licensee, the board of BL should have:
- a. taken steps to independently investigate the events leading to the China Arrests; and
 - b. assumed responsibility for communicating to the GWC the Perth Casino licensee's response to the China Arrests, having regard to the outcome of that investigation.
- 99 Both of these conclusions are accepted by Crown.¹²⁹

Part Four: Communications with the Gaming and Wagering Commission and its response to the China Arrests

Communication of the China Arrests

- 100** The GWC and officers of the Department became aware of the China Arrests at around the time they occurred, including through media coverage of the arrests.¹³⁰
- 101** In October and November 2016 Joshua Preston (**Preston**), then the Executive General Manager – Legal Services and employed by BRML,¹³¹ provided updates on the situation at the Department’s operations division (**Operations Division**) meetings.¹³²
- 102** Barry Sargeant (**Sargeant**), then the chair of the GWC and Director General of the Department, gave evidence to the PCRC that after the China Arrests, Felstead called him more than once to ‘reassure the GWC that Crown’s marketing activities in China were not illegal’.¹³³ Sargeant relayed this information verbally to the GWC.¹³⁴ In his evidence to the PCRC, Felstead recalled that either he or Preston spoke to Sargeant and the relevant Minister shortly after the staff were detained.¹³⁵
- 103** As is examined below, Preston had a conversation with Sargeant on 26 June 2017 and then sent a letter to Michael Connolly (**Connolly**), then the Chief Casino Officer (**CCO**), on 4 July 2017. The Burswood entities gave a presentation to the GWC at its meeting in August 2017 to brief the GWC about the China Arrests.
- 104** The minutes of the seven GWC meetings from 22 November 2016 to 27 June 2017 do not record any discussion of the China Arrests.¹³⁶ One GWC member gave evidence to the PCRC that he thought that the GWC requested briefings during this period but did not recall the reason for the delay until August 2017 of the presentation of a briefing.¹³⁷
- 105** The PCRC infers from the above that none of CRL, CML or the Burswood entities volunteered information to the GWC about the China Arrests between November 2016 (following the initial information provided by Felstead and (or) Preston referred to above) and 26 June 2017.
- 106** The minutes of the meeting of the GWC on 25 July 2017 record that Preston was to be invited to attend the GWC’s August meeting to make a presentation to it about the China Arrests.¹³⁸ Preston’s recollection was to the effect that he was requested by CRL to provide the presentation to the GWC.¹³⁹ It is not possible on the evidence before the PCRC to determine whether CRL initiated the briefing to the GWC or whether it occurred at the request of the GWC.
- 107** The precise reasons for the delay in briefing the GWC about the China Arrests are not clear. What is apparent is that neither CRL nor the Burswood entities took any steps to make a presentation directly to the GWC before its presentation on 22 August 2017.¹⁴⁰

Events prior to the August 2017 Presentation

- 108** In a letter dated 4 July 2017 from Preston to Connolly, BNL ‘in its capacity as the “Operator”’ notified the CCO pursuant to reg 15 of the CCBILE Regs that 15 licensed employees named in the letter had been convicted in China of ‘contraventions of Article 303, Clause 1 and Article 25, Clause 1 of the *Criminal Law of the People’s Republic of China*’¹⁴¹ and 11 of them were imprisoned.¹⁴² The letter also noted that, due to their incarceration, the employees were unable to personally notify the CCO of their conviction.¹⁴³

- 109 Regulation (3) of the CCBILE Regs provides that, as a condition of holding a casino key employee licence or casino employee licence, a licence holder must notify the CCO within seven days of being convicted of any offence.¹⁴⁴ Regulation 15(4) provides that, where 'the Operator' becomes aware that the holder of a casino key employee licence or casino employee licence has been convicted of an offence, the Operator shall within seven days inform the CCO of the particulars of that offence (in so far as those particulars are known to the Operator).¹⁴⁵
- 110 The letter of 4 July 2017 was addressed to Connolly as CCO and underneath his title the words 'Gaming and Wagering Commission of Western Australia' appeared. The letter stated that it was provided on a 'strictly commercial in confidence' basis and 'should not be disclosed to other third parties'.¹⁴⁶ There is no evidence before the PCRC that Connolly provided the letter to the GWC or advised it that 15 of Crown's China-based staff who had been arrested and convicted were licensed under the CCBILE Regs.¹⁴⁷
- 111 Preston's letter of 4 July 2017 also referred to a conversation between he and Sargeant on 26 June 2017,¹⁴⁸ and enclosed CRL's media release to the Australian Securities Exchange (**ASX**) dated 26 June 2017 announcing the convictions of the China-based staff and the penalties imposed.¹⁴⁹
- 112 There is no other evidence before the PCRC about the content of the 26 June 2017 conversation between Preston and Sargeant. Felstead stated that he understood that Sargeant and the relevant Minister's office were given periodic updates, however, he did not state who provided those updates and when they were provided, nor did he refer to a conversation between Preston and Sargeant on 26 June 2017.¹⁵⁰
- 113 On 24 July 2017 Preston sent an email to Connolly, that stated:¹⁵¹
- Further to our recent telephone conversation, our advices are that the Chinese Court that dealt with our staff has not made public any written verdict/reasons for decision.
- I will contact you should this position change to arrange a time to meet with you/ present to the [GWC].
- 114 The minutes of the GWC meeting held the next day record the following:¹⁵²
- The Deputy Chairman [Connolly] advised that Chinese authorities have not publicly released information in relation to the arrest of and charges against Crown employees. Mr Joshua Preston, Chief Legal Officer – Australian Resorts will be invited to attend the August meeting of the [GWC] to brief members on the matter.
- 115 There is no reference in the minutes of the GWC meeting on 25 July 2017 to the letter of 4 July 2017 from Preston to Connolly.
- 116 However, the minutes of the Operations Division meeting on 29 July 2017 record that Connolly:¹⁵³
- ...advised that GWC has determined that it will await the outcome of the potential probity enquiry that may be conducted by the Victorian / NSW Regulatory Authorities in regards to the recent outcome relating to the International Operations staff who were detained in China.
- 117 There is no record of any such determination by the GWC. Andrew Duckworth (**Duckworth**), a GWC member from 2008 to 2020, recalled that either Sargeant or Connolly 'advised that the GWC should wait to get details from the Victorian regulator',¹⁵⁴ but it is unclear on the documentary evidence when that recommendation was made.
- 118 On the basis of the minutes of the Operations Division meeting on 29 July 2017 and Duckworth's statement to the PCRC, the PCRC infers that the recommendation was made by

Connolly or Sargeant at the GWC's meeting on 25 July 2017, but it was not recorded in the minutes.

The August 2017 Presentation

- 119** On 22 August 2017, Preston on behalf of the Burswood entities gave a presentation to the GWC on the China Arrests (**August 2017 Presentation**).¹⁵⁵
- 120** The August 2017 Presentation provided a summary of the arrest, conviction and sentencing of the Crown staff in China, as well as a translation of the offence provisions.¹⁵⁶ It also noted that:¹⁵⁷
- Contrary to media reports, Crown did not receive any warning, official or otherwise, to the effect that its staff might be regarded as breaching Article 303 or any other relevant laws.
- 121** It was further stated in the August 2017 Presentation that 'Crown had obtained legal advice on Article 303 and a related court guideline which said that an individual committed an offence against Article 303 if they organised 10 or more Chinese citizens to engage in group gambling; and personally receiv[ed] a referral fee or similar kind of reward.'¹⁵⁸ It was also stated that Crown 'instructed its staff to conduct themselves in China in a manner which it understood would not involve breaching Article 303'.¹⁵⁹ In particular, staff were instructed to refrain from meeting with more than a few patrons at the same time (given the 10 person guideline), not to hand out promotional material which referred to gaming facilities and to 'keep marketing efforts "low key"'.¹⁶⁰
- 122** The August 2017 Presentation noted advice provided to Crown by the Mintz Group prior to the China Arrests that:
- a. the South Korean Arrests were a 'targeted effort, not part of a broad-based action against foreign casinos';
 - b. the relevant South Korean casino operators were targeted 'because of their overt promotional activities, including [the] use of collateral which referred to gambling and promotional offers'; and
 - c. 'Crown staff should not be concerned beyond the need to take normal precautions' and 'Mintz would continue to monitor the situation'.¹⁶¹
- 123** Preston informed the GWC in the August 2017 Presentation that:
- a. Crown understood the Chinese government's 'crackdown' on foreign casinos seeking to attract and recruit Chinese citizens to travel abroad for gambling to be targeting illegal gambling in China, 'rather than targeting the provision of assistance to customers to arrange visits to foreign or Macau casinos';¹⁶²
 - b. Crown staff had become 'aware of the detention of ... staff of two South Korean casinos' in mid-2015, and became aware of the subsequent formal arrests of those staff in October 2015;¹⁶³
 - c. after becoming aware of the South Korean Arrests, Crown had sought the Mintz Group's advice and advised its China-based staff of the substance of it. The August 2017 Presentation claimed that Crown 'did not hear anything further of substance' in relation to the South Korean Arrests before the China Arrests, or receive any warning 'from Mintz or otherwise' that its staff or the staff of any other foreign casino were under investigation or at risk of being detained. It also claimed that as far as Crown was aware, 'it remained business as usual' for foreign casinos and junket operators in China throughout 2016, until the China Arrests;¹⁶⁴
 - d. the China Arrests were 'unexpected and represented a shift in the application of laws

- by the Chinese authorities' and following the China Arrests, 'Crown has ceased all its gaming related activities in mainland China and has shut down all of its international offices with the exception of an office in Hong Kong';¹⁶⁵
- e. prior to the China Arrests Crown informed its staff members in China of the substance of the advice received from WilmerHale and the Mintz Group and reminded them of the importance of 'limiting their activities to low key marketing' and that Crown 'did not hear anything further ... in relation to the [South Korean Arrests]';¹⁶⁶
 - f. neither Crown itself nor any of its directors had been accused or convicted of any offence in China;¹⁶⁷ and
 - g. Crown had sought to mitigate the risk of a recurrence and 'has a robust risk management framework and retains confidence in it notwithstanding this episode'.¹⁶⁸

Gaming and Wagering Commission's response to the August 2017 Presentation

- 124** GWC members understood from the August 2017 Presentation that Crown was taken by surprise by the China Arrests;¹⁶⁹ that the China-based staff had not broken the law,¹⁷⁰ rather China had changed the way it was enforcing the law;¹⁷¹ and that the crackdown was on Chinese people gambling.¹⁷² Preston gave the GWC the impression in the August 2017 Presentation that Crown was somewhat confused about why the China Arrests had occurred.¹⁷³
- 125** Professor Colleen Hayward (**Hayward**), a GWC member from 2006 to 2020, recalled that the conversations amongst GWC members were more around 'the veracity ... of Chinese law' rather than whether or not Crown had in place risk management systems that would have prevented the employees in China from being exposed to the risk in the first place.¹⁷⁴ She also said that during this time she did not turn her mind to the suitability of the parent company of Perth Casino.¹⁷⁵
- 126** Similarly, Sargeant gave evidence that he understood that even though Crown employees had pleaded guilty, Crown 'were [not] necessarily saying that they had acted contrary to the law'.¹⁷⁶
- 127** The GWC resolved to 'note the presentation'.¹⁷⁷ The GWC members gave evidence that they were concerned about the China Arrests, but considered it out of their hands,¹⁷⁸ and there was a feeling of 'let's see what else comes out of this'.¹⁷⁹
- 128** Hayward believed that the GWC requested Crown provide further information as it came to hand after the August 2017 Presentation.¹⁸⁰ However, Connolly and other GWC members gave evidence to the effect that the GWC left the matter to lie pending the outcome of the VCGLR China Arrests Investigation.¹⁸¹
- 129** Sargeant recalled that he thought 'the ultimate result was that if Melbourne authorities are going to investigate, we [would rely] on the Melbourne authorities'. When asked what he did to consider whether the protections in Western Australia were adequate, Sargeant responded 'I did nothing other than what I've just said. We went to the Victorian authorities'.¹⁸² Sargeant said the extent of his involvement was receiving reports from Connolly and having discussions with Felstead. He went on to say, 'we were looking at working with Melbourne authorities. Other than that, as an individual item, we let it stand'.¹⁸³
- 130** At the Operations Division meeting on 24 August 2017, Connolly advised that further conversations were to be held with regulators from other jurisdictions prior to advising Crown of the outcome.¹⁸⁴

Inaccuracies and omissions in the August 2017 Presentation

- 131** The August 2017 Presentation was prepared with assistance from Crown’s external lawyers who were advising on the China Arrests,¹⁸⁵ together with CRL management and some CML representatives.¹⁸⁶ Preston gave evidence to the PCRC that, at the time he delivered the August 2017 Presentation, he did not believe it to be in any way deficient or inaccurate.¹⁸⁷
- 132** Preston gave evidence that he thought it was Craigie who took responsibility for the August 2017 Presentation and that he gave the presentation on instruction from either Craigie or Alexander.¹⁸⁸ The PCRC notes that, as at the date of the August 2017 Presentation, Craigie was no longer a director of CRL or any of the Burswood entities.¹⁸⁹
- 133** Felstead gave evidence that he informed the BL board that a presentation had been given to the GWC regarding the China Arrests.¹⁹⁰ However, the BL board minutes do not record any mention of the August 2017 Presentation.¹⁹¹
- 134** The knowledge Crown and (or) certain individuals possessed about certain events in the lead-up to the China Arrests, at the time of the arrests and thereafter, is detailed in Parts Two and Three. For the purposes of analysing the adequacy of the August 2017 Presentation, the following matters are relevant:
- a. Felstead knew of the Crackdown on Foreign Casinos Announcement and some of the CRL board (including Craigie) had received media updates about it;¹⁹²
 - b. each of Felstead, Packer, Barton and Craigie knew of the South Korean Arrests;¹⁹³ and
 - c. Felstead received or knew the contents of advice provided by WilmerHale and the Mintz Group.
- 135** During the August 2017 Presentation, the following information relating to the China Arrests and the convictions of 16 of Crown’s China-based staff was not disclosed to the GWC (and this lack of disclosure has been conceded by Crown):¹⁹⁴
- a. the Crackdown on Foreign Casinos Announcement;
 - b. the Questioning of Crown Staff;
 - c. advice had been received that it would be prudent to limit travel of senior executives to mainland China before the China Arrests; and
 - d. the CCTV Program.
- 136** The August 2017 Presentation did not make reference to the article provided by the Mintz Group to Crown on 1 October 2013 (discussed in Part Two above), which indicated that the aggressive stance taken by Chinese authorities against foreign companies was not ‘business as usual’. It also did not refer to the July 2013 advice from the Mintz Group (discussed in Part Two above) regarding the underlying challenges of doing business in China, including ‘systemic lack of transparency, inconsistent application of fairness and uneven accountability under the rule by law’, and that foreign companies ‘must enter with full anticipation of a lack of transparency, fairness and accountability’ under China’s laws.
- 137** While Preston may have believed the content of the August 2017 Presentation to have been accurate, at the time he delivered that presentation, there were individuals holding senior roles within CRL and (or) the Burswood entities, including Felstead, who were aware:
- a. that the crackdown extended to scrutiny of foreign-owned casinos rather than illegal gambling alone;¹⁹⁵
 - b. that advice had been received before the China Arrests that it would be prudent to limit travel of senior executives to mainland China;¹⁹⁶
 - c. of the South Korean Arrests;¹⁹⁷

- d. of the Questioning of Crown Staff;¹⁹⁸
 - e. of the concerns of Crown's China-based staff for their safety;¹⁹⁹
 - f. of Crown's communications about the need to not act in an 'overt' fashion when promoting its gambling business;²⁰⁰
 - g. of Crown's marketing strategy which continued to encourage the China-based staff to make sales budgets;²⁰¹
 - h. of the risk of lack of transparency, fairness and accountability under Chinese law;²⁰² and
 - i. of the risk that the law in China may be enforced inconsistently.²⁰³
- 138** On that basis, the PCRC infers that CRL and (or) some officers of the Burswood entities knew, or knew of facts that would indicate to a reasonable person, that there was a risk that Crown's China-based staff would, if they continued to market gambling at Crown's Australian casinos to Chinese nationals, be detained, arrested, charged or convicted for breaches of China's criminal laws, or purported breaches of China's criminal law (through the lack of consistent, transparent or fair application of the laws).
- 139** The PCRC therefore finds that the August 2017 Presentation was not an adequate communication by Crown to the GWC because it was not open as to the knowledge within Crown of that risk.
- 140** The PCRC also finds that the August 2017 Presentation was not an adequate communication by Crown to the GWC because the statement by Preston that the China Arrests were 'unexpected' was not open, competent or accountable.

2019 Junket Media Allegations

- 141** The **2019 Junket Media Allegations** have been examined in Chapter Six: Junkets.
- 142** The 2019 Junket Media Allegations included an allegation to the effect that Crown knowingly exposed its China-based staff to the risk of breaking Chinese laws through marketing Crown's Melbourne and Perth properties in mainland China.
- 143** In an announcement to the ASX of 30 July 2019, CRL (among other things) denied 'any allegation that it knowingly exposed its staff to the risk of detention or conviction in China'.²⁰⁴

August 2019 Presentation

- 144** On 21 August 2019, Connolly emailed Preston (who was by now the Chief Legal Officer – Australian Resorts), Paul Hulme (the former Gaming & Regulatory Compliance Manager at Perth Casino) and Claude Marais (**Marais**) (General Manager – Legal and Compliance at Perth Casino and employed by BRML),²⁰⁵ requesting Preston to present to the GWC the following week on some of the issues arising from the 2019 Junket Media Allegations.²⁰⁶ Connolly 'specifically request[ed]' that the presentation cover a number of specified topics, including the 'arrangements that were in place to promote and attract players in China and any due diligence processes that were undertaken by Crown in relation to those players and the source of gaming funds'.²⁰⁷ Connolly noted that Preston had 'already provided information to the [GWC] relating to the circumstances leading to the detention of staff'.²⁰⁸
- 145** On 27 August 2019, Preston and Marais, as representatives of the Burswood entities, attended a meeting of the GWC and gave a presentation to its members in response to the 2019 Junket Media Allegations (**August 2019 Presentation**). The August 2019 Presentation has also been examined in Chapter Six: Junkets.

- 146 Preston said that a number of people had input into the presentation to be given to the GWC and it 'would have been a combination of teams from Melbourne and Perth'.²⁰⁹ He confirmed that his teams collated it and that he reviewed the draft presentation when it was prepared for him.²¹⁰ Marais confirmed that he drafted the presentation with support from others, and stated that Preston requested that certain slides in relation to the events leading to the China Arrests be removed as Preston believed they had already been presented to the GWC.²¹¹
- 147 Marais gave evidence to the PCRC that he put together the draft presentation based on materials sent to him by Preston, including previous presentations Preston had provided to other regulators, which included (among other things) information relating to the China Arrests.²¹² He stated further that Preston 'did not require me to, nor did I see my role as being to, review in detail or verify the accuracy of the [m]aterials'.²¹³ Marais also stated that he 'did not have an opportunity to review all the [m]aterials in detail and relied on the [m]aterials as being accurate'.²¹⁴
- 148 Felstead gave evidence that he recalled that Preston gave a presentation to the GWC on the 2019 Junket Media Allegations but did not attend the presentation or have knowledge of the detail of it.²¹⁵ He stated that Preston may have shown him the presentation but did not recall either way.²¹⁶
- 149 Preston said that CRL management and some board members of BL, including Felstead, were aware that the August 2019 Presentation was to be given to the GWC.²¹⁷ However, neither he nor Felstead gave evidence as to whether the specific content of the presentation relevant to the China Arrests was discussed among CRL management. Preston also could not recall who else reviewed the August 2019 Presentation or whether he provided it to a more senior manager for approval before delivering it to the GWC.²¹⁸ It is not clear on the evidence before the PCRC whether Preston had direct knowledge of the circumstances of the China Arrests, or whether Felstead (who did possess that knowledge) imparted that knowledge to Preston or otherwise reviewed the information about the China Arrests prior to delivery of the August 2019 Presentation.
- 150 Barton stated he had no contemporaneous knowledge or understanding of any communications with, representations made to, or disclosure of information to the GWC by Crown with respect to the 2019 Junket Media Allegations.²¹⁹

Information provided

- 151 The presentation, which was led by Preston,²²⁰ was given by way of PowerPoint slides. Preston confirmed he reviewed the slides before the August 2019 Presentation was given, and that the information contained in them reflected his view at that time.²²¹ The evidence of the members of the GWC present at the 27 August 2019 meeting was broadly to the effect that the PowerPoint slides and the minutes of that meeting were an accurate record of the substance of the August 2019 Presentation.²²²
- 152 In the August 2019 Presentation, Crown rejected allegations of illegality or improper behaviours and said it had 'zero tolerance for unlawful activities whether by its staff, contractors or customers'.²²³ Crown assured the GWC that compliance and the integrity of gaming operations had 'always been maintained and are of paramount importance to Crown'.²²⁴
- 153 The PowerPoint slides contained the following statements relevant to the China Arrests:
- a. Crown's promotional activities were 'largely based on personal engagement with known **VVIP** patrons in accordance with legal and government relations advices that Crown took on a regular basis';²²⁵
 - b. 'Directions were given to staff regarding meeting with and engaging with VVIP

- patrons',²²⁶ including to refrain from meeting with more than a few patrons at once, not hand out promotional material that referred to gaming facilities and 'generally keep marketing efforts "low key"';²²⁷
- c. Crown's marketing and promotional activities in China 'were consistent with other domestic and foreign casino operators';²²⁸
 - d. Crown denied allegations in the media reporting that it knowingly broke the law in the way it conducted its operations in China 'in the strongest possible terms';²²⁹
 - e. Crown denied allegations made in a class action against it relating to the China Arrests, that it did not disclose certain risks associated with its China-based activities;²³⁰
 - f. 'At all times Crown understood that its staff were operating in China in a manner which would not involve breaching Article 303', and Crown obtained legal and government relations advice about its operations from reputable and independent experts;²³¹ and
 - g. Crown 'followed its usual due diligence and ['know your customer'] processes in relation to Chinese customers who visited Crown'.²³²
- 154** The August 2019 Presentation also referred to the VCGLR being instructed to 're-examine the matters raised in recent media reporting relating to Crown'.²³³
- 155** As with the August 2017 Presentation, the August 2019 Presentation did not disclose:
- a. the Crackdown on Foreign Casinos Announcement;
 - b. the Questioning of Crown Staff;
 - c. that advice had been received before the China Arrests that it would be prudent to limit travel of senior executives to mainland China; or
 - d. the CCTV Program.
- 156** Further, the August 2019 Presentation did not make reference to the advice received from the Mintz Group in 2013 to the effect that it was not 'business as usual' in China, and that there was a risk of lack of transparency, fairness and accountability under Chinese law and that Chinese law may be enforced inconsistently.
- 157** In its closing written submissions, Crown conceded that it did not address the omissions from the August 2017 Presentation, in the August 2019 Presentation, and that greater care should have been taken when preparing the latter presentation.²³⁴
- 158** Given that Connolly had requested a presentation about Crown's due diligence undertaken in relation to patrons in China and their source of funds, the PCRC concludes that the August 2019 Presentation did not provide an open and accountable description of those processes. The adequacy of the August 2019 Presentation in regard to the source of gaming funds, and the use of specific bank accounts for the depositing of gaming funds, are examined in Chapter Eight: Money Laundering.

Gaming and Wagering Commission's understanding of the August 2019 Presentation

- 159** As discussed in Chapter Six: Junkets, the GWC members gave consistent evidence to the effect that they understood from the August 2019 Presentation that:
- a. Crown categorically refuted all of the 2019 Junket Media Allegations;²³⁵
 - b. the 60 Minutes episode 'Crown Unmasked' concerned Melbourne Casino, and Perth Casino was not subject to similar allegations or risks of money laundering and criminal infiltration;²³⁶

- c. the allegations were largely historic, unsubstantiated, untruthful and, in effect, a 'media beat-up';²³⁷ and
- d. Crown had taken and was taking action to correct the risks, including reviewing their policies, practices and activities around high rollers entering the casino.²³⁸

160 Further, the GWC members gave consistent evidence that they were generally reassured by CRL's ASX announcements and the August 2019 Presentation, that they believed that they were being told the truth, and that they had no reason to question the presentation's accuracy.²³⁹ In particular, Duckworth gave evidence that he was initially sceptical, but Preston was 'extremely persuasive' and he was ultimately convinced by Crown's explanation.²⁴⁰

161 The GWC members also gave consistent evidence that, following the August 2019 Presentation, the GWC determined not to take any action, but to await the outcome of other inquiries.²⁴¹ Duckworth gave evidence that Preston's explanation about the 2019 Junket Media Allegations was at least part of the reason the GWC was persuaded to wait until other inquiries (including the VCGLR China Arrests Investigation) were completed.²⁴²

162 The VCGLR China Arrests Report was published on 19 February 2021.²⁴³ Save for the single reference in the August 2019 Presentation,²⁴⁴ there is no evidence before the PCRC that Crown provided updates to the GWC about the VCGLR China Arrests Investigation.

163 From September 2019, the '[m]atters to be actioned' agenda item in the GWC board papers consistently listed as an action item that Connolly was to monitor the outcome of the VCGLR China Arrests Report.²⁴⁵ Connolly advised GWC members that the VCGLR China Arrests Report had not been released as at November 2019,²⁴⁶ and later undertook to continue to monitor the investigation's progress,²⁴⁷ but there is otherwise no evidence that the GWC were updated on the progress of the VCGLR China Arrests Investigation by the Department.

Findings and conclusions

164 The PCRC concludes that:

- a. the significance of the China Arrests and subsequent convictions of 16 of the 19 staff members were downplayed to the GWC, taking into consideration that those staff were convicted for offences under Chinese law, for work undertaken on behalf of Crown. In addition, at least some of this work was done in the promotion and organisation of gambling at Perth Casino, and 15 of the staff convicted held casino employee licences issued by the GWC;²⁴⁸
- b. at least at the time of the occurrence of the China Arrests in October 2016, an open, honest, competent and accountable casino licensee and (or) its associates ought to have informed the GWC of the circumstances surrounding the arrests;
- c. BNL (as licensee of Perth Casino) and its associates did not do so. The fact that the China-based staff may not have been directly employed by a Burswood entity is not a justification for the deficiencies in the communications with the GWC given that the staff were working, in part, to promote Perth Casino and some of them were licensed by the GWC; and
- d. following the China Arrests, an open, honest, competent and accountable casino licensee and (or) its associates ought to have informed the GWC accurately and fully of the ongoing circumstances related to the welfare and prosecution of the China-based employees. No Crown entity did this. The letter of 4 July 2017 to Connolly substantively complied with the requirements of reg 15 of the CCBILE Regs for the 'Operator' to inform the CCO of the convictions.

- 165** The PCRC therefore finds that Crown did not, between mid-October 2016 and August 2017, adequately communicate to the GWC the facts and circumstances of the China Arrests and their aftermath.
- 166** As to the August 2017 Presentation, the PCRC concludes that:
- a. the increasing risk of detention to Crown’s China-based staff ought to have become apparent to CRL and (or) the Burswood entities, with the occurrence of each of the four escalation events (examined in Part Two);
 - b. CRL and (or) the Burswood entities knew, or knew of facts that would indicate to a reasonable person, that there was a risk that Crown’s China-based staff would, if they continued to market gambling at Crown’s Australian casinos to Chinese nationals, be detained, arrested, charged or convicted for breaches, of China’s criminal laws, or purported breaches through inconsistent application of those laws;
 - c. the risk that Crown’s China-based staff may be detained, arrested, charged or convicted for breaches of China’s criminal laws, or purported breaches through inconsistent application of those laws, could not reasonably have been considered ‘unexpected’;
 - d. the statement to the effect that the China Arrests were ‘unexpected’ was therefore not open or competent;
 - e. a competent, open and accountable licensed casino operator and its close associates would not have made a statement to the effect that the China Arrests were ‘unexpected’ to a casino regulator. Either adequate enquiries were not made of Felstead or, if so, Felstead’s knowledge of the relevant background facts was not effectively conveyed;
 - f. the failure to disclose all of the escalation events, concerns raised by the China-based staff, and the advice received from the Mintz Group to the effect that it was not ‘business as usual’ in China and that there was a risk of lack of transparency, fairness and accountability under Chinese law, was misleading by omission, because the absence of that information reinforced the incorrect statement to the effect that the China Arrests were unexpected from Crown’s perspective; and
 - g. consequently, in delivering the August 2017 Presentation, the Burswood entities and (or) CRL were not open, competent and accountable, and the presentation was misleading by omission.
- 167** For the same reasons, the PCRC concludes that in delivering the August 2019 Presentation, CRL and (or) the Burswood entities were not open, competent and accountable, and the presentation was misleading by omission.
- 168** The PCRC therefore finds that CRL and the Burswood entities did not communicate adequately with the GWC with respect to the August 2017 Presentation and the August 2019 Presentation.
- 169** It was not until late January 2022, after these matters had been raised by the PCRC, that Crown acknowledged to the GWC that there were occasions where Crown’s communications to the GWC fell short of the standard expected of it, that there were inaccuracies or omissions in the August 2017 Presentation and the August 2019 Presentation and that it apologised to the GWC.²⁴⁹
- 170** As to the GWC, the PCRC concludes that:
- a. GWC members were aware of the China Arrests shortly after they happened in October 2016 but did not receive a briefing of any substance until the August 2017 Presentation;

- b. as chair of the GWC and Director General of the Department at the time, Sargeant had a responsibility to ensure the GWC were furnished with accurate and timely information to ensure the GWC could carry out its function as the casino regulator;
- c. Sargeant ought to have insisted that the GWC receive a briefing before the August 2017 Presentation. He did not do so. Equally, the GWC members should have insisted on a more timely and formal response so that they could assess collectively whether in fact there was an issue that required its own independent investigation;
- d. the GWC should have caused inquiries to be made in regard to the welfare of the Crown staff who were arrested and detained in China (15 of whom held licences granted by the GWC) and the nature and lawfulness of the work they performed on behalf of Perth Casino;
- e. while the GWC showed some interest and concern regarding the China Arrests, there was a lack of appreciation of the significance of the issue and its impact on the overall suitability of Crown and the licensee of Perth Casino;
- f. the GWC should have considered the potential adverse impact of the China Arrests on public confidence in the Perth Casino licensee;
- g. the GWC failed to consider that the China Arrests could have an adverse impact on the character and reputation of the Perth Casino licensee, and ultimately undermine its suitability and the public's confidence in it;
- h. the GWC relied on inaccurate and misleading information provided to it by CRL and (or) the Burswood entities in the discharge of its regulatory functions;
- i. the GWC was persuaded to take no action following the August 2019 Presentation and the GWC's decision was influenced by Crown's inaccurate and misleading information that there was little or no substance in the 2019 Junket Media Allegations; and
- j. the reliance by the GWC on the VCGLR China Arrests Investigation was too passive in the circumstances. That was a failure and a risk to the public's confidence in the capability of the regulator to perform its functions.

171 The PCRC therefore finds that the GWC did not act appropriately or effectively in its response to the China Arrests.

Endnotes

- 1 Western Australia, Government Gazette, 'Commission Terms of Reference' No 45 (12 March 2021) 1079 [PCRC.0026.0001.0001] 1080.
- 2 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 16, 419 [38] – [39].
- 3 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 16, 419 [39], 420 [41], 421 – 422 [44] – [50].
- 4 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 420 [41].
- 5 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 421 [45].
- 6 Bergin Report vol 1 [BGN.0001.0001.0001] 293 [281] – [282].
- 7 Bergin Report vol 1 [BGN.0001.0001.0001] 255 [102(a)].
- 8 Bergin Report vol 1 [BGN.0001.0001.0001] 255 – 256 [102(c)].
- 9 Bergin Report vol 1 [BGN.0001.0001.0001] 256 [103].
- 10 Bergin Report vol 1 [BGN.0001.0001.0001] 256 [104].
- 11 Letter from Coonan to Kennedy (22 January 2021) [VCG.0001.0002.3415_R] 5 [2(d)(i)]. Crown accepts that this proposition is literally true but does not accept the implication that a licence was required.
- 12 Bergin Report vol 1 [BGN.0001.0001.0001] 253 [89], 254 [92]; Crown, 'Submissions on the Suitability Review to the Bergin Inquiry' (26 November 2020) [CRL.778.001.0464] 31 – 32 [130].
- 13 Bergin Report vol 1 [BGN.0001.0001.0001] 258 [114].
- 14 Bergin Report vol 1 [BGN.0001.0001.0001] 258 – 259 [114] – [117].
- 15 Bergin Report vol 1 [BGN.0001.0001.0001] 264 [141].
- 16 Bergin Report vol 1 [BGN.0001.0001.0001] 263 – 264 [138]; Email from Chen to O'Connor (25 March 2013) [CRL.545.001.0617_R].
- 17 Bergin Report vol 1 [BGN.0001.0001.0001] 264 [140].
- 18 Bergin Report vol 1 [BGN.0001.0001.0001] 265 [143]; Email from the Mintz Group to Chen (12 July 2013) [CRL.527.001.0568_R].
- 19 Bergin Report vol 1 [BGN.0001.0001.0001] 265 [146].
- 20 Bergin Report vol 1 [BGN.0001.0001.0001] 265 [146].
- 21 BL, agenda papers (17 October 2013 meeting) [CRW.702.001.1477_R]; BL, agenda papers (12 December 2013 meeting) [CRW.702.001.1612_R]; BL, agenda papers (14 February 2014 meeting) [CRW.702.001.1721_R]; BL, agenda papers (4 April 2014 meeting) [CRW.702.001.1922_R]; BL, agenda papers (8 August 2014 meeting) [CRW.702.001.2087_R]; BL, agenda papers (15 October 2014 meeting) [CRW.702.001.2374_R]; BL, agenda papers (9 December 2014 meeting) [CRW.702.001.2504_R]; BL, minutes (29 May 2015 meeting) [CRL.627.001.0617_R]; BL, minutes (7 August 2015 meeting) [CRL.627.001.0622_R]; BL, minutes (3 December 2015 meeting) [CRL.627.001.0626_R]; BL, agenda papers (11 February 2016 meeting) [CRW.703.001.0410]; BL, agenda papers (5 May 2016 meeting) [CRW.703.001.0655_R]; BL, agenda papers (11 August 2016 meeting) [CRW.703.001.0006_R]; Crown, 'Comparison of Crown Perth and Crown Melbourne Corporate Risk Registers' (19 November 2015) [CRW.700.064.2836] 4.
- 22 Bergin Report vol 1 [BGN.0001.0001.0001] 266 [150].
- 23 Bergin Report vol 2 [BGN.0001.0001.0334] 410 – 411 [41].
- 24 Bergin Report vol 1 [BGN.0001.0001.0001] 20 [48].
- 25 Bergin Report vol 1 [BGN.0001.0001.0001] 270 [170].
- 26 Bergin Report vol 1 [BGN.0001.0001.0001] 271 [172].
- 27 Bergin Report vol 1 [BGN.0001.0001.0001] 281 [213]; Bergin Report vol 2 [BGN.0001.0001.0334] 408 [30].
- 28 Bergin Report vol 1 [BGN.0001.0001.0001] 283 [227].
- 29 Bergin Report vol 1 [BGN.0001.0001.0001] 262 [129] – [130], 288 [252].
- 30 Bergin Report vol 1 [BGN.0001.0001.0001] 271 [173].
- 31 Bergin Report vol 1 [BGN.0001.0001.0001] 271 – 272 [176] – [177].
- 32 Bergin Report vol 1 [BGN.0001.0001.0001] 271 [175].
- 33 Bergin Report vol 1 [BGN.0001.0001.0001] 273 – 274 [184] – [185].

34 Bergin Report vol 1 [BGN.0001.0001.0001] 261 [125] – [126], 274 – 275 [187].

35 Bergin Report vol 1 [BGN.0001.0001.0001] 275 [188].

36 Bergin Report vol 1 [BGN.0001.0001.0001] 275 [190].

37 Felstead, Bergin Inquiry, transcript [BGN.0002.0001.1251] 1374 – 1375.

38 Bergin Report vol 1 [BGN.0001.0001.0001] 275 [191] – [192].

39 Bergin Report vol 1 [BGN.0001.0001.0001] 248 – 249 [57]; Crown, presentation (17 March 2015) [CRL.638.001.0029].

40 Bergin Report vol 1 [BGN.0001.0001.0001] 248 – 249 [57] – [58]; Crown, presentation (17 March 2015) [CRL.638.001.0029] 4, 15, 24.

41 Bergin Report vol 1 [BGN.0001.0001.0001] 279 [209].

42 Bergin Report vol 1 [BGN.0001.0001.0001] 281 [213].

43 Bergin Report vol 1 [BGN.0001.0001.0001] 281 [214].

44 Bergin Report vol 1 [BGN.0001.0001.0001] 281 [215].

45 Bergin Report vol 1 [BGN.0001.0001.0001] 281 [217]; Email from Felstead to Johnston (20 June 2015) [CPH.001.242.2798_R].

46 Bergin Report vol 1 [BGN.0001.0001.0001] 281 – 282 [218].

47 Bergin Report vol 1 [BGN.0001.0001.0001] 282 [220].

48 Bergin Report vol 1 [BGN.0001.0001.0001] 283 [224].

49 Bergin Report vol 1 [BGN.0001.0001.0001] 283 [224] – [226].

50 Bergin Report vol 2 [BGN.0001.0001.0334] 411 [43].

51 Bergin Report vol 1 [BGN.0001.0001.0001] 283 [226].

52 Bergin Report vol 1 [BGN.0001.0001.0001] 283 [228] – [229].

53 Bergin Report vol 1 [BGN.0001.0001.0001] 286 [242].

54 Bergin Report vol 1 [BGN.0001.0001.0001] 283 – 284 [230] – [231].

55 Bergin Report vol 1 [BGN.0001.0001.0001] 284 – 285 [232] – [234].

56 Bergin Report vol 1 [BGN.0001.0001.0001] 285 [235] – [236].

57 Bergin Report vol 1 [BGN.0001.0001.0001] 285 [237] – [238], 286 [243].

58 Bergin Report vol 1 [BGN.0001.0001.0001] 285 [238] – [239].

59 Bergin Report vol 1 [BGN.0001.0001.0001] 287 [250] – [251].

60 Bergin Report vol 1 [BGN.0001.0001.0001] 262 [129] – [130], 288 [252].

61 Email from O'Connor to Felstead (15 October 2015) [CRL.545.001.0512_R].

62 Bergin Report vol 1 [BGN.0001.0001.0001] 288 [254].

63 Bergin Report vol 1 [BGN.0001.0001.0001] 288 [252]; Email from Chen to the Mintz Group (14 October 2015) [CRL.522.001.0657_R]; Email from Chen to WilmerHale (14 October 2015) [CRL.545.001.0080_R] 3.

64 Bergin Report vol 1 [BGN.0001.0001.0001] 288 [253].

65 Bergin Report vol 1 [BGN.0001.0001.0001] 288 [255].

66 Bergin Report vol 1 [BGN.0001.0001.0001] 262 – 263 [132] – [133].

67 Bergin Report vol 1 [BGN.0001.0001.0001] 263 [134].

68 Bergin Report vol 1 [BGN.0001.0001.0001] 263 [135].

69 Bergin Report vol 1 [BGN.0001.0001.0001] 289 [256].

70 Bergin Report vol 1 [BGN.0001.0001.0001] 289 [261]; A Grigg and L Murray, 'China tightens controls on moving money overseas', *Australian Financial Review* (online), 21 January 2016 [INQ.100.001.0362].

71 Bergin Report vol 1 [BGN.0001.0001.0001] 289 [262].

72 Bergin Report vol 1 [BGN.0001.0001.0001] 290 [263].

73 Crown, presentation (22 May 2016) [CRL.519.001.0538] 27.

74 Bergin Report vol 1 [BGN.0001.0001.0001] 26 [74].

75 Bergin Report vol 1 [BGN.0001.0001.0001] 249 [59].

76 Bergin Report vol 1 [BGN.0001.0001.0001] 291 [271].

77 Bergin Report vol 1 [BGN.0001.0001.0001] 291 – 292 [273].

78 Bergin Report vol 1 [BGN.0001.0001.0001] 291 [273].

79 Bergin Report vol 1 [BGN.0001.0001.0001] 291 [272].

80 Letter from Preston to Connolly (4 July 2017) [CRW.709.144.2182_R] 1; Letter from the GWC to the PCRC (18 February 2022) [PCRC.0002.0042.0001_R].

81 Bergin Report vol 1 [BGN.0001.0001.0001] 254 [94].

82 Bergin Report vol 2 [BGN.0001.0001.0334] 496 – 497 [18] – [19].

83 Bergin Report vol 2 [BGN.0001.0001.0334] 406 [19].

84 Bergin Report vol 1 [BGN.0001.0001.0001] 196 [4].

85 Bergin Report vol 2 [BGN.0001.0001.0334] 557 [84].

86 Bergin Report vol 1 [BGN.0001.0001.0001] 294 [288].

87 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [75].

88 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [77].

89 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [77].

90 Bergin Report vol 2 [BGN.0001.0001.0334] 510 [81].

91 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [79].

92 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [72].

93 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [72]; Felstead, transcript [TRA.0001.0001.0001] 2110 – 2111.

94 Bergin Report vol 2 [BGN.0001.0001.0334] 543 – 544 [9].

95 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [72].

96 Bergin Report vol 2 [BGN.0001.0001.0334] 347 [34].

97 Bergin Report vol 2 [BGN.0001.0001.0334] 510 [81].

98 Bergin Report vol 2 [BGN.0001.0001.0334] 555 [72].

99 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [77].

100 Bergin Report vol 2 [BGN.0001.0001.0334] 556 [78].

101 Bergin Report vol 1 [BGN.0001.0001.0001] 295 [297].

102 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 419 [39].

103 Poynton, witness statement [WIT.0009.0002.0001_R] [79] – [82]; Poynton, transcript [TRA.0001.0001.0001] 1460; Poynton, Bergin Inquiry, transcript [BGN.0002.0001.3332] 3378; Roberts, witness statement [TAR.0001.0001.0001_R] 10; Roberts, transcript [TRA.0001.0001.0001] 1670 – 1672.

104 Bergin Report vol 1 [BGN.0001.0001.0001] 271 [175] – [176]; Crown, 'Submissions on the Suitability Review to the Bergin Inquiry' (26 November 2020) [CRL.778.001.0464] 23 [89(a)].

105 Bergin Report vol 1 [BGN.0001.0001.0001] 281 – 282 [214] – [215], [218] – [221].

106 Felstead, transcript [TRA.0001.0001.0001] 2128 – 2130; Letter from McNally and Co to the PCRC (5 August 2021) [PCRC.0002.0017.0001] 5 – 7. There is no direct evidence that Felstead was aware of the CCTV Program but given that he was forwarded Chen's email of 15 October 2015 and subsequently received the legal advice that Chen requested as a result of the CCTV Program, the PCRC is satisfied that he did know about it.

107 Felstead, transcript [TRA.0001.0001.0001] 2127.

108 Felstead, transcript [TRA.0001.0001.0001] 2127.

109 Felstead, transcript [TRA.0001.0001.0001] 2127.

110 Felstead, transcript [TRA.0001.0001.0001] 2128.

111 Felstead, transcript [TRA.0001.0001.0001] 2132.

112 Felstead, transcript [TRA.0001.0001.0001] 2128.

113 Felstead, transcript [TRA.0001.0001.0001] 2130 – 2131.

114 Letter from McNally and Co to the PCRC (5 August 2021) [PCRC.0002.0017.0001] 2 – 3.

115 Felstead, witness statement [WIT.0011.0002.0001_R] [153].

116 BL, agenda paper (14 December 2016 meeting) [CRW.703.001.0543_R] 86.

117 BL, minutes (14 December 2016 meeting) [CRL.627.001.0494_R] 4.

118 BL, minutes (13 February 2015 meeting) [CRL.627.001.0612_R]; BL, minutes (29 May 2015 meeting) [CRL.627.001.0617_R]; BL, minutes (7 August 2015 meeting) [CRL.627.001.0622_R]; BL, minutes (3 December 2015 meeting) [CRL.627.001.0626_R]; BL, minutes (11 February 2016 meeting) [CRL.627.001.0630_R]; BL, minutes (5 May 2016 meeting) [CRL.627.001.0634_R]; BL, minutes (11 August 2016 meeting) [CRL.627.001.0578_R]; BL, minutes (16 February 2017 meeting) [CRL.649.001.3000_R].

119 Poynton, transcript [TRA.0001.0001.0001] 1460; Barton, transcript [TRA.0001.0001.0001] 2338 – 2339, 2368.

120 Bergin Report vol 1 [BGN.0001.0001.0001] 254 [96].

121 Roberts, transcript [TRA.0001.0001.0001] 1670 – 1674; Roberts, witness statement [TAR.0001.0001.0001_R] 10.

122 Barton, witness statement [WIT.0012.0001.0001_R] [108].

123 Poynton, witness statement [WIT.0009.0002.0001_R] [73] – [74].

124 Poynton, transcript [TRA.0001.0001.0001] 1474 – 1475.

125 Poynton, transcript [TRA.0001.0001.0001] 1475.

126 Poynton, transcript [TRA.0001.0001.0001] 1475.

127 Roberts, witness statement [TAR.0001.0001.0001_R] 10.

128 Roberts, transcript [TRA.0001.0001.0001] 1659.

129 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 421 [45].

130 Connolly, transcript [TRA.0001.0001.0001] 327; Sargeant, witness statement [GWC.0003.0019.0039_R] [56]; Duckworth, transcript [TRA.0001.0001.0001] 2995; Fisher, witness statement [GWC.0003.0017.0001_R] [14]; GWC, minutes (25 October 2016 meeting) [GWC.0002.0016.0194_R] 4.

131 Preston, witness statement [JRP.0001.0001.0006_R] [14].

132 DRGL Operations Division, minutes (27 October 2016 meeting) [DLG.8001.0018.6086] 5; DRGL Operations Division, minutes (23 November 2016 meeting) [CRW.700.001.0076_R] 5.

133 Sargeant, witness statement [GWC.0003.0019.0039_R] [56]; Sargeant, transcript [TRA.0001.0001.0001] 3733.

134 Sargeant, transcript [TRA.0001.0001.0001] 3733.

135 Felstead, witness statement [WIT.0011.0002.0001_R] [225].

136 GWC, minutes (22 November 2016 meeting) [GWC.0002.0016.0196]; GWC, minutes (12 December 2016 meeting) [GWC.0002.0016.0200]; GWC, minutes (28 February 2017 meeting) [GWC.0002.0016.0203_R]; GWC, minutes (28 March 2017 meeting) [GWC.0002.0016.0205]; GWC, minutes (26 April 2017 meeting) [GWC.0002.0016.0207]; GWC, minutes (23 May 2017 meeting) [GWC.0002.0016.0220_R]; GWC, minutes (27 June 2017 meeting) [GWC.0002.0016.0208].

137 Duckworth, transcript [TRA.0001.0001.0001] 2996.

138 GWC, minutes (25 July 2017 meeting) [GWC.0002.0016.0210_R] 4.

139 Preston, witness statement [JRP.0001.0001.0006_R] [199].

140 There may have been discussions between officers at Operations Division meetings in this period.

141 Article 303, cl 1 is quoted in translation earlier in this chapter. Article 25 concerns joint crimes.

142 Letter from Preston to Connolly (4 July 2017) [CRW.709.144.2182_R] 1.

143 Letter from Preston to Connolly (4 July 2017) [CRW.709.144.2182_R] 2.

144 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA)* [PUB.0033.0015.0006] reg 15(3).

145 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA)* [PUB.0033.0015.0006] reg 15(4). The definition of ‘Operator’ is an anachronism, and it is unclear which entity or person had the obligation to inform the GWC under reg 15(4).

146 Letter from Preston to Connolly (4 July 2017) [CRW.709.144.2182_R] 2.

147 As Connolly held delegated authority from the GWC to issue licences, the GWC may not have been aware that the arrested staff held licences issued under the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA)* [PUB.0033.0015.0006] reg 8(1).

148 Letter from Preston to Connolly (4 July 2017) [CRW.709.144.2182_R] 1.

149 CRL, ‘Update on Detention of Crown Employees in China’ (ASX Media Release, 26 June 2017) [CRW.709.144.2184].

150 Felstead, witness statement [WIT.0011.0002.0001_R] [225].

151 Email from Preston to Connolly (24 July 2017) [DLG.8001.0008.8046_R].

152 GWC, minutes (25 July 2017 meeting) [GWC.0002.0016.0210_R] 4.

153 DRGL Operations Division, minutes (29 July 2017 meeting) [DLG.0004.0001.0158] 6.

154 Duckworth, witness statement [GWC.0003.0015.0001_R] [20].

155 GWC, minutes (22 August 2017 meeting) [GWC.0002.0016.0211_R] 2.

156 Crown, presentation (22 August 2017) [CRW.801.016.7009] 1 – 6.

157 Crown, presentation (22 August 2017) [CRW.801.016.7009] 5.

158 Crown, presentation (22 August 2017) [CRW.801.016.7009] 5.

159 Crown, presentation (22 August 2017) [CRW.801.016.7009] 6.

160 Crown, presentation (22 August 2017) [CRW.801.016.7009] 6.

161 Crown, presentation (22 August 2017) [CRW.801.016.7009] 11 – 12.

162 Crown, presentation (22 August 2017) [CRW.801.016.7009] 7.

163 Crown, presentation (22 August 2017) [CRW.801.016.7009] 7, 10.

164 Crown, presentation (22 August 2017) [CRW.801.016.7009] 13 – 14.

165 GWC, minutes (22 August 2017 meeting) [GWC.0002.0016.0211_R] 2; Crown, presentation (22 August 2017) [CRW.801.016.7009] 15 – 17.

166 Crown, presentation (22 August 2017) [CRW.801.016.7009] 13.

167 Crown, presentation (22 August 2017) [CRW.801.016.7009] 20.

168 Crown, presentation (22 August 2017) [CRW.801.016.7009] 21.

169 Duckworth, witness statement [GWC.0003.0015.0001_R] [19]; Hayward, witness statement [GWC.0003.0018.0001_R] [21].

170 Sargeant, transcript [TRA.0001.0001.0001] 3762; Duckworth, witness statement [GWC.0003.0015.0001_R] [19]; Ord, transcript [TRA.0001.0001.0001] 106.

171 Hayward, transcript [TRA.0001.0001.0001] 864; Duckworth, transcript [TRA.0001.0001.0001] 1264 – 1266; Duckworth, witness statement [GWC.0003.0015.0001_R] [19]; Ord, transcript [TRA.0001.0001.0001] 106.

172 Duckworth, transcript [TRA.0001.0001.0001] 1264.

173 Duckworth, transcript [TRA.0001.0001.0001] 1265.

174 Hayward, transcript [TRA.0001.0001.0001] 864.

175 Hayward, transcript [TRA.0001.0001.0001] 865.

176 Sargeant, transcript [TRA.0001.0001.0001] 3762.

177 GWC, minutes (22 August 2017 meeting) [GWC.0002.0016.0211_R] 3.

178 Fisher, transcript [TRA.0001.0001.0001] 772; Hayward, transcript [TRA.0001.0001.0001] 863 – 864; Duckworth, transcript [TRA.0001.0001.0001] 1265.

179 Duckworth, transcript [TRA.0001.0001.0001] 1265; Fisher, transcript [TRA.0001.0001.0001] 772.

180 Hayward, transcript [TRA.0001.0001.0001] 865.

181 Connolly, witness statement [MCN.0001.0001.0001_R] [132] – [133]; Sargeant, witness statement [GWC.0003.0019.0039_R] [58]; Sargeant, transcript [TRA.0001.0001.0001] 3734; Duckworth, transcript [TRA.0001.0001.0001] 1285; Fisher, transcript [TRA.0001.0001.0001] 772.

182 Sargeant, transcript [TRA.0001.0001.0001] 3733.

183 Sargeant, transcript [TRA.0001.0001.0001] 3734.

184 DRGL Operations Division, minutes (24 August 2017 meeting) [DLG.8001.0011.4563] 4.

185 Preston, witness statement [JRP.0001.0001.0006_R] [152].

186 Preston, witness statement [JRP.0001.0001.0006_R] [199], [247]; Preston, transcript [TRA.0001.0001.0001] 1833 – 1834.

187 Preston, witness statement [JRP.0001.0001.0006_R] [247].

188 Preston, transcript [TRA.0001.0001.0001] 1834.

189 CRL, 'Rowen Bruce Craigie, Resignation as Director' (22 March 2017) [CRW.707.021.1447_R]; Bergin Report vol 1, [BGN.0001.0001.0001] 129 [16].

190 Felstead, witness statement [WIT.0011.0002.0001_R] [191].

191 BL, agenda papers (1 August 2017 meeting) [CRW.702.001.3579_R]; BL, minutes (1 August 2017 meeting) [CRL.627.001.0498_R]; BL, agenda papers (30 November 2017 meeting) [CRW.703.001.1407_R]; BL, minutes (30 November 2017 meeting) [CRL.627.001.0510_R].

192 Bergin Report vol 1 [BGN.0001.0001.0001] 294 [288]; Crown, 'Submissions on the Suitability Review to the Bergin Inquiry' (26 November 2020) [CRL.778.001.0464] 23 [89(a)].

193 Bergin Report vol 1 [BGN.0001.0001.0001] 281 – 282 [214] – [215], [218] – [221].

194 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 467 [98].

195 Bergin Report vol 1 [BGN.0001.0001.0001] 271 – 272 [176] – [177], 279 – 281 [211] – [212].

196 Bergin Report vol 1 [BGN.0001.0001.0001] 276 [195] – [196]; Bergin Report vol 2 [BGN.0001.0001.0334] 408 [32].

197 Bergin Report vol 1 [BGN.0001.0001.0001] 281 – 282 [214] – [219].

198 Bergin Report vol 1 [BGN.0001.0001.0001] 293 – 294 [287] – [289].

199 Bergin Report vol 1 [BGN.0001.0001.0001] 264 [140].

200 Bergin Report vol 1 [BGN.0001.0001.0001] 295 [302].

201 Bergin Report vol 1 [BGN.0001.0001.0001] 267 – 268 [155] – [159].

202 Bergin Report vol 1 [BGN.0001.0001.0001] 265 [143]; Email from the Mintz Group to Chen (12 July 2013) [CRL.527.001.0568_R].

203 Felstead, transcript [TRA.0001.0001.0001] 2127.

204 CRL, 'Response to Media Reports' (ASX Media Release, 30 July 2019) [CRW.709.029.0196].

205 Marais, witness statement [CRW.998.002.0349_R] [1], [8].

206 Email from Connolly to Preston and others (21 August 2019) [CRW.709.021.4377].

207 Email from Connolly to Preston and others (21 August 2019) [CRW.709.021.4377].

208 Email from Connolly to Preston and others (21 August 2019) [CRW.709.021.4377].

209 Preston, transcript [TRA.0001.0001.0001] 1836.

210 Preston, transcript [TRA.0001.0001.0001] 1836 – 1837.

211 Marais, witness statement [CRW.998.002.0349_R] [146(a)].

212 Marais, witness statement [CRW.998.002.0349_R] [146(a)(ii)] – [146(a)(vi)].

213 Marais, witness statement [CRW.998.002.0349_R] [146(a)(vii)].

214 Marais, witness statement [CRW.998.002.0349_R] [146(a)(vii)].

215 Felstead, witness statement [WIT.0011.0002.0001_R] [232].

216 Felstead, witness statement [WIT.0011.0002.0001_R] [232].

217 Preston, transcript [TRA.0001.0001.0001] 1836 – 1838.

218 Preston, transcript [TRA.0001.0001.0001] 1837.

219 Barton, witness statement [WIT.0012.0001.0001_R] [238].

220 Marais, witness statement [CRW.998.002.0349_R] [146(a)(xii)]; Duckworth, witness statement [GWC.0003.0015.0001_R] [25]; Duckworth, transcript [TRA.0001.0001.0001] 1271; Hodson-Thomas, witness statement [GWC.0003.0013.0067_R] [32] – [33]; Hodson-Thomas, transcript [TRA.0001.0001.0001] 3147.

221 Preston, transcript [TRA.0001.0001.0001] 1836.

222 Hodson-Thomas, witness statement [GWC.0003.0013.0067_R] [32]; Meadows, transcript [TRA.0001.0001.0001] 537; Meadows, witness statement [GWC.0003.0014.0021_R] [37]; Fiorentino, witness statement [GWC.0003.0012.0074_R] [33] – [34]; Duckworth, transcript [TRA.0001.0001.0001] 1269, 1271.

223 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 3.

224 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 3.

225 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 4.

226 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 4.

227 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 12.

228 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 4, 12.

229 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 11.

- 230 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 11.
- 231 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 12.
- 232 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 12.
- 233 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 37.
- 234 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 472 [121].
- 235 Hodson-Thomas, transcript [TRA.0001.0001.0001] 449, 3147; Meadows, transcript [TRA.0001.0001.0001] 536.
- 236 Ord, transcript [TRA.0001.0001.0001] 3428, 3432 – 3433; Fiorentino, witness statement [GWC.0003.0012.0074_R] [37]; Duckworth, witness statement [GWC.0003.0015.0001_R] [26].
- 237 Ord, transcript [TRA.0001.0001.0001] 3428; Duckworth, witness statement [GWC.0003.0015.0001_R] [25]; Duckworth, transcript [TRA.0001.0001.0001] 1272; Hodson-Thomas, transcript [TRA.0001.0001.0001] 449, 3147; Hodson-Thomas, witness statement [GWC.0003.0013.0067_R] [33]; Meadows, transcript [TRA.0001.0001.0001] 536, 538.
- 238 Ord, transcript [TRA.0001.0001.0001] 3428, 3432 – 3433.
- 239 Sargeant, transcript [TRA.0001.0001.0001] 3769; Ord, transcript [TRA.0001.0001.0001] 3428; Hodson-Thomas, witness statement [GWC.0003.0013.0067_R] [33]; Duckworth, witness statement [GWC.0003.0015.0001_R] [25]; Fiorentino, transcript [TRA.0001.0001.0001] 620; Hodson-Thomas, transcript [TRA.0001.0001.0001] 449; Duckworth, transcript [TRA.0001.0001.0001] 1272.
- 240 Duckworth, witness statement [GWC.0003.0015.0001_R] [25]; Duckworth, transcript [TRA.0001.0001.0001] 1272.
- 241 Sargeant, witness statement [GWC.0003.0019.0039_R] [63]; Hodson-Thomas, transcript [TRA.0001.0001.0001] 3148; Fiorentino, witness statement [GWC.0003.0012.0074_R] [37]; Duckworth, witness statement [GWC.0003.0015.0001_R] [26]; Fiorentino, transcript [TRA.0001.0001.0001] 620.
- 242 Duckworth, transcript [TRA.0001.0001.0001] 1272.
- 243 VCGLR, 'Report prepared pursuant to sub-section 24(3) of the *Casino Control Act 1991* (Vic) in respect of an investigation conducted pursuant to sub-sections 24(1) – (2) of the *Casino Control Act 1991* (Vic) into the conviction and sentencing of Crown employees for gambling related offences in the People's Republic of China, in June 2017' (19 February 2021) [VCG.0001.0001.0001] 2.
- 244 Crown, presentation (27 August 2019) [GWC.0001.0009.0001_R] 37.
- 245 GWC, agenda papers (24 September 2019 meeting) [GWC.0002.0016.0287_R] 13; GWC, agenda papers (29 October 2019 meeting) [GWC.0002.0016.0289_R] 12; GWC, agenda papers (26 November 2019 meeting) [GWC.0002.0016.0291_R] 11; GWC, agenda papers (17 December 2019 meeting) ([GWC.0002.0016.0293_R] 13; GWC, agenda papers (25 February 2020 meeting) [GWC.0002.0016.0296_R] 10; GWC, agenda papers (28 April 2020 meeting) [GWC.0002.0016.0298_R] 18; GWC, agenda papers (26 May 2020 meeting) [GWC.0002.0016.0300_R] 18; GWC, agenda papers (23 June 2020 meeting) [GWC.0002.0016.0302_R] 13; GWC, agenda papers (28 July 2020 meeting) [GWC.0002.0016.0306_R] 11; GWC, agenda papers (25 August 2020 meeting) [GWC.0002.0016.0310] 14; GWC, agenda papers (22 September 2020 meeting) [GWC.0002.0016.0314_R] 14; GWC, agenda papers (27 October 2020 meeting) [GWC.0002.0016.0319_R] 13; GWC, agenda papers (24 November 2020 meeting) [GWC.0002.0016.0334_R] 11, 13; Hodson-Thomas, witness statement [GWC.0003.0013.0067_R] [36].
- 246 GWC, minutes (26 November 2019 meeting) [GWC.0002.0016.0292] 2.
- 247 GWC, minutes (25 February 2020 meeting) [GWC.0002.0016.0297_R] 2.
- 248 The PCRC bases this conclusion on the information in Preston's letter to Connolly of 4 July 2017. The status of those staff members, as licensed by the GWC, has not yet been confirmed by the GWC.
- 249 Letter from Switkowski and McCann to Chopping (18 January 2022) [CRW.701.011.8744_R] 1; Crown, 'Reply Submissions of the Crown Entities' (27 January 2022) [CRW.000.001.0694] 22 [73], 23 [80].

CHAPTER 8

Money Laundering

CHAPTER EIGHT

Money laundering

Part One: Context for the examination of money laundering

Purpose of Chapter

- 1 This chapter examines:
 - a. the regulatory framework;
 - b. regulation and oversight by the Gaming and Wagering Commission (**GWC**); and
 - c. the governance and risk management by Crown Resorts Limited (**CRL**) and, in particular, Burswood Limited (**BL**), Burswood Nominees Limited (**BNL**) and Burswood Resort (Management) Limited (**BRML**) (together, the **Burswood entities**), relevant to the mitigation of the risk that the organisation and conduct of gaming operations at Perth Casino may be used by criminals for the purpose of money laundering independent of junkets.
- 2 ToR 8 requires the **PCRC** to inquire into the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address certain extant and emerging strategic risks, including in relation to money laundering.¹
- 3 Money laundering through Australian casinos has been associated with organised crime.² Money laundering is itself a crime and often involves dealing with the financial proceeds of other crimes. Casinos may be used to facilitate money laundering by criminals ranging from individuals operating in the cash economy to avoid tax, to those involved in serious organised crime involving, for example, drugs, weapons, extortion and modern slavery.³
- 4 The risk of the gaming operations of Perth Casino being used to facilitate money laundering is, therefore, a focus for regulation as a strategic risk to the attainment of the objectives of casino regulation:
 - a. to ensure the socially responsible, lawful and efficient operation of Perth Casino and casino gaming at Perth Casino; and
 - b. to maintain the confidence and trust of the public of Western Australia in the credibility, integrity and stability of gaming operations at Perth Casino.
- 5 The risk to the organisation and conduct of gaming operations at Perth Casino posed by junkets, including money laundering and criminal infiltration is examined in Chapter Six: Junkets. Money laundering and criminal influence are extant strategic risks to casino operations and the regulatory regime has been devised with that in sight.⁴ Consequently, the GWC's regulation and oversight of that strategic risk is an appropriate subject of inquiry by the PCRC pursuant to ToR 9 and ToR 10.⁵
- 6 An assessment of the management by or on behalf of the Perth Casino licensee of the strategic risk associated with money laundering also bears relevantly on the assessment of suitability that the PCRC is required to undertake pursuant to ToRs 1 to 5.⁶
- 7 Separately, and in the context of the examination by the Bergin Inquiry of Crown's facilitation of money laundering, this chapter also examines the adequacy of

communications by or on behalf of Crown with the GWC on the subject matter of money laundering, as required by ToR 6.⁷

- 8 This chapter contains the following parts:
- a. Part One provides some background context for the matters that are the subject of examination in the balance of the chapter, as well as an explanation of some terms and concepts and the PCRC's general approach relevant to that examination.
 - b. Part Two examines the regulatory framework relevant to money laundering.
 - c. Part Three examines how the GWC has regulated money laundering risks at Perth Casino.
 - d. Part Four examines Perth Casino's management of its money laundering risks between 2010 and 2019.
 - e. Part Five examines communications between Crown and the GWC about money laundering.
 - f. Part Six examines the adequacy of Perth Casino's current system to manage money laundering risks.
 - g. Part Seven examines Crown's path ahead for management of money laundering risks at Perth Casino.

Explanation of some relevant concepts and terms

Money laundering and terrorism financing

- 9 The term 'money laundering' in ordinary parlance describes the process by which the origins of the proceeds of crime are disguised. As money laundering is a crime and, given that money laundering hinders identification of other crimes and criminals, anti-money laundering laws support crime prevention and assist in the enforcement of the law against persons engaging in other illegal activities.
- 10 Casino operations are particularly vulnerable to the risk of money laundering because of the cash-intensive nature of the business and the array of financial services made available to casino patrons. Such services include accepting funds on account, conducting money exchange, providing stored value services and providing credit to international patrons.⁸ Casinos also provide the opportunity for patrons to use illegally obtained funds to gamble and to claim alleged winnings as clean money.
- 11 Terrorism financing includes the financing of terrorists and of terrorists' acts. Funding can come from legitimate sources, as well as from illegal activities. Money laundered at Australian casinos could be used to finance terrorism. While terrorism financing risks in casinos are not as common as money laundering, as cash intensive businesses, and highly populated venues, the potential exposure to such risks remain.⁹
- 12 Against this background, money laundering and terrorism financing (**ML/TF**) risk may be understood as the risk that an entity may reasonably face when the provision of a service they provide might (whether inadvertently or otherwise) involve or facilitate money laundering or the financing of terrorism.¹⁰
- 13 Given that there is a considerably greater risk that a casino will be used by criminals to engage in money laundering, rather than to facilitate the financing of terrorism, this chapter will focus on money laundering.¹¹ However, as money laundering is engaged in for many reasons, including to enable terrorism, the risk of terrorism financing is mitigated by effective anti-money laundering measures.

- 14** Money laundering in a casino environment typically involves three distinct stages:¹²
- a. *Placement* - Introducing illegal funds. Examples of placement include depositing illicit cash into a patron's casino account, or using it to repay casino debt, buy chips or to feed into electronic gaming machines (**EGMs**).
 - b. *Layering (concealment of origins)* – Concealing the origin of the funds through activities which aim to obfuscate their source by separating the funds from their source, including by the elapse of time. Examples of layering include 'parking' funds in casino accounts, removing chips from the casino and then cashing out those chips at a later time, and using international funds transfers to patron accounts to create geographic distance between funds and their source.
 - c. *Integration (funds appear to have been legitimately acquired)* – The return of the funds to the launderer in a form which is difficult to distinguish from legitimate funds. Examples of integration include:
 - i. cashing into chips or EGM credits and cashing out with minimal play;
 - ii. intentional losing in peer to peer games such as poker where illicit funds are lost to the benefit of a single player who then cashes out the winnings for a cheque or bank transfer; or
 - iii. cashing out ticket in ticket out vouchers, credits or chips acquired with low denomination notes for high denomination notes.
- 15** Anti-money laundering (**AML**) techniques aim to disrupt the placement/layering/integration flow. At a casino, techniques are generally centred around:
- a. know your customer (**KYC**) – a process of gathering information and intelligence on customers so that the casino knows with whom it is dealing, can identify and assess behaviours and transactions by individuals as unusual or suspicious in the context of that knowledge and can exclude persons who present a high risk of criminal infiltration;
 - b. cash controls – limiting the cash flowing into and out of the casino;
 - c. controlling non-cash funds movements – receiving and paying funds only and directly to the patron who has been subject to KYC;
 - d. transaction monitoring - capturing data on transactions and reviewing them for the purpose of identifying patterns of behaviour which may be suspicious; and
 - e. reporting those transactions and behaviours that appears to be suspicious as a Suspicious Matter Report (**SMR**), as discussed further below.¹³
- 16** It is useful to mention some other concepts, as they will be referred to later in this chapter:
- a. *Structuring* - the practice of deliberately splitting what could be a single cash transaction¹⁴ into several smaller transactions, each of which is less than \$10,000 individually but which collectively equal or exceed \$10,000. Cash transfers of \$10,000 or more constitute 'threshold transactions' which must be reported to the Australian Transaction Reports and Analysis Centre (**AUSTRAC**). Transactions are structured to try and avoid the reporting obligations. It is an offence to structure transactions for the purpose of ensuring that the relevant transfer does not give rise to a threshold transaction.¹⁵
 - b. *Smurfing* – a money laundering process which involves numerous third parties conducting transactions on behalf of criminals. Large cash amounts are broken into multiple smaller amounts and then given to third parties to deposit in accounts held in different financial institutions. These third parties may be complicit or unwittingly involved in this money laundering activity.¹⁶

- c. *Cuckoo smurfing* - a money laundering process whereby a legitimate payment is intercepted by international money remitters and replaced with a deposit of illicit funds. Cuckoo smurfing is facilitated by professional money laundering syndicates that work with a corrupt remitter based overseas. The corrupt remitter:
- i. accepts an instruction from a customer to make a payment to an Australia-based non-complicit beneficiary customer; and
 - ii. appropriates the money transfer coming into Australia in order to place funds that are sourced from criminal activity into the Australia-based beneficiary account.
- d. generally, the beneficiary customer receiving the funds is expecting legitimate funds to be deposited into their account and is not aware that the funds transferred are the proceeds of crime.¹⁷
- 17** The language of AML and 'counter-terrorism financing' (**CTF**) is used to denote legal and regulatory frameworks, systems, processes and other initiatives intended to respond to the fact and threat of money laundering and terrorism financing.
- 18** The *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) is discussed in Part Two of this chapter, but it is useful to note at this point the following terms:
- a. a 'reporting entity' is an entity which provides 'designated services'.¹⁸ A reporting entity has various obligations, including obligations to make various reports to AUSTRAC, under the Australian AML/CTF regulatory framework. BNL as the holder of the Perth Casino licence is a 'reporting entity'; and
 - b. there are a range of 'designated services' detailed in the AML/CTF Act, including various 'gambling services' which a casino provides to patrons.

Risk management

- 19** In the AML/CTF context, the risk management focus is upon the extent to which a reporting entity is identifying, managing and mitigating ML/TF risk.
- 20** It may be difficult to eliminate all instances of ML/TF in an organisation. According to the Financial Action Task Force (**FATF**), an inter-governmental body whose purpose is to develop and promote implementation of international AML and CTF standards:¹⁹
- A reasonably designed and effectively implemented risk-based approach will provide an appropriate and effective control structure to manage identifiable money laundering and terrorist financing risks. However, it must be recognised that any reasonably applied controls, including controls implemented as a result of a reasonably designed and effectively implemented risk-based approach, will not identify and detect all instances of money laundering or terrorist financing.
- 21** The use of a three lines of defence model in the context of corporate governance and risk management is discussed in Appendix E: Corporate Governance Theory. Although Crown is presently evolving to a three lines of defence model,²⁰ it is useful to consider Crown's previous approach to the identification and management of ML/TF risk broadly by reference to the components of such a model in a casino. In relation to ML/TF risk, the three lines of defence model has the following characteristics.²¹
- 22** The first line of defence lies with a reporting entity's business units which includes units involved with customer facing activities. These units identify ML/TF risks and implement controls to mitigate those risks. At Perth Casino, the most significant business unit in the first line is the cage. The role of the cage is discussed below. Staff running other 'on the floor' operations, such as table games and EGMs, are also considered to be part of the first line of defence.

- 23 The function of the second line of defence is to oversee and assist the first line of defence. It provides tools, structures, advice, guidance and support to the first line to enable the first line to appropriately manage ML/TF risk.²² At Perth Casino, the second line includes the AML Compliance Officer and the AML team.
- 24 The third line of defence provides independent assurance that the first and second lines are operating effectively to manage risk. At Perth Casino, this line is provided by the internal audit team and external audit.

The cage

- 25 The cage is the bank of a casino. It is responsible for managing the monetary transactions between patrons and the casino in relation to gaming. At its simplest, the cage is where a patron can exchange money for chips or chips for money.²³ The cage is a particular focus for ML/TF risk identification and management because it is the place where the majority of a casino's financial transactions take place or are processed.
- 26 The cage is a key part of the first line of defence in managing ML/TF risk at a casino.

SYCO

- 27 SYCO is presently Crown's approved casino management software system. SYCO records details pertaining to patron data and a patron's gaming activity generally such as games played, turnover, amounts deposited and amounts paid out.²⁴

Relevant background

- 28 Relevant to the discussion in this chapter are events relating to suspicions or allegations of apparent money laundering through the bank accounts of Crown subsidiaries, Southbank Investments Pty Ltd (**Southbank**) and Riverbank Investments Pty Ltd (**Riverbank**).²⁵ These allegations, among other circumstances, precipitated the Bergin Inquiry, which was then followed by a period of significant change for Crown, particularly in relation to the identification and management of ML/TF risk.
- 29 Many of the key findings made in the Bergin Inquiry and the Royal Commission into the Casino Operator and Licence (inquiry into the suitability of Crown Melbourne Limited to hold a casino licence) (**RCCOL**) in relation to the past management of the ML/TF risk were in respect of the Riverbank (and Southbank) bank accounts.

Riverbank

- 30 Riverbank was incorporated on 15 May 2003. It is a subsidiary of BL with Perth Casino executives being the past and present directors.²⁶ Riverbank's sole function was to operate bank accounts²⁷ to receive funds from patrons who did not wish to disclose that the deposited funds were to be used for gambling at Perth Casino.²⁸
- 31 Riverbank originally held a number of patron deposit bank accounts with the HSBC Bank Australia (**HSBC**). Those accounts were closed in 2013, when the HSBC ceased offering banking services to the global gaming sector.²⁹ Perth Casino sought another banker with whom to do business.
- 32 The Australia and New Zealand Banking Group (**ANZ**) Riverbank accounts were opened in about April 2013.³⁰ On 31 January 2014, ANZ first raised concerns with CRL regarding regarding multiple cash deposits indicative of structuring occurring within Riverbank's account.³¹ On 1 July 2014, ANZ closed the Riverbank accounts.³²

- 33** The Commonwealth Bank (**CBA**) Riverbank accounts were opened in March and November 2014.³³
- 34** Between December 2018 and February 2019, CBA raised issues regarding the mitigation and management of ML/TF risk by Southbank and Riverbank.³⁴ On 27 August 2019, following the media allegations about the Southbank and Riverbank accounts and the commencement of the Bergin Inquiry, CBA told Crown that the issues identified in the media allegations had raised red flags and that an investigation of the Southbank and Riverbank accounts had identified information that CBA could not share with Crown, thereby telegraphing to Crown CBA's concerns that the accounts had been used for money laundering.³⁵
- 35** In August 2019, Louise Lane (**Lane**), Crown former Group General Manager of AML, identified some suspicious transactions in the Southbank accounts and recommended to Joshua Preston (**Preston**), the former Perth Casino's AML/CTF Compliance Officer, that an independent third party review transactions on the Southbank and Riverbank accounts. That recommendation was not implemented until late 2020.³⁶
- 36** On 4 October 2019, CBA formally gave notice to CRL of the impending closure of the Southbank and Riverbank accounts.³⁷ The accounts were officially closed on 3 December 2019.³⁸
- 37** Since December 2019, neither Riverbank nor Southbank has operated a bank account. Instead, the only patron accounts for Crown's gaming operations have been the bank accounts in the name of the respective licensees.³⁹
- 38** In November 2020, Crown obtained reports from external AML experts, Grant Thornton and Initialism, identifying various types of transactions, indicative of money laundering in the bank accounts of Southbank and Riverbank.⁴⁰ This activity was found to have continued in the CBA Riverbank account from May 2014 to July 2017.⁴¹

Media allegations

- 39** Relevant to ML/TF risk, the following allegations appeared in the media in July and August 2019:
- a. on 27 July 2019, the Sydney Morning Herald and the Age published an article entitled 'Crown Unmasked – Gangsters, gamblers and Crown casino: How it all went wrong', which referred to money laundering, junkets and connections to organised crime (among other issues).⁴² The following day, on 28 July 2019, the 60 Minutes program broadcast an episode entitled 'Crown Unmasked'.⁴³ That episode contained allegations of a similar nature to those referred to in the newspaper articles of the preceding day. These publications were followed by numerous newspaper articles (**2019 Junket Media Allegations**).⁴⁴
 - b. on 5 August 2019, the Sydney Morning Herald and the Age published an article entitled 'Crown investments companies were used to launder drug funds, authorities believe'.⁴⁵ Between 27 July 2019 and mid-August 2019, 'numerous' newspaper articles were published, referring to the 2019 Junket Media Allegations and also to allegations of money laundering through the bank accounts of Southbank and Riverbank.⁴⁶
- 40** The substance of the allegations contained in the Sydney Morning Herald and the Age articles published on 5 August 2019 was to the effect that bank accounts of Riverbank and Southbank were used to launder suspected proceeds of crime.⁴⁷ These allegations included an allegation that multiple deposits were made by a Chinese cocaine trafficker in June 2015 and that money remitting agents engaged in money laundering deposited funds into the bank accounts.⁴⁸ Further, that police arrested a known money launderer in early 2014 that resulted in the discovery of deposit slips for Riverbank.⁴⁹

- 41 The apparent money laundering through the Riverbank accounts and the media allegations are discussed in more detail in Parts Four and Five of this chapter.

PCRC's approach

- 42 Crown's management of its money laundering risks through the Riverbank and Southbank accounts was comprehensively examined in the Bergin Inquiry. Oral evidence (including evidence given under cross-examination) was taken from Crown witnesses about the relevant events and their involvement in those events.
- 43 As noted in paragraph 4 of the Recitals, PCRC's Commission the Bergin Inquiry found that CRL facilitated money laundering through the accounts of Southbank and Riverbank unchecked and unchanged in the face of warnings from its bankers.⁵⁰
- 44 Following the Bergin Inquiry, the RCCOL identified Crown Melbourne Limited's (**CML**) management and mitigation of its money laundering risks as a 'particular area of interest'. CML recognised that its ability in this area was central to the RCCOL's assessment of its suitability to continue to hold a casino licence.⁵¹
- 45 The RCCOL found, among other things, that Crown facilitated money laundering through the Southbank account and failed to investigate warnings about potential money laundering. It found that CML did not have sufficiently robust systems to detect and deter money laundering and was uncertain whether and when it will have such systems.⁵²
- 46 The Bergin Report made a number of findings in respect of the management of ML/TF risk. CRL and CML made numerous concessions to the Bergin Inquiry and the RCCOL which are referenced in this chapter. Further concessions have been made by Crown to the PCRC.
- 47 Paragraph (d) of the operative part of the PCRC's Commission stipulates that the PCRC is not required to inquire into a particular matter to the extent that it is satisfied that the matter has been sufficiently and appropriately dealt with by another inquiry, investigation or proceeding.⁵³
- 48 Against this background, the PCRC has limited its own inquiry into Crown's past systems and practices to manage money laundering risk to matters related to the operation of Perth Casino and the directors of and senior managers working in respect of the Burswood entities, with a focus on those matters which have not been addressed by either the Bergin Inquiry or the RCCOL.
- 49 For the purpose of its conclusions in this chapter, the PCRC has relied on findings and conclusions made by other inquiries insofar as they are the subject of concessions by Crown. The PCRC otherwise relies upon relevant findings and conclusions in other inquiries to provide background and context for its own factual analysis, conclusions and findings.
- 50 As discussed in Chapter One: Subject Matter of Inquiry and Terms of Reference, past conduct can be relevant to an assessment of suitability. As is examined in this chapter, in the context of the management of money laundering risk at Perth Casino, past conduct has been characterised by the inadequate practices of individuals responsible for managing and overseeing the management of that risk and by systems which were inadequate for the task at hand. The identification of these deficiencies and an assessment of whether they have now been sufficiently addressed by Crown and, more particularly, the Burswood entities, is therefore directly relevant to the issue of present suitability.

PCRC AML experts

- 51 The PCRC engaged two AML/CTF experts for the purpose of this inquiry:
- a. McGrathNicol Advisory, led by Robyn McKern; and

- b. Murray Waldren Consulting, led by Rachel Waldren. (together, the **PCRC AML experts**).
- 52** The PCRC AML experts were asked to address different but complementary scopes of work, and they produced a report in three volumes:
- Volume A: Joint Report containing the common background information and an executive summary of each of the McGrathNicol and Murray Waldren reports;
 - Volume B: the Murray Waldren report addressing the Murray Waldren scope; and
 - Volume C: the McGrathNicol report addressing the McGrathNicol scope, (referred to as the **PCRC AML experts report**).⁵⁴
- 53** McGrathNicol's scope was to review, test and evaluate the efficacy of policies, processes and controls for the identification, management and mitigation of ML/TF risk at Perth Casino. Murray Waldren's scope was to evaluate the AML/CTF compliance program that was in place at Casino at the time of the report and to comment on the nature of any material deficiencies in that program.
- 54** The PCRC AML experts reviewed documents provided to them by the PCRC, which were obtained from Crown by way of notices to produce. Additional information was obtained through interviews conducted jointly by Murray Waldren and McGrathNicol, and survey and focus groups conducted by McGrathNicol.
- 55** McGrathNicol interviewed focus groups made up of a selection of Perth Casino 'on the floor' staff and AML team staff in October 2021. During October 2021, McGrathNicol also procured a survey issued of Perth Crown staff issued with a casino employee licence under the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA) (CCBILE Regs)*. The results of the focus group interviews and the survey are set out in Appendix O.

Part Two: Regulatory frameworks relevant to money laundering

Criminal Code Act (Cth) 1995

- 56** Chapter 10, Part 10.2, Division 400 of the *Criminal Code Act 1995 (Cth)* prohibits money laundering. It is also an offence if a person deals with money or other property, and it is reasonable to suspect that the money or property is the proceeds of indictable crime.⁵⁵
- 57** A person commits the crime of money laundering by receiving or possessing the proceeds of crime, or what might reasonably be suspected to be the proceeds of crime.⁵⁶ The offence is committed by receiving the proceeds of crime before those proceeds are attempted to be concealed.⁵⁷ The criminal offence differs from, and is broader than, the ordinary meaning of the term money laundering, which primarily relates to the act of concealing the proceeds of crime.

Anti-Money Laundering and Counter-Terrorism Financing legislation

Reporting entities and designated services

- 58** The AML/CTF Act and Rules (**AML/CTF Rules**) aim to prevent money laundering, the financing of terrorism and other serious crimes by imposing a number of obligations on 'reporting entities', being businesses which provide designated services.⁵⁸

- 59 The AML/CTF Act contains an extensive list of designated services which pose a ML/TF risk, and includes the provision of various 'gambling services'.⁵⁹ An Australian casino is a reporting entity as it provides one or more of these gambling-related designated services in Australian premises.
- 60 The AML/CTF Act also contains a number of offences related to money laundering. Some of these are directed at the conduct of the providers of designated services and some are directed at the conduct of suspected money launderers. An example of the first type of offence is providing a designated service using a false customer name.⁶⁰ An example of the second type of offence is structuring so as to avoid threshold reporting requirements.⁶¹ A provider of a designated service could be convicted of an offence of the second type as a party to the offence.
- 61 AUSTRAC is responsible for ensuring reporting entities comply with their obligations under the AML/CTF Rules and collects and analyses financial reports and information to generate financial intelligence.⁶²

Reporting entity's reporting obligations

- 62 BNL is a reporting entity for the purposes of the AML/CTF Act.⁶³
- 63 A reporting entity has a number of reporting obligations under the AML/CTF Act.
- 64 A reporting entity must give AUSTRAC an SMR about a 'suspicious matter' in relation to a person to whom the reporting entity is providing or proposes to provide a designated service.⁶⁴ In summary, a suspicious matter arises where the reporting entity suspects:
- a. a person is not who they claim to be;
 - b. information that the entity has may be:
 - i. relevant to an investigation or prosecution of a person for tax evasion or some other offence; or
 - ii. of assistance in the enforcement of the proceeds of crime legislation; or
 - c. the provision of the service relates to a terrorism financing offence or a money laundering offence.⁶⁵
- 65 A SMR is to be provided to AUSTRAC within either 24 hours or three business days of forming the relevant suspicion, depending on the matter.⁶⁶
- 66 If a reporting entity provides a designated service that involves a 'threshold transaction', the reporting entity must give AUSTRAC a report about the transaction.⁶⁷ This is called a 'threshold transaction report' (**TTR**). A threshold transaction means a transaction involving the transfer of physical currency where the total amount transferred is not less than \$10,000.⁶⁸
- 67 If a person sends or receives an international funds transfer instruction (**IFTI**), the person must give AUSTRAC a report about the instruction.⁶⁹ An IFTI is an instruction to transfer money or property to either Australia from another country or another country to Australia.⁷⁰
- 68 The statutory obligations to lodge SMRs, TTRs and IFTIs are the obligations of the entity which is providing the relevant designated services. A reporting entity may have appointed an agent to discharge one or more of the reporting obligations on its behalf, but the reporting entity remains the subject of the obligations and will be responsible for the actions of the agent.⁷¹ Similarly, a reporting entity may have appointed an agent to provide one or more of its designated services, but the reporting entity remains responsible for discharging its reporting obligations.
- 69 A reporting entity must, usually annually, give AUSTRAC a report relating to the reporting

entity's compliance with the AML/CTF legislation.⁷² If the reporting entity is a member of a 'designated business group' (**DBG**), this reporting obligation may be discharged by another member of the group.⁷³ The 'DBG' concept is discussed further below.

Anti-money laundering and counter-terrorism financing program

- 70** A cornerstone of the AML/CTF legislation is the requirement for reporting entities to adopt and maintain an AML/CTF program before they provide any designated services.⁷⁴ The reporting entity can either adopt a 'standard' AML program, which applies to only one reporting entity, or a 'joint' AML program which applies to each reporting entity that from time to time belongs to a particular DBG.⁷⁵
- 71** An AML/CTF program needs to be designed to identify, mitigate and manage the reporting entity's ML/TF risks, such as by establishing systems, training staff in relation to those systems, and monitoring whether the systems are being observed and are effective.⁷⁶ The program must be based upon and informed by the entity's risk assessment.⁷⁷
- 72** The AML/CTF program must be composed of a Part A and a Part B and address matters prescribed by the legislation.⁷⁸
- 73** The purpose of Part A is to assist the reporting entity to identify, mitigate and manage its ML/TF risks.⁷⁹ In essence, the Part A program explains where an entity has assessed its greatest ML/TF risk and directs how it applies its resources to mitigate that risk.⁸⁰
- 74** Part B sets out the verification of identity/KYC procedures that must be applied to each customer before the reporting entity provides any designated services to that customer.⁸¹

Money laundering and terrorism financing risk assessment

- 75** The AML/CTF legislation contemplates that a reporting entity will identify and assess its ML/TF risks prior to designing and maintaining its AML/CTF program. This risk assessment underpins the AML/CTF program.⁸²
- 76** In identifying its ML/TF risk, a reporting entity must consider the risk posed by a range of factors set out in the AML/CTF legislation, including its customer types, customer source of funds and wealth, the types of designated services provided, the methods by which they are provided and dealings with any foreign jurisdictions.⁸³
- 77** In relation to the risk-based approach, the AML/CTF Rules provide:⁸⁴
- When determining and putting in place appropriate risk-based systems or controls, the reporting entity must have regard to the nature, size and complexity of its business and the type of ML/TF risk that it might reasonably face.
- 78** Crown accepts that the legislation contemplates that a reporting entity will assess its ML/TF risks to establish and maintain an appropriate AML/CTF program.⁸⁵
- 79** The AML/CTF legislation does not specify the form of the risk assessment which is to underpin an AML/CTF program, nor does it specify any particular name or title for that risk assessment or type of risk assessment. The AML/CTF legislative framework requires a risk assessment which comprehensively assesses all of the ML/TF risk that a reporting entity may reasonably face across the entirety of its operations arising from the reporting entity's provision of designated services.
- 80** A reporting entity cannot determine what are 'appropriate risk-based systems or controls' until it has conducted a sufficiently comprehensive risk assessment across the reporting entity's operations that allow it to 'have regard to the nature, size and complexity of its business and the type of ML/TF risk that it might reasonably face'.⁸⁶

- 81 In its April 2021 publication 'Assessing ML/TF Risk', AUSTRAC states that, before an entity can develop and implement an AML/CTF program, it must conduct a comprehensive ML/TF risk assessment.⁸⁷
- 82 An entity's risk assessment needs to function as a living document. The entity will not have appropriate risk-based systems and controls in place unless its systems and controls are regularly and reviewed and adapted over time, having regard to emerging, developing and changing risks.⁸⁸

Designated business groups

- 83 Reporting entities may elect to form a DBG if each proposed member of the DBG is related to each other member of the group within the meaning of the s 50 of the *Corporations Act 2001* (Cth).⁸⁹ Specific rules relate to each reporting entity in a DBG.⁹⁰ Once a DBG is formed, obligations that apply to reporting entities under the AML/CTF Act may be delegated by a member of the DBG to other members of the DBG.
- 84 If a reporting entity is part of a DBG then, in addition to the periodic compliance report issued to AUSTRAC noted above, some of the reporting entity's requirements under the AML/CTF legislation may be discharged by another member of the group.⁹¹ This does not extend to a reporting entity's obligation to provide SMRs and TTRs and to report IFTIs to AUSTRAC.
- 85 All members may choose to adopt one joint AML/CTF program.⁹² A member may share with others in the DBG certain information it is prohibited from disclosing to other parties according to the tipping-off provisions relating to SMRs.⁹³
- 86 A member of a DBG may rely on the approval and oversight of Part A of a joint AML/CTF program from the governing board and senior management of the main holding company of the group.⁹⁴ It is not necessary that the main holding company of the group is a reporting entity and subject to the AML/CTF Act itself.
- 87 Despite a reporting entity being a member of a DBG, each member of the DBG maintains its status as a separate reporting entity with the responsibilities that this entails.

Western Australian law enforcement agencies

- 88 The *Criminal Code Act (1913)* (WA) specifies that a person who in Western Australia engages in a transaction that involves money that is the proceeds of crime, or who brings in or receives, conceals or disposes of in Western Australia money that is the proceeds of crime, is guilty of a crime and is liable to imprisonment.⁹⁵ However, the Act does not penalise a person for failing to detect or report money laundering activity.
- 89 Although AUSTRAC is the main authority responsible for ensuring that a reporting entity is complying with its reporting and other obligations in the AML/CTF Act,⁹⁶ AUSTRAC works closely with a range of Australian and international partner agencies in law enforcement and security to help detect and disrupt criminal activity.⁹⁷ This includes working with federal and state law enforcement agencies, relevantly including Western Australia Police (**WAPOL**).
- 90 WAPOL has the following arrangements with AUSTRAC:
- WAPOL has direct access to AUSTRAC's systems giving the police with close to real-time access to various reporting information submitted by reporting entities to AUSTRAC including SMRs, TTRs and IFTIs.⁹⁸ The effectiveness of WAPOL in this area is reliant on the reporting entity complying with its AML/CTF legal obligations.
 - WAPOL also receives intelligence reports from AUSTRAC. These intelligence reports are prepared by AUSTRAC and identify suspicious transactions and money laundering

methodologies and indicators. These reports consist of supporting materials for serious organised and financial crime investigations.⁹⁹

- c. AUSTRAC analysts are embedded within the Serious and Organised Crime and Financial Crime Divisions of WAPOL. These joint resources are able to deliver targeted intelligence packages for investigations.¹⁰⁰

91 In addition to having a relationship with AUSTRAC, WAPOL's money laundering squad has an ongoing relationship with Perth Casino and its AML/CTF Compliance Officer.¹⁰¹ The purpose of these relationships is to facilitate the exchange of information to support investigations into persons suspected of conducting suspicious transactions and committing money laundering offences.¹⁰²

92 This relationship has been documented as part of the Memorandum of Understanding (**MOU**) between Perth Casino and WAPOL signed in 2014,¹⁰³ although an updated MOU with WAPOL is being developed.¹⁰⁴ Amongst other things, the 2014 MOU contains acknowledgements from Perth Casino that it has a responsibility to be a good corporate citizen and, where permitted, to provide WAPOL with information which would assist in the detection, investigation and prevention of criminal behaviour.¹⁰⁵

Section 3A Casino Manual (Operations)

93 There is no specific legislation or regulation in Western Australia for the regulation of the risk of money laundering at Perth Casino. However, s 24 of the *Casino Control Act 1984* (WA) (**CC Act**) empowers the GWC to give the Perth Casino licensee directions regarding the system of internal controls, administration and accounting procedures that apply to its gaming operations,¹⁰⁶ and to direct the casino licensee to adopt, vary, cease or refrain from any practice in respect of the conduct of gaming operations (**Directions**).¹⁰⁷ As examined in the Chapter Three: Overview of Regulatory Framework for Casino Gaming chapter, directions issued under s 24 of the CC Act require, among other things, the licensee to keep records and accounts of the gaming and casino operations at Perth Casino in accordance with the Casino Manual Operations (**CM(Ops)**),¹⁰⁸ and to ensure that the procedures in the CM(Ops) are complied with.¹⁰⁹ If the Perth Casino licensee seeks to amend any part of the Casino Manual that is subject to a Direction, they must obtain GWC approval.¹¹⁰

Section 3A

94 The GWC issued a direction in May 2011 obliging the casino operator to 'at all times prepare and keep records and accounts of the gaming and casino operations at Burswood casino following the procedures and in the manner required by', among other sections, the CM(Ops), s 3A Main Bank¹¹¹ Section 3A in the iterations of the CM(Ops) prior to January 2020 outlined the accounting and internal controls, policies and procedures in respect of the Perth Casino's cage.¹¹² Section 3A referred to Perth Casino's obligation to 'detect and report conduct which may be suspicious in nature' under the AML/CTF Act. It outlined responsibilities of the cage in relation to the identification and reporting of suspicious matters.¹¹³

95 In the 2011 to 2019 version of the CM(Ops),¹¹⁴ s 2.1 of Section 3A provided that any behaviour that gives rise to an apprehension or suspicion as to the validity, legality or procedural correctness of a transaction should be reported as a suspicious matter. It said that suspicious matters may relate to the following areas:

- a. the structuring of cash transactions so as to avoid the requirement to prepare a TTR;
- b. attempted or actual money laundering activities;
- c. attempted or actual dealings in the proceeds of crime;

- d. attempted or actual tax evasion;
 - e. attempted or actual use of false name accounts; and
 - f. suspicion that a person is not who they say they are.¹¹⁵
- 96** Once a member of the cage staff identified a suspicious matter, it was to be raised immediately with a member of cage management for evaluation. Cage management was then responsible for causing an SMR to be prepared and to provide as much detail as possible of the suspicious matter. The SMR prepared by cage employees was then to be forwarded to the AML Compliance Officer for evaluation and subsequent on-forwarding to AUSTRAC.¹¹⁶
- 97** The CM(Ops) did not provide any instruction or requirements in relation to the second and third lines of defence, nor did it encapsulate any broader requirements regarding the necessity of having a comprehensive system to effectively identify, manage and mitigate ML/TF risk.
- 98** Through this period, the information in the CM(Ops) was replicated and expanded on in the 'Cage – Standard Operating Procedure - AUSTRAC reporting' (**AUSTRAC reporting SOP**) which set out instructions and guidance on when cage staff should cause for an SMR to be considered and submitted by the AML Team.¹¹⁷ As discussed in Part Four of this chapter, it is the SOPs rather than the CM(Ops) that are used by cage staff for guidance in managing the ML/TF risk.¹¹⁸ For the reasons set out in that part, the guidance provided by the SOPs, which reflected the contents of s 2.1 of s 3A of the CM(Ops) was inadequate to properly equip cage staff with sufficient information to enable them to identify suspicious transactions.

Amendment to remove Part 3A

- 99** On 11 July 2019, Denise Vanderklau (**Vanderklau**) (former Gaming & Regulatory Compliance Officer) wrote to Nicola Perry (**Perry**) (former Department Director Licensing and Industry Services) seeking the approval of the GWC to delete s 3A of the CM(Ops). Vanderklau gave the following explanation for the removal of s 2.1:¹¹⁹
- This section of the manual is governed by [AUSTRAC] under the federal [AML/CTF Act]. As this is not regulated by the Commission we have removed these sections from the manual.
- 100** In the same correspondence to the GWC of 11 July 2019, Crown proposed a range of new sections to be added to the CM(Ops), including s 2 (Cage Operations) and s 9 (Electronic Gaming Machine and Automated Transaction Station Payouts).¹²⁰ The versions of s 2 and 9 that were subsequently approved, stated that, under the AML/CTF Act, Perth Casino must maintain a 'Crown Resorts Joint AML/CTF Program' which, among other things, includes reporting cash transactions for \$10,000 or more and detecting and reporting suspicious conduct.¹²¹ This does no more than reiterate the requirement under the AML/CTF Act if, as a member of a DBG, Perth Casino chose to have a joint AML/CTF Program.
- 101** On 10 October 2019, Vanderklau and Paul Hulme (**Hulme**) (former Gaming & Regulatory Compliance Manager at Perth Casino) met with Perry to discuss the amendments. There were no changes to the amendments outlined above as a result of this meeting.¹²²
- 102** On 17 January 2020, Michael Connolly (**Connolly**) (former Chief Casino Officer (**CCO**) and Deputy Director General of the Department) sent to Barry Felstead (**Felstead**) (former CEO of Australian Resorts) the revised CM(Ops). Connolly advised Felstead that he had approved the requested amendments including the removal of s 3A.¹²³ The 17 January 2020 iteration of the CM(Ops) is the latest iteration that has been produced to the PCRC.
- 103** The effect of the GWC's amendment to remove s 3A was to remove any regulation by the GWC of the management of the ML/TF risk. The PCRC observes that the consideration and

approval of the amendment took place after the 2019 Junket Media Allegations and the commencement of the Bergin Inquiry. By this time, all members of the GWC were aware of the money laundering risk at Perth Casino.

Part Three: The GWC's regulation of money laundering at Perth Casino

The GWC's understanding of its role in regulating money laundering risks

- 104** The GWC has submitted to the PCRC that it is a 'regulatory agency' and not a 'law enforcement agency',¹²⁴ to reflect its position that there are agencies with more direct responsibility for the mitigation of money laundering risks and which are better resourced and empowered than the GWC to respond to those risks.¹²⁵
- 105** Connolly gave evidence to the PCRC to the effect that the GWC had no risk management process in place to mitigate the possible facilitation of money laundering by Perth Casino, and in his view, the GWC did not have any capability (in terms of adequate skills or funding), nor the responsibility to manage that risk. His position was that the ultimate responsibility in that regard lay with WAPOL, AUSTRAC and the Australian Federal Police (**AFP**).¹²⁶
- 106** Those views were shared by Barry Sargeant (**Sargeant**) (former chair of the GWC and Director General of the Department), who added that he did not make formal inquiries with those agencies about their regulation of money laundering risks at Perth Casino, although he had some informal associations with WAPOL. Sargeant did not elaborate on what those associations involved.¹²⁷
- 107** Various former and current members of the GWC gave evidence to the PCRC about their understanding of the GWC's regulatory role in respect of mitigating money laundering risks at Perth Casino, which evidence was predominantly and generally to the effect that the GWC does not consider itself to have any regulatory responsibilities in that regard.
- 108** Several current members had the view that the responsibility for the oversight of money laundering risk lay with Commonwealth authorities.¹²⁸ One former member gave evidence of their view that the GWC did not have the means or capability to investigate or detect money laundering and that those matters were the responsibility of the AFP, Border Force, AUSTRAC and the Australian Taxation Office, supported by state police authorities.¹²⁹
- 109** Two former members could not recall any discussions about money laundering and thought the GWC had no function in terms of oversight of that risk at Perth Casino in terms of conducting audits of bank accounts.¹³⁰
- 110** Other evidence was given by a current member that they understood the GWC to have legislative power to investigate, monitor and undertake reviews in respect of money laundering at Perth Casino, but that it was unclear in the legislation as to the demarcation of that responsibility between the GWC, AUSTRAC and WAPOL.¹³¹ Another current member was of the view that, unlike the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**), the GWC does not work proactively with other regulators and law enforcement agencies within the anti-money laundering space.¹³²
- 111** A former member recalled general discussions as to how Perth Casino could be used to facilitate money laundering, and that it was assumed the GWC had the legislative power to 'influence' money laundering, but it did not do so.¹³³ The former member held that belief through reading the legislation.¹³⁴

The GWC's regulation of money laundering in practice

Section 3A CM(Ops)

- 112** As discussed in Part Two of this chapter, there were certain requirements within s 3A of the CM(Ops) that Perth Casino must comply with to mitigate the risk of money laundering occurring through its gaming operations. In that respect, the GWC had taken at least some responsibility for holding Perth Casino to account for the management of ML/TF risk through its operations.
- 113** However, with the removal of Section 3A in January 2020, there are no longer any requirements in the CM(Ops) regarding the management of the ML/TF risk. This is consistent with the views expressed by members regarding the GWC's responsibility for the regulation of money laundering.

GWC's audit processes

- 114** Historically, the GWC has not established any specific audit processes to assess Perth Casino's compliance with s 3A of the CM(Ops) and the effectiveness of compliance in terms of mitigating the risk of money laundering.¹³⁵
- 115** As discussed in the Chapter Five: Regulation of Perth Casino, the focus of the GWC's audit and inspection program with respect to the Perth Casino operations has to date been on the integrity of gaming and revenue reporting.
- 116** Sargeant gave evidence to the PCRC to the effect that there was no proactive risk management of money laundering within Perth Casino's footprint because its effectiveness was directly affected by the lack of skill within the GWC and the fact that it 'goes beyond West Australian borders'.¹³⁶
- 117** A former inspector also gave evidence that government inspectors were not proactively looking for money laundering.¹³⁷ Connolly, too, said that inspections are not undertaken for the purpose of detecting indications of possible money laundering, nor had they ever been.¹³⁸
- 118** David Halge (**Halge**) (former CCO from 1997 to 2007) gave evidence to the PCRC that inspectors were not responsible for investigating money laundering¹³⁹ and in fact 'they were told not to investigate money laundering [as] [t]hey didn't have the expertise to investigate those sorts of matters'.¹⁴⁰
- 119** When asked what would happen if an inspector found evidence of money laundering, Halge said that it would be reported to him, he would report it to WAPOL when there was a dedicated casino police officer (as described in Chapter Five: Regulation of Perth Casino, and on hearing back he would report it to the GWC if there was concern. He said he never had to refer any criminal activity or money laundering to the GWC.¹⁴¹
- 120** Janine Belling (**Belling**) (former CCO from 2007 to 2012), could not recall either the GWC or the Department ever undertaking forensic investigations into money laundering or the risks of money laundering'.¹⁴²

Riverbank

- 121** As noted in Part Four of this chapter, Crown accepts that between 2013 and 2017 third parties engaged in apparent money laundering through the bank account of Riverbank.¹⁴³ The deficiencies in the practices at Perth Casino that increased the risk that money laundering might occur through Riverbank's bank account were not detected by the GWC.
- 122** Until it was amended in February 2021, dir 5.1 of the Directions required the casino operator to 'open and operate a bank account to be used exclusively for the Casino wagering operations'.¹⁴⁴ At all material times, dir 4.1(c) provided that the casino operator was to furnish the GWC within eight days after the last day of each month a bank reconciliation statement in respect of the account referred to in dir 5.1 showing the balance at the beginning of the month, all deposits during the month and all withdrawals for casino cash and other payments.¹⁴⁵
- 123** The Burswood entities provided the Department (rather than the GWC) with bank reconciliation reports for the ANZ Australian dollar 'Casino Account' (not a Riverbank account).¹⁴⁶ From August 2014, the Burswood entities also provided the Department statements for the ANZ Hong Kong dollar account held in the name of BNL¹⁴⁷ and the CBA Hong Kong dollar account held in the name of Riverbank.¹⁴⁸ Those reconciliations were provided in accordance with an understanding that it was a requirement to do so in accordance with dir 4.1(c).¹⁴⁹ Although not expressly required by dir 4.1(c), the Burswood entities also provided the actual bank statements for those accounts.
- 124** The Burswood entities did not provide the Department or the GWC with bank reconciliations for the ANZ Australian dollar, Singapore dollar or United States dollar accounts held in the name of BNL, nor the CBA Australian dollar, Singapore dollar and United States dollar accounts held in the name of Riverbank, for the period August 2014 to August 2019.
- 125** A number of current and former GWC members gave evidence to the effect that the GWC had no knowledge, prior to the Bergin Inquiry and the PCRC, that Perth Casino was sending bank reconciliation statements to the Department.¹⁵⁰ Felstead did not recall Riverbank bank statements being provided to the GWC at any time.¹⁵¹
- 126** In contrast, Duncan Ord (**Ord**) (former chair of the GWC and Director General of the Department) and Sargeant were broadly aware that there was an obligation for bank reconciliations to be provided as part of the assessment of Perth Casino's taxation revenue,¹⁵² and that account information for Perth Casino's casino wagering account was being sent to the Department.¹⁵³ However, they had no knowledge at the relevant time of whether this included statements for the Riverbank accounts, and they only became aware after the closure of the CBA Riverbank accounts in 2019 that some Riverbank statements had been included in the reconciliations sent to the Department.¹⁵⁴ In that respect, their evidence was consistent with that of the other members of the GWC.
- 127** Ord stated he understood that, when Riverbank account information was provided to the Department, it was only reviewed generally and audited from a taxation of revenue perspective.¹⁵⁵
- 128** The effect of certain amendments to s 125 of the AML/CTF Act that commenced on 17 June 2021 is to allow AUSTRAC to share certain information with the GWC and the Department.¹⁵⁶ Before that amendment, AUSTRAC could not and did not share its intelligence with either of those agencies.
- 129** The PCRC considers this amendment to be an important step in facilitating the flow of information to the GWC and the Department in relation to potential money laundering activities in connection with Perth Casino. The PCRC recommends that the GWC actively pursue an information sharing arrangement with AUSTRAC to enable this to occur as soon as possible.

How the GWC could regulate or assist law enforcement agencies

- 130** As to the future potential regulatory landscape in respect of money laundering, Ord gave evidence to the effect that the GWC would need greater funding and a forensic auditing capacity before it could audit Perth Casino bank accounts for suspicious transactions. He said that, without that capability, there was a risk to the efficacy of audits for State taxation purposes.¹⁵⁷
- 131** Whether or not Ord is correct about the need for extra financial resources, there are indications that Ord's suggestions are being implemented by the GWC. Lanie Chopping (**Chopping**) (former Director General of the Department and chair of the GWC) outlined in her evidence to the PCRC:¹⁵⁸
- ... [the] GWC recently resolved to support the [Department] commencing a procurement process to employ the services of external experts in [AML and CTF]. Their brief will be to undertake an annual audit of [Perth Casino's] bank accounts, review the Casino Manual (Operations) to ensure that all relevant aspects of AML/CTF are captured in it, and develop an audit program based upon the internal controls. The review will include an analysis of the risk of money laundering occurring in the International Gaming Facility, also known as the Pearl Room, and recommend an appropriate system of internal controls for it.
- 132** Connolly suggested that the GWC 'through directions, policies and the procedures manual, have [Perth Casino] change whatever processes it needs to change and require of them whatever is appropriate within the constraints of the WA legislation'.¹⁵⁹
- 133** Deputy Commissioner Colin Blanch of WAPOL (**Blanch**), gave evidence to the PCRC to the effect that, if the GWC (providing it had adequate resources) also undertook analysis of financial information provided by Perth Casino, it would complement the work of AUSTRAC and enhance WAPOL's criminal intelligence in the money laundering space.¹⁶⁰ Speaking more generally, Blanch expressed a preference for a regulator to first analyse information it receives from Perth Casino and only engage with WAPOL if it forms the view that the information could be indicative of criminal activity.¹⁶¹
- 134** Blanch also gave evidence that there would be clear benefits from having law enforcement expertise on the GWC, either by having a current or former law enforcement officer seconded to the GWC, or by selecting a member with expertise in relation to AML/CTF.¹⁶²
- 135** Blanch caveated his suggestions by reference to two practical issues. First, he said issues may arise from having a current law enforcement officer on the GWC, stemming from a lack of clarity as to how to simultaneously perform the role of regulator and police officer. Second, there may be an issue as to where and how information-sharing could occur.¹⁶³
- 136** Blanch also suggested that either additionally or alternatively, an intelligence briefing could be provided to the GWC at regular intervals by a current WAPOL officer from the State Intelligence or the Financial Crimes Division. Blanch considered that this would ensure the GWC's knowledge of law enforcement practices would remain contemporary.¹⁶⁴

Conclusions

- 137** The PCRC considers that the fact that there are particular state and federal law enforcement agencies who are primarily responsible for the detection of money laundering offences and the enforcement of money laundering laws does not abrogate the responsibility of the GWC to regulate and oversee the mitigation of the risk of money laundering being facilitated through the operations of Perth Casino.
- 138** The PCRC concludes that both the GWC and the Department have, over time, and to varying degrees, proceeded on the incorrect premise that, because the GWC does not have the

primary responsibility, resourcing or expertise to detect money laundering offences and enforce state and federal laws with respect to money laundering, the GWC has limited, if any, responsibility to regulate the mitigation of the risk of money laundering occurring through Perth Casino's operations.

- 139 Both entities appear to have developed better insight into the GWC's proper role in respect of money laundering risk, perhaps as a result of their participation in the PCRC's inquiry.
- 140 As a consequence, the PCRC concludes that the GWC's approach to the regulation of money laundering risks at Perth Casino to date has been inadequate and ineffective. The incorrect premise that it has no responsibility for the regulation of money laundering underpinned its approval of the removal of Section 3A of the CM(Ops) at the request of Crown in January 2020.¹⁶⁵ The GWC has not inspected or audited the effectiveness of Perth Casino's systems and processes to mitigate the risk of money laundering occurring through its operations, nor has it inspected or audited the effectiveness of the implementation of those systems and processes.
- 141 The GWC did not adequately direct Perth Casino to provide, and it was not provided with proper financial records in respect of the operation of bank accounts used by patrons in respect of Perth Casino. In any event, if it had been, the GWC staff focused on reviewing account information that was provided from a perspective of taxation revenue and not for the purpose of identifying apparent money laundering conduct.
- 142 The PCRC concludes that it is an aspect of the GWC's function and responsibilities to exercise its statutory and regulatory powers to:
- a. mitigate the risk of money laundering being facilitated through the organisation and conduct of gaming operations at Perth Casino;
 - b. regulate and oversee the effectiveness of Perth Casino's systems and processes to mitigate the risk of money laundering being facilitated through the organisation and conduct of gaming operations of Perth Casino; and
 - c. cooperate with and assist relevant state and federal regulatory and law enforcement agencies to detect money laundering offences and enforce state and federal laws with respect to money laundering, (referred to as the **AML responsibilities**).
- 143 The PCRC concludes that both the Department and the GWC have, until recently, not appreciated the fact and content of the GWC's AML responsibilities, referred to above.
- 144 The PCRC finds that, because both the Department and the GWC have until recently not appreciated the fact and content of those responsibilities:
- a. the GWC has to date not effectively discharged its AML responsibilities;
 - b. the Department has to date not supported the GWC to ensure that the GWC effectively discharges its AML responsibilities; and
 - c. both the GWC and the Department have not ensured that the GWC is adequately resourced to discharge its AML responsibilities.
- 145 The PCRC concludes that these failings of the GWC and the Department are likely to have been a contributing factor to the occurrence of apparent money laundering through the ANZ Riverbank accounts between 2013 and 2014 and the CBA Riverbank accounts between 2014 and 2019.
- 146 Having regard to Chopping's evidence, the PCRC concludes that the GWC:
- a. now better appreciates its regulatory obligations in respect of mitigating the risk of money laundering at Perth Casino; and

b. is now taking proactive steps towards discharging its AML responsibilities.

147 Having regard to Blanch's evidence, the PCRC recommends that the GWC consider obtaining expert assistance from an external adviser in relation to AML/CTF in order to better equip the GWC with the skills and experience to discharge its AML responsibilities.

Part Four: Management of money laundering risk at Perth Casino between 2010 and 2019

148 In this part, the PCRC examines Crown's structure and systems and the practices of people responsible for managing the ML/TF risk at Perth Casino during the period of approximately 2010 to 2019, the latter date being the time when allegations relating to money laundering appeared in the media.¹⁶⁶ The media allegations, among other circumstances, precipitated the Bergin Inquiry, which was then followed by a period of significant change for Crown in terms of its systems and processes for identifying and managing ML/TF risk.

149 The PCRC considers in this part the conduct of specific individuals who, at the time of the relevant events discussed, were employed in senior roles in connection with the management and operation of Perth Casino. Almost all of these individuals have now left Crown, some in the last few months. The purpose of this examination is not to draw conclusions about the individuals in their personal capacity, as distinct from the capacity of their role in respect of Perth Casino. The purpose is to demonstrate that the apparent structuring through the Perth Casino bank accounts in the period 2013 to 2019, and, in particular, through the Riverbank accounts was caused partly by the inactions of senior managers and to demonstrate that the relevant risk management systems in place were insufficient to mitigate these inactions.

Findings and concessions

150 Crown concedes that between 2013 and 2019 in the case of Riverbank accounts, and between 2013 and 2019 in the case of Southbank accounts, third parties engaged in apparent money laundering through those accounts and that it inadvertently facilitated or enabled this activity despite concerns raised by its bankers.¹⁶⁷

151 Both the Bergin Inquiry and the RCCOL concluded that the facilitation of money laundering in the Riverbank accounts was a consequence of:

- a. the process of aggregation conducted at the cage which obscured from view of the AML team the true nature of deposits into the Riverbank account; and
- b. the failure of the cage to provide, and the failure of the AML team to request, the supporting documentation (including bank account statements and telegraphic transfer (TT) forms (TT Forms)) for transactions entered into the SYCO system, which would have shown apparent structuring occurring in the Riverbank accounts.¹⁶⁸

152 The aggregation issue comprised the following steps:

- a. A patron would transfer multiple deposits into a Riverbank account within a relatively short time period with each deposit being less than the threshold transaction amount of \$10,000 but in total, equalling over \$10,000. This behaviour is indicative of the money laundering typology structuring.¹⁶⁹
- b. Cage employees were required to enter details of deposits made by patrons into SYCO.¹⁷⁰
- c. From time to time, cage employees would aggregate the multiple deposits made by a single patron and enter a single SYCO entry of the sum total of the deposits, rather than entering the details of each individual deposit.¹⁷¹

- d. The AML team would access and review reports of the transactions entered into SYCO for the purpose of identifying suspicious patterns of transactions.¹⁷²
- e. Due to only the aggregated sum of the deposits being entered into SYCO, if the AML team did not inspect the source documents, it did not identify that the amount being credited to the relevant patron deposit account was comprised of two or more smaller amounts.¹⁷³ Therefore, the AML team would not detect suspicious activity of potential structuring.

153 The Bergin Inquiry found that:

- a. despite being made aware of ANZ's concerns on 31 January 2014, and of the particular transactions ANZ identified in the January 2014 bank statements, it appears that no one at CRL, Perth Casino or Melbourne Casino took any steps to review the balance of the bank statements of Riverbank's ANZ account,¹⁷⁴ to respond to ANZ's queries or to report the concerns to CRL's Risk Management Committee (**CRL RMC**) or any member of the boards of CRL, BL, BNL, CML or Riverbank.¹⁷⁵
- b. Crown's practice in relation to aggregation was raised in an email from ANZ to CRL on 31 March 2014.¹⁷⁶
- c. Banks again raised concerns in 2015¹⁷⁷ and 2018,¹⁷⁸ but again no changes were made to the operation or monitoring of the Southbank or Riverbank accounts at these times.
- d. the banks' concerns were not escalated to the CRL RMC or the CML board or the CRL board, despite in 2018 the Auckland Savings Bank (ASB) (a subsidiary of CBA) requesting due diligence information relating to Southbank accounts held with it and in January 2019 the ASB closing those accounts. The Chief Operating Officer (**COO**) of CML, Preston and Lane were informed of ASB's decision to close the Southbank accounts.¹⁷⁹
- e. CBA's decision to close the accounts was made known to CRL's Risk Management Committee, the CRL board and the boards of CML and BL in December 2019.¹⁸⁰
- f. CRL ultimately accepted that there was aggregation of certain transactions in the entries in the SYCO system and that this compromised the AML team's capacity to identify examples of structuring occurring in the Southbank and Riverbank accounts when they were reviewing them in the SYCO system.¹⁸¹
- g. the only step taken by CRL in relation to the concerns raised by ANZ was a direction by Travis Costin (**Costin**), former CRL General Manager – Corporate Finance and Treasury, that customers be told to refrain from making multiple deposits under the reporting threshold. The direction was ineffective.¹⁸²

154 The RCCOL found that Crown facilitated money laundering through the Southbank account during this period and failed to investigate warnings about potential money laundering through that account over many years. The RCCOL found that Crown:¹⁸³

- a. failed to investigate media allegations of money laundering through that account until 14 months after they were levelled, the Bergin Inquiry was established, and it had become entirely untenable for Crown to continue to do nothing; and
- b. was slow to take reasonably available steps, having regard to the conclusions of the Grant Thornton and Initialism reports with respect to Southbank and Riverbank, including to review, promptly, whether to continue to provide services to those patrons whose accounts contained transactions indicative of money laundering.

155 Crown concedes that a conclusion can be drawn that apparent money laundering was facilitated through the Riverbank accounts for the following reasons:

- a. the use of the Riverbank accounts to afford patrons with a level of privacy was not accompanied by appropriate AML processes and, therefore, increased the ML/TF risk.¹⁸⁴
- b. there was a failure to prevent the identification and reporting of structuring of deposits in the Riverbank accounts by patrons.¹⁸⁵
- c. there was a failure to prevent aggregation of transactions in the bank accounts by cage staff until September 2020, despite awareness by cage management that aggregation was occurring, within the context of the aggregation practice not being fully appreciated by all members of the cage due to a failure of training and processes.¹⁸⁶

156 Crown accepts that:

- a. the risk of structuring in the bank accounts was ignored when ANZ brought it to Perth Casino's attention in 2014, demonstrated by a complete lack of investigation into the potential money laundering raised by ANZ;¹⁸⁷
- b. the accounts in the name of Riverbank were connected to 'designated services' (under the AML/CTF Act) provided to the patrons of Perth Casino and should have been subject to appropriate monitoring and reports; and¹⁸⁸
- c. it did not engage external assistance to investigate whether there were indications of money laundering in the Southbank and Riverbank accounts until October 2020, despite Lane's recommendations to Preston and repeated recommendations from Crown's external AML advisor, Initialism.¹⁸⁹

157 Crown makes further concessions regarding the failure of its risk management system to detect and manage the ML/TF risk at Perth Casino during the period 2010 to 2019. These concessions are referenced below.

Management of ML/TF risk at Perth Casino

158 During the period of 2010 to 2019, Crown had yet to formally adopt the three lines of defence model referred to in Part One of this chapter.¹⁹⁰ Perth Casino's risk management system for ML/TF included the following elements:

- a. policies and procedures, including the AML/CTF compliance program and relevant Standard Operating Procedures (**SOPs**);
- b. 'on the floor' operations, and in particular the cage;
- c. the AML/CTF Compliance Officer and the AML/CTF compliance team;
- d. the Perth Executive Risk and Compliance Committee (**Perth ERCC**);
- e. from 2018, the AML/CTF Compliance Committee;
- f. internal audit; and
- g. senior management and board oversight.

159 While Crown had not formally adopted the three lines of defence model of risk management at the time, the model provides a useful framework for the examination of the effectiveness of ML/TF risk management during this period.

160 For the reasons set out below, the PCRC concludes that there was inaction and gaps in every element of the risk management system during this period and that Perth Casino did not have a sufficiently robust system in place to detect and deter money laundering.

ML/TF risk assessment and AML/CTF program

Assessment of inherent and residual risk

- 161 Prior to 2019, the management of ML/TF risk for Perth Casino was documented in an AML/CTF program specific to Perth Casino (**Perth Casino AML/CTF Program**).¹⁹¹
- 162 As discussed in Part Two of this chapter, a risk assessment is the basis for applying the 'risk-based' approach for a reporting entity. A comprehensive, regular risk assessment enables a reporting entity to understand how, and to what extent, it is vulnerable to ML/TF risks that it may reasonably face.
- 163 However, there was very little difference in the risk assessments recorded in the Perth Casino AML/CTF Programs between the 2012 version (version 8)¹⁹² and the 2018 version (seventeenth and final Perth Casino version).¹⁹³ The only amendments to the risk assessments during this period were the additions of a small number of designated services risks. The risk ratings for all risks during this period are identical.
- 164 Perth Casino had considered the following risk categories in determining overall 'inherent' and 'residual' risk ratings: customer type risk; products or service risk; delivery method risk and jurisdiction risk.¹⁹⁴
- 165 'Inherent' risk is the intrinsic ML/TF risk of Perth Casino's operations without any regard to the controls to mitigate or manage such risks. The 'residual' risk rating assesses the ML/TF risks once those controls are taken into account.¹⁹⁵
- 166 The Perth Casino risk assessments gave an inherent risk rating of 'high' for delivery of designated services to customers. The PCRC considers this to be appropriate, given the inherent ML/TF risk across casino operations generally.
- 167 However, Perth Casino consistently rated its 'residual' risk rating as 'low'.¹⁹⁶ That is, Perth Casino assessed that its high inherent risk was mitigated to a low residual risk once Perth Casino's mitigating controls identified in the Perth Casino AML/CTF Program were taken into account.
- 168 This approach assumed three things: First that the application of controls would result in a low level of ML/TF risk associated with the designated service. Second, that the entity could and would apply the controls to effectively manage that ML/TF risk. Third, that the people at Perth Casino who had oversight and administration of the Perth Casino AML/CTF Program and the underpinning risk assessment had sufficient knowledge and experience of ML/TF risk to properly consider the inherent risk in the casino services to be provided, and the controls in place to manage and mitigate those risks.
- 169 There is no evidence of any internal testing or assessment of the sufficiency of controls applied to manage the ML/TF risk at Perth Casino which might have formed the basis for a conclusion by the people responsible for the risk assessment that such controls had the effect of producing a low residual risk rating.

Lack of external assistance

- 170 Other than a single external review of the transactional monitoring program in late 2018,¹⁹⁷ there is no evidence that Perth Casino, or Crown generally, engaged any external assistance in testing any one of these assessments.¹⁹⁸ The purpose of that 2019 review was to assess Crown's monitoring of customer activity undertaken to comply with its on-going customer due diligence obligations and identify any opportunities to adjust, refine and where appropriate enhance Crown's monitoring.¹⁹⁹ This review was not focussed on the Perth Casino AML/CTF Program generally and in any event, occurred towards the end of the period which is being considered.

- 171 The lack of engagement of external assistance in respect of the Perth Casino risk assessments should be considered within the context of the skills and expertise of the senior management responsible for the assessments.
- 172 During this period, Preston was responsible for the conduct of the ML/TF risk assessments for Perth Casino.²⁰⁰ At the time of assuming this responsibility, Preston's evidence to the PCRC was that he had no prior experience in the conduct of ML/TF risk assessments. His experience was based on his review of the AML/CTF legislation, industry commentary and meetings with AUSTRAC and the Australasian Casinos Association.²⁰¹
- 173 As the Chief Executive Officer (**CEO**) of Perth Casino, Felstead had delegated authority from the BL board to approve amendments to the AML/CTF Program.²⁰² Felstead had no formal risk management qualifications. His experience and exposure in risk management stemmed primarily from attending Perth ERCC and CML Compliance Committee meetings.²⁰³ Felstead's only training in AML/CTF prior to 2018 was an on-line training session.²⁰⁴
- 174 The PCRC considers that Preston and Felstead had insufficient training and experience to enable them to conduct and sensibly evaluate the sufficiency of the ML/TF risk assessments and the AML/CTF program for which they were responsible. Consequently, it was important for Perth Casino to engage external assistance, which, other than in relation to the 2018 transaction monitoring program, it did not do.

Risk of structuring through Riverbank not identified

- 175 Despite the concerns expressed by ANZ in 2014 about apparent structuring through the Riverbank accounts, there was no reference made to the risk of the criminal offence of structuring occurring in Perth Casino's bank accounts in any of these risk assessments.
- 176 Prior to and for the purpose of CRL's recommendation that a joint AML/CTF program for the Crown DBG be recommended for approval by CML and BNL in August and September 2019,²⁰⁵ Preston instructed Lane to conduct a risk assessment of the ML/TF risk registers for both Melbourne Casino and Perth Casino. This resulted in the **Crown Entities ML/TF Risk Register**.²⁰⁶ The Crown Entities ML/TF Risk Register was contemplated to form part of the new AML/CTF Operations Manual under the new joint AML/CTF program.²⁰⁷ Even in this new risk register, whilst structuring is a listed risk, there was still no reference to the risk of structuring occurring in Perth Casino's bank accounts.²⁰⁸ For example, the Riverbank accounts were not directly monitored for suspicious transactions as part of the Perth Casino's AML/CTF Program, despite ANZ's warning and CBA's decision to close the Riverbank accounts.
- 177 Crown accepts that the risk of structuring in Perth Casino's bank accounts was not recognised or referred to in the AML/CTF program risk assessment even after Crown officers were advised in 2014 that the risk had manifested itself.²⁰⁹

Independent review of AML/CTF program

- 178 The AML/CTF Rules require a reporting entity to arrange for an 'independent review' of Part A of its AML/CTF program at a frequency that takes into account the nature, size and complexity of the reporting entity's business and the level of ML/TF risk the reporting entity might face.²¹⁰ AUSTRAC guidance in 2021 advises that such an independent review should be conducted by an external consultant or by an internal person or team who understands the business and ML/TF risk and was not involved in developing or maintaining the AML/CTF program or assessing ML/TF risk. AUSTRAC further advises that high risk reporting entities are expected to arrange for an independent review at least every two to three years.²¹¹
- 179 The adequacy of Perth Casino's internal audit process is examined later in this chapter.

- 180** As to external review, the Perth Casino AML/CTF Program in place in 2010 required an external audit of the program every two years.
- 181** An external audit was conducted by Ernst & Young (**EY**) in 2010. It found that the program, overall, did not raise any high or medium risk rated matters.²¹² However, the EY report suggested that Perth Casino enhance its AML/CTF risk awareness training, enhance its AML/CTF risk assessment, ensure IFTIs are reported within ten days, revise the criteria for SMRs and align the Perth Casino AML/CTF Program to better reflect AML/CTF Rules and guidance notes.²¹³ There is no evidence before the PCRC to suggest that Perth Casino attended to these suggestions.
- 182** In response to the audit, the Perth Casino AML/CTF Program was amended to change the frequency of external audits from every second year to every fifth year and to include an annual review of the risk assessment of designated services.²¹⁴ The frequency of external audits was then amended in 2012 to 'as considered necessary by Crown Perth, such consideration being given every three years, having regard to when AUSTRAC had undertaken a compliance assessment or equivalent action'.²¹⁵
- 183** There was no external audit of the Perth Casino AML/CTF Program after 2010. This is despite the warnings by ANZ in 2014 about structuring in the Riverbank accounts.
- 184** In his evidence to the PCRC, Preston could not recall a reason why. He did not consider that an eight year period was a reasonable period between external audits of the Perth Casino AML/CTF Program. Preston could not recall whether he had raised with his management the need or a desire to undertake an external audit at an earlier point in time.²¹⁶

Conclusions regarding ML/TF risk assessments and AML/CTF compliance programs

- 185** The PCRC concludes that:
- a. the scope of Perth Casino's ML/TF risk assessments did not change in any material way between at least 2012 and 2019.
 - b. in the period 2012 to 2019, there was not a sufficient basis for Perth Casino to assess its residual ML/TF risk rating as low in the Perth Casino AML/CTF Programs.
 - c. despite the concerns expressed by ANZ in 2014 about apparent structuring through the Riverbank accounts, no reference was made to the risk of the criminal offence of structuring occurring in Perth Casino's bank accounts in Perth Casino's ML/TF risk assessments at any time in the period 2014 to 2019. This likely contributed to the occurrence of apparent money laundering through the Riverbank accounts held with CBA during this period.
 - d. the senior management responsible for the Perth Casino's ML/TF risk assessments in the period 2010 to 2019 did not have the knowledge, skills and experience to effectively conduct and assess the adequacy of the ML/TF risk assessment and the AML/CTF compliance program. Crown, including the board of BL, should have recognised these limitations and retained external consultants to conduct the assessments. Other than in respect of one external review of the transaction monitoring program in 2018, it did not do so.
 - e. Perth Casino should have arranged for an independent external audit of the Perth Casino AML/CTF Compliance Program. In light of the concerns raised by ANZ in 2014 and CBA in 2018 and 2019, its failure to arrange any independent external audit during this period is an extremely serious omission.

The cage

- 186** As set out above, the Bergin Inquiry and the RCCOL found that the facilitation of money laundering in the Riverbank accounts occurred as a consequence of the practice of aggregation at the cage and the failure of the cage to identify and report apparent structured deposits as SMRs.²¹⁷
- 187** In August 2020, Vanderklau went through the Riverbank accounts statements, identified cash deposits under \$10,000 and then matched those deposits to the relevant TT Form that had been created by the cage. Vanderklau then prepared schedules for each year which included the details of the aggregated transactions, what the funds were for, and a brief description of other information held within the AML risk register.²¹⁸ Vanderklau recorded 'no SMR' when she could find no record in Perth Casino's records that an SMR had been made in relation to the corresponding transaction.²¹⁹
- 188** Vanderklau ascertained that between 2013 and 2019, in respect of the Riverbank accounts, one SMR was lodged with AUSTRAC despite identification of over 80 instances of aggregation of numerous deposits under the \$10,000 threshold (each of which was reasonably suspected to be structuring).²²⁰ Vanderklau's evidence was that it appeared to her that Crown failed to identify or manage activities indicating or suggesting money laundering or terrorism financing.²²¹
- 189** Crown accepts the following in relation to the role of the Perth Casino cage:
- it was a requirement for staff and management of the cage to raise SMRs in respect of apparent structured deposits through the Riverbank accounts, and SMRs should have been raised;²²²
 - there were opportunities to raise SMRs when the cage employees checked the Riverbank accounts for deposits or during the release process;²²³
 - the practice of aggregation and the failure to prepare SMRs in the cage meant that suspicious transactions were not being brought to the attention of the AML team for consideration;²²⁴ and
 - the failure to prevent the aggregation of accounts, despite awareness by cage management that aggregation was occurring, was as a result of the aggregation practice not being fully appreciated by members of the cage due to a failure of training and processes.²²⁵
- 190** The remainder of this section considers additional evidence and conclusions in relation to the cage at Perth Casino in the period 2010 to 2019.

The cage structure and composition

- 191** The structure and composition of the cage at Perth Casino has not changed over time:
- Cashiers are the 'bank tellers' of the cage, who interact with patrons and facilitate their money and other financial transactions. Cashiers can handle transactions of under \$10,000. Transactions of over \$10,000 require the supervision of the cage supervisor.
 - Cage supervisors oversee the cashiers. They also approve transactions of over \$10,000, which is intended to ensure that there are two people involved in a transaction that has a direct AML component and requires a TTR.
 - Cage managers oversee the Cage supervisors and are responsible for managing cage employees on their shift. The cage managers have the overall approval authority for cage transactions while on shift.²²⁶

- 192 The various transactions that occur in the cage include, relevantly:
- a. *Cash deposit at the Cage* - the patron attends the cage, their identity is confirmed against their identification and they are able to deposit cash to the deposit account. Depending on the amount of the transaction, a TTR may be completed.²²⁷
 - b. *Telegraphic Transfers received* - the patron makes a deposit to one of Crown's bank accounts. The patron²²⁸ then attends the cage and provides evidence of payment to the account if this has not occurred by electronic means. A cage employee reviews the documentation provided, and should the evidence provided be deemed sufficient to confirm the payment had been made, and the transaction is supported by the operational team, then the funds can be released.²²⁹ If the funds have not been cleared, approval of a more senior officer is required.
- 193 As set out above, Crown has conceded that cage staff as the first line of defence did not raise SMRs in respect of apparent structured deposits through the Riverbank accounts in circumstances where SMRs should have been raised.²³⁰

Instructions for cage employees

- 194 Cage operations are essentially process driven, in that the processing and recording of transactions is heavily dependent upon cage staff following written standard procedures and policies. The main way in which the standard procedures and policies and approval limits are followed is by creating a series of documented procedures entitled SOPs. Cage staff are required to follow those SOPs.²³¹
- 195 The AUSTRAC Reporting SOP of January 2007²³² informed cage staff to look out for 'structuring of cash outs'. An amendment was made to the AUSTRAC Reporting SOP in January 2011,²³³ informing cage staff that, where the transaction had cash components equalling \$10,000 (such as \$6,000 USD and \$4,000 AUD) a TTR had to be entered in the relevant internal system. David Brown (**Brown**), former General Manager Cage & Count at Perth Casino, conceded in his evidence to the PCRC that there was significant ambiguity in this version of the SOP when it came to whether the cage staff member or manager would determine whether a transaction was suspicious.²³⁴
- 196 Although the AUSTRAC Reporting SOP was amended in September 2011,²³⁵ August 2012²³⁶ and August 2019²³⁷, it was not until an amendment in March 2021²³⁸ that a more detailed discussion of structuring (including smurfing) was added, as well as instructions not to accept cash deposits from patrons into bank accounts and, in any event, not to aggregate deposits.²³⁹
- 197 The focus of the AUSTRAC Reporting SOP in this regard was upon what might happen physically in Perth Casino, either in the cage or on the gaming floor, and not what might happen through bank accounts being used for Perth Casino operations, particularly via electronic transactions. There was no clear instruction to monitor the bank accounts used for Perth Casino's operations for suspicious activity. Brown accepted that the description of structuring in the 2011 AUSTRAC Reporting SOP applied not only to cash-outs but to every transaction in and out of the casino.²⁴⁰ There is no reason why it would not do so, rather it was not expressly stated to so apply.
- 198 Crown accepts that, after ANZ's advice that it was closing the Riverbank accounts, neither Brown, as the General Manager Cage & Count at Perth Casino, nor Preston, as the Perth Casino AML Compliance Officer, audited or amended the relevant SOPs so as to give appropriate direction to junior staff about the risk of money laundering through Perth Casino's bank accounts.²⁴¹
- 199 The PCRC considers that the AUSTRAC Reporting SOP was, until March 2021, insufficient to properly equip cage staff to identify suspicious behaviour. Structuring was a known risk

from 2014 and the AUSTRAC Reporting SOP should have provided clear guidance to assist staff to detect and report structuring and to avoid the practice of aggregation. It did not.

Inadequate training of cage staff

- 200** Training is a key aspect of any casino AML/CTF program aimed at ensuring staff employees, particularly those in the first line of defence, understand the money laundering risk at the casino, the typologies, the indicators to look out for and what to do if they notice potential indicators of money laundering.²⁴²
- 201** To compound the gap in instruction to cage staff in the SOPs, the training at Perth Casino did not expressly address potential structuring through bank accounts.
- 202** All Crown staff were expected to undertake an annual online training module regarding AML which covered basic information on threshold transaction and suspicious matter identification and Crown's reporting obligations to AUSTRAC.²⁴³
- 203** Brown had overall responsibility for training of Perth Casino cage staff.²⁴⁴ In his evidence to the PCRC he said that, as a result of the online and on-boarding training, cage staff were trained to understand their AML responsibilities as complying with reporting obligations by instigating the raising of SMRs, in addition to positively identifying and preventing where they could transactions that were indicative of money laundering.²⁴⁵ As to AML/CTF training specifically, Brown said that was Preston's responsibility.²⁴⁶
- 204** However, Brown also gave evidence that the AML online training given to cage staff only dealt with the issue of structuring in respect of cash deposits at the cage front window, rather than through bank accounts.²⁴⁷ Furthermore, the online training regarding structuring 'wasn't heavily on our radar from a training perspective'.²⁴⁸ There was no documented specific training of cage staff to detect as suspicious structuring into a casino bank account, despite the fact that there was specific training on the structuring of cash outs and structuring (either by way of payments in or payments out) at the front window. Brown could not explain why this was the case.²⁴⁹
- 205** Vanderklau said that as a former AML & Compliance Officer, her belief was, that, from at least 2013, cage employees understood structuring and would raise SMRs on structuring on cash-outs, but they were not looking for structuring from the deposits (telegraphic transfer) side.²⁵⁰
- 206** Brown said that, from at least 2013, he had a general understanding of how a casino could be used for money laundering, including the money laundering typology of structuring.²⁵¹ In contrast Jarrod Campbell (**Campbell**) (former General Manager – Cage & Count, Perth Casino from March 2021 to February 2022) said that until late 2019 he did not understand or appreciate that splitting of amounts below \$10,000 into bank accounts, rather than cash in the front window, was associated with money laundering.²⁵²
- 207** Following the ANZ warnings in 2014, the PCRC considers that Perth Casino should have carried out further training for cage staff to identify the possible structuring of deposits through Perth Casino's bank accounts and to raise it as a suspicious matter. It did not do so.
- 208** In the period up to 2019, the Perth Casino Legal Compliance meetings, attended by members of the Perth Casino AML team and internal audit, the outcomes of which were reported to the Perth ERCC, routinely recorded employee non-compliance instances in regard to 'AML' and the 'Cage'. There were frequently multiple instances of 'major' and 'minor' employee breaches of AML and cage procedures. For example, the 'major' instances for AML (as they were described at the time) commonly were:
- a. TT forms not being completed or not being completed properly;²⁵³

- b. TT forms being completed using patron expired ID;²⁵⁴ or
 - c. TT forms being completed but the cage member not compiling all or some of the required personal information required (normally the patron's address).²⁵⁵
- 209** The PCRC considers that the frequency of AML and cage employee procedural non-compliance, in addition to the same issues commonly arising, suggests that cage employees were not being adequately trained or supervised in terms of their compliance with AML procedures and processes.
- 210** The PCRC concludes that:
- a. while the cage staff may have understood their obligation to report suspicious activity, inadequate training in understanding and identifying typical money laundering typologies meant that cage staff were incapable of recognising instances of potential structuring through bank accounts as being suspicious;
 - b. the training for cage staff did not explain that multiple deposits into bank accounts by a patron under \$10,000 on the same day or otherwise close in time could be an indication of structuring and money laundering and therefore suspicious; and
 - c. cage employees were not adequately trained or supervised in terms of their compliance with AML procedures and processes.

Inadequate supervision of cage staff

- 211** The PCRC heard evidence from two former cage managers regarding the operation of the cage at Perth Casino during this period: Brown and Campbell.
- 212** Brown was the most senior manager of the cage at the time that ANZ closed the Riverbank accounts. He was in a position to supervise cage staff to assist them to recognise apparent structuring through the new CBA bank account in the name of Riverbank. He was in a position to instruct other managers in the cage, who reported to him, to do the same. He did not do either of these things.

Brown

- 213** Brown was the General Manager – Cage & Count at Perth Casino for the period July 2006 to September 2020.²⁵⁶ From September 2020 to 31 January 2022, Brown was the General Manager – Cage & Count for Barangaroo Casino.²⁵⁷ Brown is no longer employed by Crown.
- 214** Brown gave evidence to the PCRC that, from at least 2013, he had a general understanding of how a casino could be used for money laundering, including structuring.²⁵⁸ He was aware in early to mid-2013 that HSBC shut down the Riverbank accounts held with that bank on the basis that it had decided to no longer provide banking services to the gaming sector.²⁵⁹
- 215** In March 2014, when ANZ expressed its concerns about the operation of the Riverbank account, Brown did not check the cage's files to see whether SMRs had been raised with respect to transactions that involved multiple cash deposits to different branches of ANZ. In his evidence to the PCRC, Brown did not remember taking any steps at that point to ensure that the cage staff were alert to reporting suspicious matters in respect of possible structuring through Perth Casino's bank accounts. He did not remember making any changes to the SOP at the time. He did not alert the former COO for Perth Casino, Lonnie Bossi (**Bossi**) or the former CEO – Australian Resorts, Felstead. Brown was not aware of taking any steps at the time to prevent such deposits being made to Perth Casino's bank accounts.²⁶⁰
- 216** An internal email dated 29 April 2014, refers to a conversation that in the previous week between Brown and others at Perth Casino about 'unusual deposits' by a named patron

into Perth Casino's bank accounts.²⁶¹ In his evidence to the PCRC, Brown could not explain why no SMR had been raised for these deposits even when a week later an enforcement agency advised Perth Casino that the patron had made structured deposits into a Riverbank account. He agreed that an SMR ought to have been raised.²⁶² Brown could not explain why he did not raise the transaction with the Legal Compliance committee.²⁶³ Brown conceded that, in hindsight, he should have looked more into whether an SMR had been raised for that transaction.²⁶⁴

- 217** Despite learning of that transaction, Brown took no steps at that point in time to ensure that the cage cashiers were alert to reporting to cage management possible structuring of deposits in casino bank accounts so that an SMR could be raised. He was not sure why. Brown did not remember whether he took any steps to amend the SOP or the CM(Ops). He did not raise the transaction with Bossi or Felstead.²⁶⁵
- 218** In his evidence to the PCRC, Brown agreed that, by the time of his receipt of the internal email dated 29 April 2014,²⁶⁶ he was on notice that ANZ was closing the Riverbank accounts because of its concerns that suspicious transactions were occurring in those accounts. Brown accepted that from the end of April 2014 he, as the General Manager - Cage & Count, and 'other parties involved in it' had the responsibility to ensure that multiple cash transactions under the threshold reporting limit stopped being deposited into the Riverbank accounts.²⁶⁷ Brown had the ability to change the procedures in the cage and he did not do so. Brown accepted that this was a failing on his part.²⁶⁸
- 219** Brown conceded that he knew there were transactions occurring in 2013 and 2014 that were suspicious and warranted SMRs being made to AUSTRAC. In particular, these were multiple cash deposits at different bank branches, and that this led to ANZ closing the Riverbank accounts in 2014. In his written statement of evidence to the PCRC, Brown said that at the time he was at Perth Casino that he did not expect money laundering activities through the accounts. In his oral evidence to the PCRC, Brown conceded that this was not correct and that he knew that ANZ had closed the accounts because of concerns about structuring through those bank accounts.²⁶⁹
- 220** Brown has submitted to the PCRC that, with the benefit of the additional training he has since received and the recent changes in policies and procedures that he has been involved in implementing, the ML/TF risks arising from these events in 2014 would have been apparent to him at the time the transactions in question first came to the notice of the cage, and that those transactions would not be completed today.²⁷⁰
- 221** Brown watched the 60 Minutes program, Crown Unmasked, in 2019. In his evidence to the PCRC, he accepted that the program included commentary on Crown's relationship with junket operators and included allegations of money laundering by overseas patrons at Crown's casinos.²⁷¹ Brown's evidence was that he did not 'go into anything' as a response to this program to mitigate AML risk in the cage at Perth Casino.²⁷²
- 222** On 4 October 2019, Costin (then Treasury and Finance Manager) sent an email to a number of recipients, including Brown, regarding CBA's closure of the Riverbank accounts.²⁷³ Brown's evidence to the PCRC was that he was aware that the reason CBA was closing the accounts was because of the money laundering risk through the accounts that the bank was not happy to continue to accept.²⁷⁴ Brown considered the closure of the accounts to be a serious matter.²⁷⁵ Brown did not, however, take any steps at that point to consider whether the SOPs and CM(Ops) in respect of the cage operations adequately addressed the risk of money laundering occurring through Perth Casino bank accounts.²⁷⁶
- 223** The PCRC concludes that:
- a. Brown, as General Manager Cage & Count and the most senior employee in charge of the cage, was responsible for the acts and omissions of the cage staff;

- b. from at least 2014, Brown was on notice of the money laundering typology of structuring in Perth Casino's bank accounts in the name of Riverbank;
- c. in light of his responsibilities and his knowledge, Brown ought to have taken steps to ensure that cage staff could recognise and raise as suspicious such conduct at the time when they reviewed the bank statements to process patron deposits into the bank accounts used for Perth Casino. He did not do so;
- d. Brown should have responded to apparent structuring by not processing deposits or arranging for the funds to be returned to the relevant depositor, at least pending further KYC inquiries. Brown did not do so;
- e. from at least 2014, Brown should have reported the potential structuring in the Riverbank accounts which had been brought to his attention to the AML compliance team, at least by raising SMRs. Brown's lack of AML training probably contributed to him assuming that the AML compliance team would see these matters without his positive action; and
- f. if Brown had taken such steps it is quite possible, that the Burswood entities could have significantly reduced the apparent money laundering through the CBA Riverbank accounts which occurred after 2014.

Campbell

- 224** Campbell was a cage cashier at Perth Casino from 1997 to 2006. From 2006 to 2007, he was a cage supervisor at Perth Casino and from 2007 to March 2021, he was a cage shift manager. From March 2021, he was promoted to the General Manager of Cage & Count at Perth Casino.²⁷⁷ The PCRC was informed on 3 February 2022 that Campbell will be leaving that role on 28 February 2022 and that he will formally depart Perth Casino on 31 May 2022.²⁷⁸
- 225** In his evidence to the PCRC, Campbell said that from 2012 until late 2019, through the AML training that he received, he only understood structuring as a potential indicator of money laundering in terms of cash or chips presented or deposited below \$10,000 at the cage front window. He did not understand that multiple TTs by a patron into a casino bank account below \$10,000 within a short period of time could also amount to structuring.²⁷⁹ As a result, in his role as cage shift manager, when he was reviewing and approving TT Forms created by cage cashiers to release the funds to the patrons, he did not consider records of multiple deposits for the benefit of one patron under \$10,000 to be suspicious.²⁸⁰
- 226** In February 2014, Campbell was aware of rumours that ANZ were closing the Riverbank accounts and that the closure was due to concerns around deposits under \$10,000 being made into the Perth Casino bank accounts.²⁸¹ Despite being aware of these concerns, when filling out TT Forms, he did not form any suspicions when approving records of multiple deposits under \$10,000, nor when a money remitter transferred funds split into multiple deposits under \$10,000.²⁸²
- 227** When asked what he thought ANZ's concerns with the Riverbank account were, the only explanation Campbell could provide was that they were concerned with deposits being made under \$10,000.²⁸³ His evidence was that he did not understand at the time that the splitting of a larger sum into amounts under \$10,000 evidenced possible structuring and, therefore, money laundering.²⁸⁴ Campbell took no steps to clarify ANZ's concerns with a cage shift manager or Brown, the General Manager of Cage & Count at the time.
- 228** The PCRC concludes that:
- a. Campbell's lack of understanding about apparent structuring through bank accounts used in connection with Perth Casino is an example of the insufficient training, instruction and supervision provided to cage staff in the period 2010 to 2019.

- b. given his lack of understanding of ML/TF risks, Campbell was not sufficiently qualified or experienced to be a cage shift manager and to supervise cage staff; and
- c. given his lack of understanding of ML/TF risks, Campbell was not sufficiently qualified or experienced to be promoted to the position of General Manager Cage & Count.

Overall conclusions regarding the cage

229 The PCRC concludes that between 2010 and 2019:

- a. Cage staff at Perth Casino did not appreciate that apparent structuring through the Perth Casino bank accounts was conduct that was suspicious of money laundering through the accounts;
- b. Cage staff should have identified structured deposits as suspicious transactions and raised SMRs. They did not do so;
- c. the failure of cage staff to identify suspicious transactions and to raise SMRs was caused by inadequate policies and procedures, and inadequate training and supervision of cage staff; and
- d. these inadequacies materially compromised the first line of defence in the management of ML/TF risk.

AML compliance officer and compliance team

230 During the period 2010 to 2019, the Perth Casino AML/CTF Compliance Officer and the AML compliance team had primary responsibility to ensure compliance with the AML/CTF legislation and to provide the operating business units (including the cage) with the tools, structures, advice, guidance and support to enable them to appropriately manage the risk. They were responsible for conducting the ML/TF risk assessments and reviewing the AML/CTF program.²⁸⁵

231 In carrying out its transaction monitoring function, the AML team relied primarily on reports generated from Perth Casino's SYCO system.²⁸⁶ A report was generated by the AML team from SYCO which listed the records created by cage employees.²⁸⁷ While TT Forms and supporting paperwork were not provided to the AML team as a matter of practice, those documents were available to the AML team upon request.²⁸⁸ Notwithstanding that the AML team had access to the TT Forms and supporting paperwork, the AML team's ordinary practice was to only review the SYCO generated report and to not review that paperwork for potentially suspicious activity.²⁸⁹

232 Crown accepts:

- a. the failure of the Perth Casino AML team members to detect apparent structuring through the Riverbank account was due to them only having regard to the SYCO system, the limited transaction information that was included in the SYCO generated report and not the TT Forms or the associated paperwork;²⁹⁰
- b. a more detailed SYCO generated report, including information as to whether there had been multiple deposits for one transaction, would have assisted the AML team members to form a view as to whether the transaction should be the subject of an SMR or further investigation;²⁹¹
- c. the closure of the Riverbank accounts by ANZ in 2014 should have led to a review of the bank account activity, which in turn ought to have identified the aggregation issue;²⁹²

- d. the Perth Casino AML team should have ensured that a thorough review of the Perth Casino AML/CTF framework occurred after the closure of the Riverbank accounts by ANZ in 2014;²⁹³ and
- e. these acts and omissions comprised a failure in the system for second-line review by the AML team.²⁹⁴

Preston

233 Preston was appointed the designated AML/CTF Compliance Officer in 2007 and continued in this role until November 2020.²⁹⁵ He was responsible for the Perth Casino AML/CTF compliance team (albeit a small team). The PCRC has therefore examined Preston's role in the management of ML/TF risk in the second line of defence in respect of Perth Casino in the relevant period.

234 Relevantly, Preston also held the following roles during this period:

- a. Executive General Manager – Legal Services;
- b. from 12 August 2014, Co-Company Secretary of BL, BNL, BRML and Riverbank;
- c. from 1 March 2017, Chief Legal Officer – Australian Resorts, which incorporated responsibilities in relation to Melbourne Casino;
- d. chair of the Perth ERCC; and
- e. member of the AML/CTF Committee when it was established in 2018.

235 Preston gave evidence to the PCRC that Riverbank's sole function was to hold bank accounts, the main purpose of which was to facilitate transfer of funds by overseas patrons.²⁹⁶ He conceded in evidence that operating the Riverbank account exposed Perth Casino to an increased risk that the account would be utilised by money remitters for illegitimate purposes.²⁹⁷

236 In his evidence, Preston was taken to various written communications in 2014²⁹⁸ which he either sent or received, or which referred to communications with him, which referenced (in substance):

- a. that multiple deposits were being made by patrons or on behalf of patrons of Perth Casino into the Riverbank accounts that appeared to be instances of structuring;
- b. closure by ANZ of the accounts which it held in the name of Riverbank because of concerns about these multiple deposits;
- c. ANZ's concerns that Crown would aggregate the deposits throughout the course of the day and report internally only the aggregated amount; and
- d. a meeting with ANZ representatives on 3 March 2014 about the bank closure which Preston apparently attended.

237 Preston's evidence to the PCRC was that, prior to him giving evidence in the Bergin Inquiry, he had no recollection that there were occasions when multiple deposits were made in cash into the Riverbank accounts.²⁹⁹ He had no recollection of the closure of the Riverbank accounts held with ANZ. He did not recall attending the meeting with ANZ in March 2014.³⁰⁰

238 Preston gave other evidence to the PCRC to the effect that:

- a. he was not aware of there being any internal Crown AML/CTF reports prepared in connection with the Riverbank accounts prior to the report prepared during the Bergin Inquiry.³⁰¹

- b. Preston could not provide any explanation why no one involved in the AML/CTF program management of Perth Casino undertook an investigation into the operation of the ANZ accounts until the Bergin Inquiry.
- c. to his knowledge, the independent directors of BL were not informed of the closure of the Riverbank accounts in 2019 nor the reasons for the closure. To his knowledge, the directors of CRL were not informed of the closure of the Riverbank accounts in 2019.³⁰²
- d. Preston was not aware of any other action taken after 2014 in relation to the way in which the Riverbank account was operated that might minimise the chance of a recurrence of the sort of activity that ANZ had raised to his attention or to the attention of others at CRL.³⁰³
- e. Preston could not recall, as the designated AML/CTF compliance officer in 2014, making any changes to any standard operating procedures from the AML/CTF perspective or request that they be done during 2014. He could not recall any changes made to the AML/CTF program after February 2014 that dealt with the specific circumstance of multiple deposits into bank accounts but conceded that, based on what he had seen in the Bergin Inquiry and this inquiry there was no change to the program to address that specific point. Preston accepted that was something he should have done. He could not explain why he had not done so.³⁰⁴
- f. he was unaware of any reports on the closure of the Riverbank accounts in 2019 being provided to any of the Crown boards. He could not recall any response on behalf of Crown or the Burswood entities in relation to closure of the Riverbank accounts in 2019.³⁰⁵

239 The PCRC accepts that there are matters personal to Preston which may have impacted on his subsequent memory of events. However, as the designated AML/CTF Compliance Officer, General Manager of Legal and Chair of the Perth ERCC, Preston could have:

- a. taken steps to ensure that senior management, in particular Felstead and the members of the Perth ERCC, and the boards of BNL, BL and Riverbank were aware of the closure of the ANZ Riverbank accounts, and ANZ's money laundering concerns, in 2014 or subsequently. There is no evidence that he took any such steps; and
- b. caused the AML team to take steps to investigate the activity through the Riverbank accounts in 2014, upon becoming aware of ANZ's money laundering concerns. He did not do so. In fact, the AML team did not conduct any such inquiry until the review by Vanderklau in 2020.

240 Preston now accepts that the documentary records reveal that he was aware in early 2014 of the money laundering concerns that ANZ had raised. Preston also accepts that the Perth Casino AML/CTF Program and the Perth Casino AML SOPs were not amended to take into account the risk that had been identified by ANZ. Preston also accepts that 'no steps of the kind taken in 2020 and 2021 (precluding third party transfers and returning cash deposits) were taken in 2014'.³⁰⁶

241 As discussed in Part One of this chapter, the AML team as the second line of defence was to oversee and assist the cage and to provide the tools, guidance and support to the cage to enable it to appropriately manage ML/TF risk. Armed with the knowledge of potential structuring in the Riverbank accounts, Preston and the AML team did not take adequate steps to fulfil this function through enhanced policies and procedures, increased monitoring, supervision or training for cage staff.

242 Preston was not the only Crown employee who, according to the documentary records, was aware of the closure of the ANZ accounts in 2014 and the reasons for this. Kenneth Barton (**Barton**) (former CFO and CEO of CRL), Costin, Vanderklau, Brown, Campbell, Michael Neilson (**Neilson**) (former General Counsel of CRL), Craig Spence (**Spence**) (former CFO

of Perth Casino) and Vasula Kessell (**Kessell**) (Perth Casino Financial Controller), among others, also knew of those matters in 2014³⁰⁷ but most gave evidence to the effect that they had no current recollection about the circumstances of the closure.³⁰⁸ Barton's and Costin's knowledge of and involvement in matter related to the closure of the ANZ accounts are examined further below.

243 The PCRC concludes that:

- a. Preston was aware in early 2014 of ANZ's money laundering concerns; and
- b. if Preston and the AML team had;
 - i. provided guidance and support to the cage staff through enhanced policies and procedures, monitoring and training;
 - ii. raised ANZ's concerns with the BL, BNL or BNL board; or
 - iii. conducted an investigation of the activity through the Riverbank accounts in 2014;
- c. it is quite possible that the Burswood entities could significantly have reduced the apparent money laundering through the CBA Riverbank accounts which occurred after 2014.

Internal audit

244 The role of the internal audit of risk management function is examined in Chapter Four: Corporate Governance.

245 The internal audit function and its contribution to Crown's management of ML/TF risk between 2010 and 2019 was not addressed in the Bergin Inquiry or the RCCOL.

246 Crown accepts that the internal audit team did not find in their audit process, and were not made aware of issues regarding the practice of aggregation, the failure of the cage to raise SMRs and suspected money laundering through the Riverbank accounts.³⁰⁹

247 The PCRC heard evidence as to how the issue of apparent money laundering in the Riverbank accounts was not detected by Perth Casino's internal audit function. The PCRC heard evidence from Rachel Murray (**Murray**) who was part of Perth Casino's internal audit team from 2008 to 2017.³¹⁰ From 2011 to 2017, Murray was the manager of internal audit.³¹¹

248 Murray prepared an Internal Audit Activity Report on a quarterly basis for the Perth ERCC.³¹² Those reports formed part of the board packs for BL.³¹³

249 Murray agreed that the key element to audit planning was to gain a good understanding of the risk and compliance obligations of an area, which included reviewing all relevant risk registers.³¹⁴ Murray also agreed that the purpose of an internal audit was not only to test for compliance with a control, but also to test the effectiveness of the control.³¹⁵

250 The scope of the Perth Casino AML/CTF internal audit included reviewing the 'effectiveness of risk assessment procedures in relation to Crown Perth's risk of facilitating money laundering and terrorism financing'.³¹⁶ This included an assessment of controls in place to accurately and completely identify and report information to AUSTRAC as required by the legislation, including suspect transactions.³¹⁷ However, the internal audit process did not include a specific process to ensure first line of defence staff were appropriately recognising and reporting suspicious transactions.³¹⁸

251 An additional objective of the Perth Casino AML/CTF internal audit was to ensure that AUSTRAC reporting requirements had been complied with.³¹⁹ Murray gave evidence that all materials relating to TTs, including the patron number, SYCO entry and the TT Forms and supporting paperwork were available to the internal audit team.³²⁰ Murray said that if the

bank statements attached to the TT Forms displayed multiple transactions that had been aggregated, that would have formed part of the information audited. However, she does not recall seeing such a TT Form and, therefore, any aggregation did not form part of the internal audit.³²¹ Murray agreed that the internal audit team could have designed an audit process whereby an adequate sample size was used to determine if there were gaps in the reporting of suspicious matters derived from TT Forms.³²²

- 252** After the planning of the scope of the internal audit, including details of the audit objectives, areas of focus and relevant risks, approach and timing, the scope statement was then provided to the relevant manager and a meeting was held to discuss and agree the audit scope.³²³ In this case, Murray's manager was Preston,³²⁴ who as noted above was, at the relevant times, the designated AML/CTF Compliance Officer, General Manager of Legal, and chair of the Perth ERCC.
- 253** This reporting line presented a systemic problem for Perth Casino:
- a. Murray's direct supervisor was Preston, and yet Murray's internal audit team was responsible for auditing Preston's AML team.
 - b. The AML team should have provided the internal audit team with sufficient information and records to enable it to assess whether the AML team was adequately managing compliance with the regulatory requirements as well as adequately monitoring the actions of the first line of defence and, in particular, the practices of cage staff.
 - c. The internal audit team prepared an audit report for the Perth ERCC, chaired by Preston, which was supposed to report on the results of auditing Preston's AML team (amongst other business units). Thus, Preston chaired the management committee responsible for receiving and considering a report on an audit of an internal function for which he was responsible. This reporting line for internal audit removed a significant element of accountability on the part of the AML team.
 - d. Murray said that Preston did not have any involvement in the review of the scope and focus of the audit process. This was left for her to determine. Preston's only involvement was in the timing of the audits.³²⁵
 - e. Preston (and staff supervised by Preston) were responsible for compiling the legal, risk and compliance report for the board of BL and Preston was also involved in meetings to compile the risk register prepared for the CRL risk management committee.
- 254** There was no evidence before the PCRC that members of the Perth Casino internal audit team were aware of the closure of the Riverbank accounts held with ANZ. None of the Internal Audit Reports referred to the closure of those accounts, the practice of aggregation at the cage or structuring through any of the Perth Casino bank accounts.
- 255** Between 2013 and 2018, Internal Audit Activity Reports noted in the BL board papers gave 'good' to 'excellent' AML/CTF audit ratings.³²⁶ In 2019, the AML/CTF audit rating is recorded as 'deferred until FY20'.³²⁷ There is no reference to the audit reports in the board papers of BNL. For each Internal Audit Activity Report during this period, the noted improvements required are described as 'minor'. The PCRC considers that some of these improvements should have been described as 'major' as they reflect key controls to mitigate ML/TF risk, particularly cage employees training and AML SOPs not being updated in a timely manner.³²⁸
- 256** The PCRC concludes that:
- a. Preston's role as AML/CTF Compliance Officer and Chair of the Perth ERCC compromised his ability to supervise the internal audit process as the internal auditor's line manager. There was no effective supervision of the internal audit process;

- b. conversely, the fact that the internal audit team effectively reported to Preston, compromised the ability of the internal audit process to independently and objectively audit and assess the effectiveness of ML/TF risk management at Perth Casino and, in particular, the effectiveness of Preston and the AML team in that regard;
- c. the internal audit team were not made aware of issues regarding aggregation, the failure of the cage to raise SMRs and suspected money laundering through the Riverbank accounts; and
- d. in at least the period 2014 to 2019, the Perth Casino internal audit process did not properly assess the effectiveness of ML/TF risk management.

Perth ERCC

- 257** The role of the Perth ERCC is examined in Chapter Four: Corporate Governance.
- 258** Prior to 2018, the Perth ERCC had oversight of the management of the ML/TF risk for Perth Casino. The Perth ERCC met quarterly and an 'AML/CTF update' was a standing agenda item. The attendees at Perth ERCC meetings were all members of Perth Casino's senior management, including Preston (as chair), Felstead, Alan McGregor (**McGregor**) (former CFO-Australian Resorts) and Bossi.³²⁹ Murray attended the Perth ERCC meetings by invitation.
- 259** Information about AML/CTF matters would be provided to the ERCC as a result of the AML team preparing papers which Preston would then submit.³³⁰
- 260** A Legal, Risk and Compliance Report comprising key issues from the Perth ERCC's papers went to the BL Board for its board meetings.³³¹ From approximately 2017 onwards, members of CRL management would attend the Perth ERCC meetings.³³²
- 261** For the Perth ERCC to have proper oversight of the management of the ML/TF risk, it had to monitor the effectiveness of the three lines of defence. However, Preston as the Chair of the ERCC was also:
- a. the AML/CTF Compliance Officer, and therefore occupied the most important role in the second line of defence; and
 - b. the line manager for the Internal Audit Manager, and therefore was responsible for the third line of defence.
- 262** This means that Preston as the executive responsible for managing the ML/TF risk was effectively overseeing himself.
- 263** The Perth ERCC was the management committee responsible for holding the AML team to account. For this governance structure to function properly, the AML team ought to have reported fully in relation to all AML related matters. There is no evidence that the AML team reported to the Perth ERCC in relation to, for instance, potential structuring through bank accounts associated with Perth Casino. The Perth ERCC was, therefore, unable to oversee the AML team's actions, or inaction, in respect to such events.
- 264** Crown produced to the PCRC copies of 55 papers for the Perth ERCC meetings for the period May 2013 to May 2021. A review of these documents, discloses the following:
- a. the Perth ERCC was routinely provided information on the number of TTR and SMR reports submitted to AUSTRAC, as well as information on instances of staff non-compliance with required AML/CTF processes (primarily, either not completing a TTR when required, failing to collect all required patron information when completing a TTR/SMR, or accepting expired identification from a patron);

- b. there are no references in these papers to ANZ's concerns about potential structuring in the Riverbank accounts, the aggregation issue, or potential money laundering through bank accounts generally; and
- c. in the 'Material Risk Update' included in the papers for the 22 November 2019 meeting it was noted: The CBA has provided formal notice that it will be closing the Southbank Investment and Rive[r]bank Investments accounts. No further information was provided. The 'trend' for material risks generally in that update was unchanged.³³³

- 265** In about September 2019, the Group AML/CTF Committee was established.³³⁴ The chair of this committee was the Group General Manager – AML, who initially was Lane.³³⁵ This committee was comprised of the Group AML/CTF team and a number of senior general managers and would meet quarterly. Preston and Brown were members.³³⁶ The purpose of the committee was to consider AML related matters. The reporting lines for the committee were through to the Perth ERCC and specific issues would also be reported to the relevant General Managers or Executive Team members.³³⁷
- 266** Despite the formation of the AML/CTF Committee in 2019, there is no evidence that it took any step prior to 2020 to investigate potential structuring in the Riverbank accounts, the aggregation issue, or potential money laundering through bank accounts generally.
- 267** The PCRC concludes that Preston's role as designated AML/CTF Compliance Officer and chair of the Perth ERCC meant that the Perth ERCC was compromised in its oversight function of the performance of the management of the ML/TF risk, including important oversight of the conduct of AML/CTF Compliance Officer and the AML team.

Oversight by senior management

- 268** Crown accepts that there were failings by senior management which contributed to the failure to detect and manage the ML/TF risk during this period. It contends that:
- a. senior management, such as Barton and Costin, were chiefly concerned with opening new accounts so that business could occur as usual;³³⁸
 - b. no senior manager took responsibility for ML/TF risk in 2014;³³⁹ and
 - c. there was no escalation of the risk to Perth Casino (as demonstrated by the closure of the ANZ Riverbank accounts) to the BL or CRL boards.³⁴⁰
- 269** The PCRC has identified the following senior managers who contributed to this failure.

Travis Costin

- 270** Costin held various roles with Crown from June 2007 to December 2021, including CRL Treasury and Finance Manager between 2011 and 2018 during which time he reported to the Group Financial Controller of CRL³⁴¹ Costin had responsibility for maintaining relationships with banking partners generally.³⁴² Costin departed Crown in late December 2021.³⁴³
- 271** Costin was involved in correspondence and meetings with ANZ in January to April 2014.³⁴⁴ On the closure of the ANZ Riverbank accounts in 2014, Costin in his evidence to the PCRC said that he acted on Barton's instruction to open a new account with CBA³⁴⁵ and sent an email on 29 April 2014 internally to Brown, Preston and others, requesting that patrons be advised that multiple cash deposits in bank branches under the \$10,000 reporting threshold will not be accepted in the new CBA Riverbank accounts.³⁴⁶ Once he had sent the email, Costin considered that was the end of his involvement in the matter.³⁴⁷

- 272** Costin accepted that, in hindsight, what was drawn to his attention by ANZ in January 2014 was a fairly obvious example or indicia of possible money laundering but he says that was not obvious to him at the time.³⁴⁸ Costin accepts that in 2014 he knew of the closure of the ANZ Riverbank accounts and the reasons for that closure.³⁴⁹
- 273** In his evidence to the PCRC, Costin said that between 2014 and 2020 there were no steps or procedures in place at Crown for considering AML/CTF risks when opening bank accounts.³⁵⁰ Costin said that it was not until 2021 that there was a requirement for all openings and closures of bank accounts to be reported to the AML team, compliance teams and risk management committee, although this change was only verbally communicated to him and to his knowledge, was not documented.³⁵¹
- 274** The PCRC considers that Costin's evidence highlights another aspect of the problematic management of ML/TF risk in respect of Perth Casino in that:
- a. rather than Crown, and the Burswood entities in particular, acting to investigate and address the issues raised by ANZ, Costin was simply instructed to open new accounts with another bank; and
 - b. Costin's request in relation to multiple cash deposits was a clear indication to senior management of the reason ANZ closed the accounts, and yet this did not trigger an investigation into the Riverbank accounts, any remedial response or reporting to the boards of the Burswood entities on the part of the recipients of his email.
- 275** One further point can be made about Costin's role in connection with ANZ's closure of the Riverbank accounts. On 31 March 2014, during the course of its investigation into the Riverbank accounts, ANZ wrote to Costin in the following terms:³⁵²
- We would like to clarify some points concerning reporting to AUSTRAC. It is our understanding from our previous conversations that when it comes to amounts deposited in accounts, Crown would aggregate deposits through the course of a day and report the aggregated amount. However, this differs for cash received at the casino itself, where we understand only amounts over the AUD10K threshold are reported.
- 276** On 1 April 2014, Costin replied:³⁵³
- Where cash is deposited in the Cage, where it is under the \$10k threshold they are not reported as threshold transactions. If multiple receipts from the same patron under the threshold are placed on the same day Crown would then report suspicious transactions rather than a threshold transaction.
- 277** Costin's evidence to the PCRC was that this information was provided to him by someone else, although he could not recall whom that was.
- 278** The ANZ responded:³⁵⁴
- Just to clarify in respect of accounts (eg Riverbank), when multiple deposits are made into an account on the same day (eg at different branches), would that be aggregated and reported as a threshold transaction. Or once again a suspicious transaction?
- 279** Costin replied:³⁵⁵
- My understanding is it is the same for bank accounts as it is for cash deposits made into the Cage.
- 280** In his evidence to the PCRC, Costin explained this reply in the following terms:³⁵⁶
- I think what I would have meant by that sentence is if there were multiple transactions under \$10,000 through a bank account, similar to the Cage, Crown would have reported them as a suspicious transaction, not a threshold transaction.

- 281** Costin said that the source of this information would have been someone internal to Crown, but he could not identify the source.³⁵⁷
- 282** This exchange demonstrates that ANZ was not only concerned about the apparent structuring through the Riverbank accounts, but that by reason of the aggregation process in the cage that apparent or potential structuring was not being reported to AUSTRAC as a suspicious matter. Costin's final reply to ANZ, noted above was incorrect. There is no evidence to suggest that anyone in connection with Perth Casino investigated the possible 'aggregation issue' at this time, despite the concerns raised by ANZ following the meeting with Crown.
- 283** The PCRC concludes that:
- a. Costin was aware of the closure of the ANZ Riverbank accounts and ANZ's suspicions regarding those accounts in 2014;
 - b. Costin was in direct communication with ANZ and should have appreciated the importance of the questions raised by ANZ and the potential seriousness of the matters the subject of those questions; and
 - c. in responding to ANZ's questions, Costin should have taken care to ensure Crown's responses were considered and accurate. Whatever steps he may have taken to obtain relevant information before responding to ANZ, the response sent by Costin to ANZ on 1 April 2014 was incorrect.

Kenneth Barton

- 284** Barton was employed by CRL from March 2010 to February 2021.³⁵⁸ He was the CFO of CRL from March 2010 to 24 January 2020 and the CEO and Managing Director of CRL from 24 January 2020. Barton was a director of BL and BNL from 24 March 2010 and Riverbank from 12 August 2014.³⁵⁹ Barton resigned on 15 February 2021.³⁶⁰
- 285** In his evidence to the PCRC, Barton said that he understood Riverbank to be so named due to a desire by some patrons to not have the name of the casino as the counterparty to some financial transactions. He said that he became aware of this when ANZ closed the Riverbank accounts in 2014.³⁶¹ According to Barton, the VIP team's preference to have an account in the names of Riverbank and Southbank was the only reason for maintaining the account after its closure in 2014.³⁶² Upon becoming aware of the purpose of Riverbank, it did not raise any alarms bells with him that accounts of this character may facilitate money laundering.³⁶³
- 286** Barton was involved in correspondence with ANZ in 2014 and met with representatives of ANZ. Barton said that he was aware that ANZ was concerned about suspicious transactions in the Riverbank accounts and, through discussions or communications with members of the Melbourne finance team, that at least some of the transactions related to overseas patrons and the use of money changers.³⁶⁴ Barton accepts that he did nothing to prevent the patrons who were suspected to be money laundering through the ANZ Riverbank accounts to continue doing business with Perth Casino.³⁶⁵
- 287** Following the media allegations in 2019, Barton attended a meeting with CBA to discuss the CBA Riverbank accounts. CBA wanted to understand Crown's AML processes, given its concern of potential money laundering occurring through the CBA Riverbank accounts in 2019.³⁶⁶
- 288** Despite the red flags raised by ANZ and CBA, and media allegations relating to the Riverbank accounts, Barton was not aware of any investigation and did not cause or undertake an investigation in 2014 or 2019.³⁶⁷

289 The PCRC concludes that:

- a. Barton was aware of the closure of the ANZ Riverbank accounts and ANZ's suspicions regarding those accounts in 2014;
- b. as a director of BL and BNL from 24 March 2010, Barton should have reported the closure of the ANZ Riverbank accounts and ANZ's suspicions regarding those accounts in 2014 to other members of the boards of BL and BNL at the time when he became aware of such matters. He did not do so;
- c. after ANZ raised its concerns, Barton should have ensured that an investigation occurred to ensure that all appropriate SMRs were raised in respect of past transactions in the Riverbank and other Perth Casino bank accounts, and that if there was conduct suspicious of structuring through the accounts it was reported to an appropriate law enforcement agency;
- d. as the CFO of CRL from March 2010 to 24 January 2020, Barton had a responsibility (and the authority) to direct that reasonable steps be taken to enhance relevant controls in respect of the ML/TF risk arising from the Riverbank accounts, once they were opened with CBA in 2014, to mitigate the prospect that the same third party conduct about which ANZ was concerned would be repeated. He did not do so; and
- e. Barton should not have instructed Costin to open new accounts with CBA in the name of Riverbank without first satisfying himself that appropriate measures would be put in place to mitigate against the risk identified by ANZ. He did not do so.

Barry Felstead

- 290** Felstead was employed within the Crown group between March 1994 and 1 January 2021. From May 2005, he commenced as the COO at Perth Casino and was promoted to CEO of Crown Perth Resort in March 2007. From 2 August 2013 to 31 December 2020, he was the CEO of Australian Resorts, an amalgamation of the CEO roles at Perth Casino, CML and Aspinalls. He became a director of the Burswood entities and Riverbank on 26 April 2007 and a director of CML on 8 November 2013. Felstead departed the role of CEO - Australian Resorts on 31 December 2020 and ceased being a director of the Burswood entities, Riverbank and CML on 1 January 2021.³⁶⁸
- 291** In 2013, Felstead was aware that HSBC decided to close the Riverbank account on the basis that it had decided to no longer provide banking services to the gaming sector.³⁶⁹
- 292** From 2013, Felstead was aware of ANZ holding the Riverbank accounts and in 2014, was aware of the closure of the ANZ Riverbank accounts in 2014.³⁷⁰ However, in his evidence to the PCRC he said that he was that he was not informed of the reason for the closure, nor that the closure was specifically in relation to money laundering.³⁷¹ He made no enquiries to ascertain why the ANZ Riverbank accounts had been closed.³⁷² Felstead agreed that the closure of the ANZ Riverbank accounts, and the reasons for it, should have been brought to his attention and that of the relevant governing boards.³⁷³
- 293** Felstead was aware of the 2019 media allegations alleging money laundering through the Southbank and Riverbank accounts. However, he took no steps to investigate the veracity of the allegations. Instead, he understood that Barton and his team would be 'handling' the media allegations but did not follow up to confirm this.³⁷⁴ It did not occur to him, as CEO-Australian Resorts, to inquire into the operations of the Riverbank accounts.³⁷⁵
- 294** It is unclear when Felstead became aware of the closure of the CBA Riverbank accounts but it was between mid to late 2019.³⁷⁶ Regardless, upon learning that the CBA Riverbank accounts would be closed in late 2019, he did not consider whether the Riverbank accounts should continue to operate with another bank.³⁷⁷ Furthermore, it did not occur to Felstead

that there may have been a connection between the media allegations in mid-2019 and the closure of the CBA Riverbank accounts in late 2019.³⁷⁸

295 The PCRC concludes that:

- a. Felstead was aware of the closure of the ANZ Riverbank accounts and the CBA Riverbank accounts. Regardless of whether he knew the reasons for the closures, the fact that two major banks had closed the accounts should have caused him to inquire into the reasons for the closure of the accounts. He did not so; and
- b. in 2019, given the seriousness of the media allegations, Felstead's awareness of the Riverbank accounts and the previous closure of the accounts by ANZ, as CEO Australian Resorts, he should have taken steps to investigate the money laundering allegations rather than assuming that others were handling it. Had he done so, it is likely that Crown would have identified the issues and commenced remediation actions in a more timely and responsible manner in 2019.

Alan McGregor

296 McGregor was appointed CFO of CRL in August 2020 and remains in that position. Relevantly, he also held and holds the following roles:

- a. CFO of Perth Casino from April 2007 to April 2013;
- b. director and company secretary of BNL, BRML and Riverbank from April 2007 to July 2013;
- c. company secretary of BL from April 2007 to date;
- d. CFO of CML from April 2013 to August 2014;
- e. CFO of Australian Resorts from August 2014 to August 2020; and
- f. company secretary of CRL from August 2014 to date.³⁷⁹

297 McGregor was based in Perth until April 2013, when he moved to Melbourne to assume the role of CFO of CML. McGregor continues to reside in Melbourne.

298 During his time as CFO of Perth Casino, responsibility for AML largely sat with the legal and compliance teams, although the Perth Casino cage reported to him.³⁸⁰

299 At the time McGregor was appointed director and secretary of Riverbank in April 2007, his understanding was that Riverbank was set up solely to run patron deposit accounts.³⁸¹ McGregor was also an authorised signatory on some of the Riverbank accounts.³⁸² McGregor's evidence to the PCRC was that his responsibilities in respect of the Riverbank accounts during the period were largely administrative. While he was involved in matters such as changing authorised persons on the bank accounts, he did not have any oversight of the transactions in and out of those accounts. He could not recall any AML related issues being raised during his time as a director of Riverbank.³⁸³

300 In relation to monitoring the operation of the Riverbank accounts, McGregor's evidence to the PCRC was that daily monitoring of the accounts for compliance with systems, policies and procedures was jointly conducted by the cage team (monitoring and reporting on deposits into the account and identifying any unusual or suspicious matters), the compliance team (reviewing bank activity and reporting of any threshold transactions or suspicious matters) and the VIP credit team (monitoring and matching the patron deposits and debt payments). McGregor understood that reporting of suspicious transactions and SMRs was actioned through to the relevant authorities as appropriate.³⁸⁴

301 McGregor accepts that the operation of the Riverbank account and the process of sweeping deposits into other accounts was a practice that was particularly vulnerable to a risk of money laundering occurring.³⁸⁵

- 302** McGregor accepted in examination that the systems and processes were ‘clearly’ deficient, but said that he did not appreciate it at the time and did not do anything in respect of the controls or management of the Riverbank accounts.³⁸⁶ McGregor accepts that he bears a responsibility for the deficiencies in the systems and processes in place in respect of the Riverbank accounts between 2007 and 2013.³⁸⁷ He accepts that there should have been more attention given to the activities and transactions through Riverbank, and that, as CFO at the time, he bears a responsibility for the fact that there was not.³⁸⁸
- 303** McGregor accepts that the closure of accounts by a reputable bank was a very significant matter. However, he said that he has no recollection of whether he was aware of the closure of the ANZ Riverbank accounts at the time, despite the fact that he became CFO Australian Resorts and therefore effectively the CFO of Perth Casino one month after the closure of the accounts.³⁸⁹ He cannot recall whether he knew the reasons for the closure of the ANZ Riverbank accounts at the time of the opening of the CBA Riverbank accounts. He cannot recall whether he was a signatory to the ANZ Riverbank accounts. He cannot recall whether he was aware of the opening of the CBA Riverbank accounts.³⁹⁰
- 304** McGregor accepts that, as CFO of Perth Casino and Melbourne Casino, he needed, at the point of the closure of the CBA Riverbank and Southbank accounts, to be more involved in understanding the reasons for the closure and what adjustments needed to be made to the financial management of Perth Casino and Melbourne Casino to avoid that happening with another bank.³⁹¹
- 305** Despite being a director and secretary of Riverbank between 2007 and April 2013, and CFO of Perth Casino during that period, McGregor did not know whether Riverbank was or was not registered as a reporting entity with AUSTRAC. He concedes that he probably should have known this. He cannot explain why he did not know at the time.³⁹²
- 306** McGregor’s understanding, as a director and secretary of Riverbank between 2007 and 2013, and as CFO of Perth Casino during that period, was that Riverbank was included within the Perth Casino AML/CTF Program. This was incorrect. Riverbank was not recognised in the AML compliance programs as a reporting entity.³⁹³ McGregor cannot explain why he did not realise that at the time.³⁹⁴
- 307** The PCRC concludes that:
- a. given his roles as CFO of Perth Casino from April 2007 to April 2013, and CFO of Australian Resorts from August 2014 until August 2020, McGregor should have had a greater level of awareness of the fact and reasons for the closure of the ANZ Riverbank accounts in July 2014 and the closure the CBA Riverbank accounts in March and November 2014;
 - b. McGregor did not pay sufficient attention to the operation of the Riverbank accounts. Given his role as CFO of Perth Casino and as a director of Riverbank until 2013, he should have appreciated that the operation of the Riverbank accounts and the process of sweeping deposits into other accounts was a practice that was particularly vulnerable to a risk of money laundering occurring. He should have taken steps to improve the management and controls of the Riverbank accounts. He did not do so; and
 - c. as a result, McGregor bears a responsibility for the deficiencies in the systems and processes in place in respect of the Riverbank accounts between 2014 and 2019.

Apparent structuring through other bank accounts

- 308** In response to the Bergin Inquiry, Crown engaged Deloitte to conduct a forensic review of (among other things) patron bank accounts to identify transactions which may be indicative of money laundering activity.³⁹⁵ This work was completed on 15 October 2021

and is known as the Deloitte Phase 2 Forensic Review (**Deloitte Phase 2 Review**). While the Deloitte Phase 2 Review was commissioned during the RCCOL, its work was not completed until close to the conclusion of the RCCOL and therefore it was not considered by the RCCOL.

- 309** In the Deloitte Phase 2 Review, Deloitte identified 55 Crown bank accounts held in the name of ten legal entities as 'Patron Accounts' in a mixture of Australian dollar and foreign currency. This included bank accounts held by Riverbank and BNL.³⁹⁶ Deloitte identified a variety of activity indicative of potential money laundering throughout the relevant period, being 22 February 2014 to 30 April 2021.³⁹⁷ The activity indicative of money laundering that was identified related to 1,150 patrons and 22 of the 55 identified Patron Accounts. The Patron Accounts included accounts owned by BNL and Riverbank, although the majority of the activity was identified in bank accounts owned by Southbank.³⁹⁸
- 310** Deloitte found that the majority of the identified ML/TF typologies and risks occurred through the Patron Accounts from 2014 to 2017.³⁹⁹ Further, there were no incidents of structuring, smurfing and cuckoo smurfing, use of third party agents or use of potential shell companies from late 2020.⁴⁰⁰ This was likely as a result of Crown's recently improved controls over the bank accounts.⁴⁰¹

Patron reviews

- 311** The PCRC received evidence of patrons displaying potentially suspicious behaviour that was not identified or effectively managed by Perth Casino.
- 312** The following case studies are illustrative of this evidence.

Patron K

- 313** Patron K became a member of Perth Casino in June 2012 and had a recorded occupation of 'bankwork'.⁴⁰² Patron K was a high value patron, given his large deposits into his patron account, high turnover and routine jackpot wins.⁴⁰³
- 314** On 26 October 2017, the source of funds of Patron K's significant gaming activity was raised by Mark McKay (**McKay**) (Executive General Manager Gaming Machines, Melbourne Casino) whose request was passed on to Bossi and subsequently to Richard Smith (**Smith**) (Perth Casino General Manager VIP Gaming).
- 315** In response, Smith provided limited information on Patron K, including that he was a bank manager, was a very private person and travelled to Melbourne frequently for work.⁴⁰⁴ On 27 October, McKay emailed Bossi and Walsh to report that there had been a significant increase in Patron K's play and average bet for 2017. Bossi forwarded the email to Smith saying, 'let's hasten our review'.⁴⁰⁵
- 316** On 19 December 2017, Smith forwarded an email to Bossi from Patron K's Perth Casino executive host, providing information he had collected on Patron K. The information included unsubstantiated information collected from a friend's Facebook page which suggested that Patron K came from a wealthy 'Family to Know'.⁴⁰⁶
- 317** On the same day, Bossi was forwarded information from Patron K's Melbourne Casino executive host with further information on his background following conversations with Patron K, including that he was involved in property developing and investment and had a 'large portfolio'.⁴⁰⁷
- 318** On 15 February 2018, the day after his employer verified he had been stealing funds from the bank where he was a manager,⁴⁰⁸ Patron K self-excluded from Perth Casino.⁴⁰⁹ In the Customer Details Register record for Patron K, it was noted that Patron K was under

investigation by WAPOL for potential fraud in February 2018. Patron K was charged with stealing as a servant in March 2018.⁴¹⁰ An NRL was issued for Patron K for the reason of 'RSG (that is, responsible service of gambling) concerns' on 12 October 2018.

- 319** Bossi accepted that the investigations conducted by Perth Casino and Melbourne Casino during 2017 were not a sufficient substantiation of Patron K's financial position and could not be relied upon to satisfy Crown that the source of Patron K's gambling funds were legitimate.⁴¹¹
- 320** Bossi further accepted that the failure to approach Patron K to require him to provide financial documentation to support his gambling position should have been done but was not.⁴¹² When asked whether he considered that the oversight by Perth Casino of Patron K's high turnover on EGMs in 2017 was adequate, Bossi responded with 'we should have known better' and accepted that steps should have been taken to exclude Patron K from the casino at an earlier point in time than when he was issued an NRL in October 2018.⁴¹³

Patron AP

- 321** Patron AP was a Pearl Room member from July 2013⁴¹⁴ and had a recorded occupation of 'book keeper'.⁴¹⁵ In 2016, Patron AP had a total recorded loss at Perth Casino of \$1,292.⁴¹⁶ Between 2017 and 2019, the total loss of Patron AP at Perth Casino increased substantially to a maximum of \$154,747 in 2017 and \$73,618 in 2019.⁴¹⁷
- 322** In October 2019, Patron AP entered into a cross-property self-exclusion.⁴¹⁸ The reason for the self-exclusion was noted as 'stealing from employer, currently incarcerated' and 'gambling has resulted in stealing from employer to fund it'.⁴¹⁹
- 323** In June 2021, CRL was advised via a letter from the trustee of Patron AP's bankrupt estate that they were declared bankrupt as of May 2021 and were currently incarcerated.⁴²⁰ An enhanced customer due diligence inquiry was then undertaken with a review of the patron's historical gaming activity and conviction, resulting in a NRL being issued against Patron AP in July 2021 across all Crown casinos.⁴²¹
- 324** There is no record of an occupation audit being conducted that included 'bookkeepers' or similar by Perth Casino or Melbourne Casino AML teams. Furthermore, despite Patron AP's sharp rise in bets made and turnover, as demonstrated by the Perth Casino player rating transaction records,⁴²² there is no record of Perth Casino forming a suspicion of potentially illicit funds, nor was a source of wealth inquiry undertaken.

Patron AN

- 325** On 20 July 2012, Patron AN, a member of a junket, was reported in the AML/CTF Officer Meeting attended by Preston, Vanderklau and Christo Theodoropoulos (**Theodoropoulos**) (former AML officer) as having two possible serious World Check matches.⁴²³
- 326** The first World Check listed a person with the same name as Patron AN as the legal representative of a group which in June 2010, had its assets seized due to allegations of mafia association intent on laundering proceeds of tax evasion and other counterfeiting and fraud allegations between 2006 to 2010.⁴²⁴ The second World Check listed a person with the same name as Patron AN as the political commissar of the People's Liberation Army and former Director of the Political Department of the group.⁴²⁵
- 327** Despite the World Check findings, the patron's risk rating was determined to remain low.⁴²⁶
- 328** Vanderklau said the patron's risk rating remained low because of an absence of a date of birth or photograph of the people identified in the World Checks.⁴²⁷
- 329** When asked whether other searches or checks were available to remove uncertainty about the identity of Patron AN, Vanderklau said that Perth Casino could have also conducted

a Google search. When asked if she had access to any more sophisticated means of identifying patrons than World Check or Google searches, she responded in the negative.⁴²⁸

- 330** Without exhausting all due diligence avenues, the Perth Casino could not conclusively confirm that Patron AN was not a person linked to an organisation who were alleged to launder money. This ought to have given rise to a higher suspicion of money laundering risk and increased patron risk rating which should have resulted in equivalent consideration and management of the risk that was presented by Patron AN. Instead, Perth Casino's response to retain Patron AN's risk rating at low was not consistent with the ML/TF risk presented.
- 331** Furthermore, the decision to proceed with accepting Patron AN's business demonstrated a preponderance to act reactively when an event occurred, such as a patron who potentially laundering money, rather than acting to prevent the event from happening in the first place.

Part Five: Communications with the Gaming and Wagering Commission

- 332** In this part, the PCRC examines Crown's communications with the GWC in relation to Riverbank and the 2019 Junket Media Allegations, insofar as they related to money laundering.

2019 Junket Media Allegations

- 333** The 2019 Junket Media Allegations have been examined in more detail in Chapter Six: Junkets and Chapter Seven: China Arrests. They have also been considered in relation to money laundering in Part Four of this chapter. In this part, the PCRC examines Crown's communications to the GWC in relation to the allegations of money laundering and the Riverbank accounts.
- 334** On 30 and 31 July 2019, immediately after the allegations were published in the Age and the Sydney Morning Herald, CRL issued announcements to the Australian Securities Exchange (**ASX**).⁴²⁹ In relation to the allegations about money laundering, CRL said that it had a 'comprehensive' AML/CTF Program, that it took its regulatory obligations very seriously, and worked closely with all of its regulatory agencies, including State and Federal law enforcement bodies, and provided a range of information in a proactive manner.⁴³⁰
- 335** At the time of release of each of the announcements, Preston sent the announcements to Connolly and Ord.
- 336** On 5 August 2019, the Sydney Morning Herald and the Age articles were published.⁴³¹
- 337** On 21 August 2019, Connolly requested Preston to present to the GWC on some of the media allegation issues, specifically requesting that the presentation cover '[t]he use of specific bank accounts for the depositing of gaming funds and/or the repayments of debts', and '[c]onfirmation that all player deposits, transfers and payments are accounted for through the banking system and in accordance with [AML/CTF] legislative requirements'.⁴³²
- 338** On 27 August 2019, Preston and Claude Marais (**Marais**) (General Manager – Legal and Compliance at Perth Casino)⁴³³ provided a presentation to GWC (**August 2019 Presentation**).⁴³⁴ In relation to Riverbank, the presentation stated that:
- a. sources of funds were required to be determined as part of its enhanced customer due diligence obligations;⁴³⁵
 - b. 'all funds transferred to and from Crown went through its casino wagering accounts (CBA and ANZ)';⁴³⁶

- c. 'Crown had, and continues to have, a range of due diligence and screening processes in place in relation to junket operators and players';⁴³⁷
 - d. where funds were telegraphically transferred, player deposits, transfers and payments were accounted for through the banking system, and cash and cheques were accounted for through Crown's approved procedures, all in accordance with AML/CTF legislation;⁴³⁸ and
 - e. Crown 'maintains and complies with a risk-based AML/CTF Program'.⁴³⁹
- 339** Crown accepts that the references to its AML/CTF Program at least implied that the Program operated effectively to address the risks of money laundering.⁴⁴⁰
- 340** The slides also contained the following statement in relation to the use of specific bank accounts for the depositing of gaming funds and (or) the repayment of debts:
- In accordance [with] Burswood Casino Directions (Direction 5.1) and the Casino Manual Operations (Section 03A – subsection 4.8.1), Crown has opened and operates dedicated casino wagering accounts, which are used exclusively for casino wagering transactions.⁴⁴¹
- 341** The presentation included a statement to the effect that transactions through all of Crown's casino wagering accounts, including the Riverbank accounts, were subject to AML/CTF reporting obligations including IFTI reports and the reporting of suspicious matters of any nature.⁴⁴²
- 342** The presentation also listed the bank accounts used by Crown for casino wagering, including accounts held with ANZ in the name of BNL and Australian dollar, Hong Kong dollar, Singapore dollar and United States dollar accounts held with CBA in the name of Riverbank.⁴⁴³
- 343** Crown accepts that the August 2019 Presentation did not disclose:⁴⁴⁴
- a. the purpose of the Riverbank accounts, namely to afford privacy to patrons;⁴⁴⁵
 - b. the fact that, at the time, third parties and money remitters were able to make deposits into the Riverbank accounts;⁴⁴⁶
 - c. the fact that ANZ had identified multiple deposits under \$10,000 in early 2014, and closed the ANZ Riverbank accounts in 2014 out of money laundering concerns;⁴⁴⁷
 - d. the fact that the CBA had raised money laundering concerns in connection with the CBA Riverbank accounts in late 2018 and early 2019, and was considering closing the CBA Australian dollar Riverbank accounts;⁴⁴⁸
 - e. the fact that Lane had identified some suspicious transactions in the Southbank accounts and recommended that an independent third party review transactions on the Southbank and Riverbank accounts, and that recommendation was not implemented;⁴⁴⁹ and
 - f. the fact that the Riverbank accounts were not directly monitored for suspicious transactions as part of Perth Casino's AML/CTF Program.
- 344** The GWC members gave consistent evidence to the effect that, from the August 2019 Presentation they understood that:
- a. Crown categorically refuted all of the 2019 Junket Media Allegations;⁴⁵⁰
 - b. the 60 Minutes episode concerned Melbourne Casino, and Perth Casino was not subject to similar allegations or risks of money laundering and criminal infiltration;⁴⁵¹
 - c. the allegations were largely historic, unsubstantiated, untruthful and, in effect, a 'media beat-up';⁴⁵² and

- d. Crown had taken and was taking action to correct the risks, including reviewing their policies, practices and activities around high rollers entering the casino.⁴⁵³

345 The GWC members also gave consistent evidence that, following the August 2019 Presentation, the GWC determined not to take any action, but to await the outcome of other inquiries.⁴⁵⁴ Andrew Duckworth (**Duckworth**) (former member of the GWC) gave evidence that Preston's explanation about the 2019 Junket Media Allegations was 'extremely persuasive',⁴⁵⁵ and formed at least part of the reason the GWC was persuaded to wait until other inquiries were completed.⁴⁵⁶

346 The PCRC concludes that:

- a. the statement in CRL and the Burswood entities' August 2019 Presentation to the effect that Perth Casino was not subject to the risks of money laundering and criminal infiltration identified in the 2019 Junket Media Allegations was incorrect;
- b. the information provided by Crown to the GWC in the August 2019 Presentation in respect of money laundering was not open and competent;
- c. the GWC relied on that information in the discharge of its functions under the CC Act and GWC Act;
- d. taken as a whole, the August 2019 Presentation was not open or accountable in that it conveyed the inaccurate impression that there was no substance to the 2019 Junket Media Allegations;
- e. the GWC was persuaded to take no action following the August 2019 Presentation; and
- f. the GWC's decision was influenced by Crown's representation that there was little or no substance in the 2019 Junket Media Allegations.

347 The PCRC therefore finds that CRL and the Burswood entities' August 2019 Presentation was not an adequate communication with the GWC.

348 Despite these issues being raised through the course of the PCRC's inquiry, it was not until late January 2022 that CRL or the Burswood entities acknowledged and apologised for the inaccuracies and omissions in the information conveyed in the August 2019 Presentation.⁴⁵⁷

October and December 2020 presentations to GWC

349 On 27 October 2020, a further presentation was given by Barton, Bossi and Marais to the GWC.⁴⁵⁸ The presentation acknowledged that, through the course of the Bergin Inquiry, 'certain shortcomings' had been identified, although it did not identify the precise nature of the shortcomings.⁴⁵⁹ While the presentation stated that the Riverbank and Southbank accounts were closed in December 2019, it made no reference to the reason why, nor did it raise any of the reviews of the Riverbank and Southbank accounts to identify instances of potential money laundering.⁴⁶⁰

350 Barton did not recall that any explanation was provided for the reasons for the closure of the CBA Riverbank accounts during the course of the presentation to the GWC, nor that the closure of the accounts was because CBA decided to close them rather than it being at the initiative of CRL.⁴⁶¹

351 Marais' justifications for not mentioning the internal review of the Riverbank accounts (which he had instigated) or its results to that date were that it was preliminary and a work in progress, and there was to be an external review by Grant Thornton and Initialism.⁴⁶² However, he accepted that the work in progress on the internal review could have been included, with a statement that it was subject to external review, and that the Burswood entities ought to have directly informed the GWC that instances of transactions in the Riverbank accounts consistent with structuring had been identified.⁴⁶³

- 352** On 14 December 2020, Barton (on behalf of CRL and the Burswood entities) wrote a letter to Ord, a copy of which was forwarded to Connolly and GWC members, in relation to the reform program undertaken by Crown as a result of the matters raised by the Bergin Inquiry.⁴⁶⁴ The letter identified a number of measures implemented by the board and management of CRL to mitigate against future incidents. The letter also attached (among other things) the Grant Thornton reports on transactions through the Riverbank and Southbank accounts and the Initialism report.⁴⁶⁵ Crown received these reports about a month earlier. The letter acknowledged that, as indicated in the Initialism report, there were a significant number of transfers, for which there were indications of money laundering, relating to overseas money remitters.⁴⁶⁶
- 353** The letter was sent to Connolly by email on 14 December 2020 at 5.15 pm⁴⁶⁷ and was sent to the GWC members at 5.23 pm.⁴⁶⁸ The PCRC has heard that this timing was not intended to leave the GWC insufficient time to consider the reports.⁴⁶⁹ However, the PCRC also notes that GWC members were surprised and concerned to receive materials they considered relevant the night before the meeting.⁴⁷⁰
- 354** On 15 December 2020, Barton and Helen Coonan (**Coonan**) (former Chair of CRL)⁴⁷¹ gave another presentation to GWC focussing on the reform agenda and the measures Crown had taken or were going to take in the future.⁴⁷² Barton did not take the GWC members to the Initialism and Grant Thornton reports, copies of which had only been provided the day before.⁴⁷³ Barton accepts that, other than a reference to the Riverbank accounts being closed, there was nothing in the prepared briefing notes that indicated Crown had in its possession reports indicating structuring in the Riverbank accounts, or that discussed the outcome of the external reviews.⁴⁷⁴
- 355** Jodie Meadows (**Meadows**) and Steven Dobson (**Dobson**), members of the GWC,⁴⁷⁵ confirmed that the December 2020 presentation did not canvass the reasons for the closure of the Riverbank accounts.⁴⁷⁶ None of the GWC members had sufficient time to consider the Grant Thornton and Initialism reports before the meeting.⁴⁷⁷
- 356** The PCRC concludes that:
- a. CRL and the Burswood entities' October 2020 presentation to the GWC was not open, competent or accountable in that it did not disclose the reasons for the closure of the Riverbank and Southbank accounts and the reviews of those accounts;
 - b. the results of the review by Grant Thornton and Initialism were not provided to the GWC in a timely manner; and
 - c. CRL and the Burswood entities' December 2020 presentation to the GWC was not open, competent or accountable in that it did not address the outcome of the Grant Thornton and Initialism reviews indicating structuring in the Riverbank accounts.
- 357** The PCRC therefore finds that CRL and the Burswood entities' presentations to the GWC in October and December 2020 were not adequate communications with the GWC.

Part Six: Management of money laundering risk from 2019 to present date

- 358** Following the media allegations in 2019 and the Bergin Inquiry, there was considerable change in the management of the ML/TF risk at Perth Casino, both in terms of people and systems.
- 359** Initially such change was reactive in nature, likely prompted by revelations from the Bergin Inquiry and the RCCOL a number of which already have been examined in this chapter. Further change, particularly since May 2021, has been conducted in a more comprehensive and planned manner.

- 360** The changes which have been made generally to Crown’s risk management system are examined in Chapter Four: Corporate Governance. Among other things, by the beginning of 2020 Crown had formally adopted the three lines of defence model of risk management.
- 361** In this Part Six, the PCRC focuses on the management of ML/TF risk in connection with Perth Casino in the period from late 2019 to early 2022. The content of this part balances a chronological account of events with a subject-based examination of Crown’s remediation efforts and an assessment of the effectiveness of both.

Investigation and review following the media allegations

- 362** As examined in Part Four of this chapter, following the 2019 Junket Media Allegations, Lane started a review of the Riverbank and Southbank accounts to determine if there was any substance to the allegations of money laundering. After a couple of days work, Lane recommended to Preston that the engagement of an external consultant be considered to conduct a full review of the accounts.⁴⁷⁸ Preston, however, decided not to instruct an independent person to carry out a review of the Southbank and Riverbank accounts.⁴⁷⁹
- 363** There was no further internal review of the ANZ or CBA Riverbank accounts until 2020, when Vanderklau undertook her review of the Riverbank account transactions and corresponding SMRs for the period from 2013 to 2019. As previously examined in Part Four of this chapter, Vanderklau’s review revealed multiple instances of potential structuring that had not been identified by cage staff as suspicious.⁴⁸⁰
- 364** On 20 August 2019, Initialism (who, at the time, was providing discrete AML consulting services to Crown) recommended to Crown that it should review all its bank accounts, not just the Southbank and Riverbank accounts.⁴⁸¹ Initialism repeated this recommendation to Preston and Barton around September 2020.⁴⁸²
- 365** Despite Lane’s recommendation in August 2019, and Initialism’s recommendations in August 2019 and August 2020, Crown did not engage external consultants to review the Southbank and Riverbank accounts until October 2020.
- 366** Reviews of the bank accounts, including bank accounts associated with Perth Casino, have now been conducted by Grant Thornton (16 November 2020),⁴⁸³ Initialism (16 November 2020)⁴⁸⁴ and Deloitte (Phase 1 - 26 March 2021, Phase 2 - 15 October 2021).⁴⁸⁵
- 367** The Grant Thornton and Initialism reviews identified various types of transactions indicative of money laundering in the Riverbank and Southbank accounts. However, the reviews were limited, in that they only looked at the Riverbank and Southbank AUD bank accounts and not foreign currency accounts. In the Grant Thornton review, only three of a proposed nine structuring scenarios were considered.⁴⁸⁶
- 368** The RCCOL found that Crown:
- a. failed to investigate media allegations of money laundering through its bank accounts until 14 months after those allegations were levelled, the Bergin Inquiry was established and it had become untenable for Crown to continue to do nothing; and
 - b. was slow to take reasonably available steps having regard to the conclusions of the Grant Thornton and Initialism reports with respect to Southbank and Riverbank including to review, promptly, whether to continue to provide services to those patrons whose accounts contained transactions indicative of money laundering.⁴⁸⁷
- 369** These findings are accepted by Crown.⁴⁸⁸
- 370** Deloitte conducted a detailed review of all Crown’s bank accounts into which patron monies had been deposited in the period from February 2014 to 30 April 2021. The results are reported in the Deloitte Phase 2 Report, which was finalised on 15 October 2021.⁴⁸⁹ Deloitte

identified 1,150 patrons associated with activity indicative of money laundering and which warranted further investigation and, potentially, reporting to AUSTRAC. This included activity indicative of typologies including structuring, smurfing, cuckoo smurfing, depositing and withdrawing funds with no corresponding gaming activity, parking, use of third party agents and use of shell companies.⁴⁹⁰ While some SMRs had been lodged, the correlation between the behaviours identified by Deloitte and the behaviours covered by the SMRs was low, suggesting that staff responsible for lodging SMRs were not focused on conduct which may have comprised money laundering occurring through the bank accounts which Deloitte reviewed.⁴⁹¹

371 The output of the Deloitte Phase 2 Report is being reviewed as part of Crown's 'lookback project', designed to review ML indicative transactions from past reviews.⁴⁹² The purpose of the review is to identify transactions that may be suspicious matters that require the provision of an SMR to AUSTRAC.⁴⁹³ Crown estimates that final outcomes will not be known until April or May 2022.⁴⁹⁴

372 The PCRC concludes that:

- a. the review of the Riverbank accounts conducted by Vanderklau in 2020 should have been carried out in 2014, after concerns were raised by ANZ. At the latest, it should have been carried out at the time of the 2019 Junket Media Allegations;
- b. Crown was inexplicably slow to obtain a thorough external review of patron bank accounts for Perth Casino, despite receiving internal and external advice of the need for such a review from August 2019. Deloitte's report was not received until October 2021, after the completion of the Bergin Inquiry and the RCCOL, and more than two years after the 2019 Junket Media Allegations; and
- c. Crown has not yet completed its review of the transactions identified by Grant Thornton, Initialism and Deloitte as ML indicative transactions to determine whether they require the provision of SMRs to AUSTRAC. This process will not be complete until April or May 2022. A reporting entity is required to report on suspicious transactions to AUSTRAC no later than three days after the transaction is identified. Any reporting to AUSTRAC by Crown will be years after the suspicious transactions occurred.

Initial changes to policies and procedures

373 During 2020 and early 2021, Crown implemented new policies and procedures that sought to rectify specific gaps in Crown's management of ML/TF risk as exposed by the Bergin Inquiry. These included a new prohibition of third money transfers and money remitters, source of funds requirements and policies and processes for reviewing significant players. These policies and procedures are examined below.

374 From May 2021, these policies and procedures ultimately became part of Crown's broader remediation plan.

Joint AML/CTF Program in November 2020

375 A joint AML/CTF program for the Crown DBG (including BNL) was introduced in November 2020 (**2020 Joint AML/CTF Program**). This was the plan that was in place during the PCRC's evidentiary hearings. The 2020 Joint AML/CTF Program is examined below.

Remediation Plan May 2021

The Crown Financial Crime and Compliance Program and Remediation Program

- 376** On 24 May 2021, Steven Blackburn (**Blackburn**) (former Chief Compliance and Financial Crime Officer (**CCFCO**)), presented to the CRL board his assessment of the current state of CRL's financial crime and compliance programs and a proposal to uplift these programs.⁴⁹⁵ At the same time, Blackburn presented to the CRL board his Financial Crime and Compliance Change Program (**FCCCP**).⁴⁹⁶
- 377** The FCCCP included the following elements:
- The introduction of new and enhanced financial crime controls, such as enhanced collection of KYC information, reduced cash thresholds for un-carded play and improved employee training.
 - Investment in data analytics capability and data infrastructure.
 - The restructure and expansion of the financial crime and compliance division. This includes the introduction of the Financial Crime and Compliance (**FCC**) team. The FCC operates independently of the business units and reports to Blackburn.
 - Changes to Crown's organisational structure to replace the AML/CTF Committee with the Financial Crime Oversight Committee (**FCOC**) and the Financial Crime Working Group (**FCGW**). The Perth ERCC has no ongoing responsibility for financial crime.⁴⁹⁷
- 378** Blackburn's presentation to the CRL board in May 2021 provided a high-level preliminary roadmap for the completion of various uplift projects and tasks relevant to AML/CTF as follows:⁴⁹⁸

Key area	Key activity	Due date
Risk appetite frameworks	Prioritised roadmap for policy uplift program finalised	End June 2021
	AML/CTF program part B finalised	End June 2021
	AML/CTF program standards finalised	End November 2021
	AML/CTF independent reviewer appointed and commenced	End December 2021
People, roles and responsibilities	Key roles and responsibilities defined	Mid-June 2021
	Ongoing recruitment activities	End July 2021 and December 2021
	People and governance framework reviewed (including performance plans and KPIs)	End first quarter 2022
Reporting and oversight	Customer exit and escalation of critical risk customer policies including persons of interest uplifted	Beginning July 2021
	Committee structure defined (including RACI)	Beginning July 2021
	Board reporting process uplifted	Beginning August 2021 (board reporting process operationalised to the end of December 2021)

Key area	Key activity	Due date
Assurance	FC&C testing assurance plan and roadmap developed	Mid-August 2021 with that assurance plan to be operationalised to the end of December 2021
Risk assessments	ML/TF EWRA report finalised	Mid November 2021
	EWRA annual process endorsed	End December 2021
Customer and controls data and systems	UAR process digitalisation uplift (sentinel to AML portal)	Beginning July 2021
	SMR digitisation plan endorsed	End October 2021
	Initialism transaction monitoring review (2021) feedback provided	Beginning June 2021
	Interim enhanced controls implemented	Beginning July 2021
	eKYC for high risk customers (Melbourne and Perth)	End October 2021 with ongoing process uplift to the end of 2022
	Operationalisation of enhanced patron account controls	End October 2021
Training	Target business unit F to F training delivered	Beginning June 2021
	Training calendar uplifted (including refresher and enhanced training re chip walking)	Beginning August 2021
	Training monitoring process enhanced	Commencing beginning September 2021 with ongoing training feedback to the end of December 2021
KYC and risk assessment	UAR investigation and SPR process updated to include eDVS checks	End November 2021 (high risk customer), first quarter 2022 (medium to low risk customers)
	CRA and JRA methodology updated	End September 2021
	CRA and JRA executed on updated data, including occupation and citizenship for new customers and occupation code standard uplift for new and existing customers	End mid 2022

379 Acting upon Blackburn's recommendation, the CRL board set the aspirational target maturity state of Crown's financial crime program to be 'advanced' by 31 December 2022.⁴⁹⁹ In presenting the FCCCP to the CRL board, Blackburn said that significant investment would be required with respect to capability, capacity, systems/infrastructure and the underlying processes to meet this target date and maturity state. Blackburn told the CRL board:

To effectively manage financial crime risk and the associated regulatory risk, Crown must continue to evolve the financial crime program through material and ongoing investment in capacity, capability and technology.

In its current state...the compliance function is under resourced and is not

adequately supported for regulatory change and responsiveness. As with the financial crime program, Crown’s compliance program requires considerable investment in order to improve and evolve.⁵⁰⁰

380 Specifically, in order to reach ‘advanced’ maturity, the FCCCP was to focus on ten key areas for uplifting Crown’s financial crime and compliance programs:⁵⁰¹

People: introducing further FC&C capability and capacity to drive evolution.	Assurance: introducing robust second line of defence assurance to test and confirm program effectiveness.
Risk appetite: clarifying Crown’s risk appetite statements with respect to FC&C.	Training: introducing victim-focused financial crime training and annual Board/senior management training.
Frameworks: improve FC&C frameworks and document hierarchy.	Roles & Responsibilities: Clarifying roles and responsibilities across Crown, and introducing FC&C key performance objectives for all.
Risk Assessments: improving Crown’s FC risk assessment methodologies and EWRA.	Customers & Controls: introducing new controls, including reduced cash thresholds, to reduce risk/better identify customers.
Reporting & Oversight: improving FC&C risk reporting and introducing new financial crime oversight committees.	Data & Systems: introducing data analytics to increase efficiencies and improve outputs, and enhance or replace basic FC&C systems.

381 Blackburn acknowledged to the PCRC AML experts that an ‘advanced’ maturity state by December 2022 was an ambitious and challenging aspiration and there were ongoing risks to its achievement. He identified the key risks as:

- a. capacity to develop and implement the technological changes required; and
- b. effective embedding of the change with the front-line operating business units.⁵⁰²

382 At the CRL Risk Management Committee meeting held on 7 October 2021, a further iteration of the FCCCP framework was tabled. A significant development in this latest iteration was a focus on delivery, change and embedment, recognised as critical to the sustainability of the changes being made. The embedment functions (‘Delivery and Change’, ‘Assurance Support’ and ‘Regulatory Response’) were described as being designed to assist the FCCCP initiatives to enable their initiative charters, deliverables and roadmaps within Crown.⁵⁰³

383 Crown has prepared and provided to regulators (including the GWC), and to the PCRC, a remediation plan.⁵⁰⁴ The remediation plan, which includes the progress of the FCCCP, is a document which is updated and amended by Crown on a monthly basis as its path to remediation develops.⁵⁰⁵ The first plan was created in May 2021 and the last updated remediation plan provided to the PCRC is dated 23 December 2021 (**Remediation Plan**).⁵⁰⁶ The Remediation Plan generally is considered in detail in Chapter Four: Corporate Governance.

384 Crown’s Remediation Plan update for December 2021 noted that ‘Execution of the FCCCP is continuing under the supervision of Crown’s transformation office’, for which Blackburn is responsible.⁵⁰⁷

Steven Blackburn

385 Blackburn is the architect of the FCCCP and the PCRC considers him to be important to the success of the implementation of the FCCCP.

386 Blackburn joined CRL as the CCFCO in February 2021 and was appointed the Group Chief Risk Officer on 23 December 2021.⁵⁰⁸ On 23 December 2021, Blackburn was appointed the Chief Risk Officer (CRO) and the role of CCFCO became redundant.⁵⁰⁹

- 387** Prior to joining CRL, Blackburn was the Chief Financial Crime Risk Officer and Group MLRO of the National Australia Bank (**NAB**) (June 2018 to February 2021). In that position, Blackburn was responsible for AML/CTF and for NAB's financial crime program content and the design and oversight of enterprise-wide implementation, including oversight of financial crime control activity and compliance with economic sanctions across NAB's global operations. Blackburn assisted NAB's lines of business in their assessment and management of financial crime risk, their development, implementation and monitoring of policies and procedures required under the financial crime compliance regime and the regular testing of their effectiveness.⁵¹⁰
- 388** Prior to joining NAB, Blackburn was employed by the Canadian Imperial Bank of Commerce as the Chief AML Officer from January 2011 to June 2018. In that role, he developed and was responsible for the bank's financial crime programs, both from a risk and operations perspective.⁵¹¹
- 389** The PCRC concludes that Blackburn has the necessary skills and experience to serve as CRL's Group CRO and to lead the FCCCP. The PCRC concludes that his ongoing leadership of the FCCCP will, at least in the short to medium term, be important for the successful achievement of the planned remediation of the AML/CTF program.

ML/TF Risk Assessment and 2020 Joint AML/CTF Program

- 390** The 2020 Joint AML/CTF Program was based upon a risk assessment carried out by Crown in June 2019, referred to in Part Four of this chapter.⁵¹² The terms of the risk assessment did not differ substantially from previous risk assessments. The typologies structuring and 'smurfing' were identified as risks, although there was no direct reference to Perth Casino's bank accounts (including Riverbank) as the subject of this apparent money laundering activity.⁵¹³
- 391** Crown contends that the risk assessment underpinning the 2020 Joint AML/CTF Program included external reviews carried out by Initialism, Promontory and Deloitte.⁵¹⁴ The PCRC observes that those reviews were finalised and provided to Crown between November 2020 and 8 October 2021 and post-dated the 2020 Joint AML/CTF Program.⁵¹⁵
- 392** Murray Waldren opined that the external reviews did not provide a holistic assessment of ML/TF risk nor comply with Crown's ML/TF Risk Assessment Methodology upon which Part A of the 2020 Joint AML/CTF Program must rely. Those external reviews did not provide an assessment of Crown's inherent risk, likelihood and consequence, control environment assessment, change risk or residual risk assessment. Further, the 2020 Joint AML/CTF Program had not been updated to reflect any of the new or emerging threats, vulnerabilities, risks, or controls as recommended in the external reports that Crown had received at the time of Murray Waldren's review in October 2021.⁵¹⁶ Murray Waldren opined that in the absence of a proper risk assessment, Perth Casino was not able to satisfactorily say what risks it might be exposed to and to demonstrate what controls have been put in place to mitigate those risks.⁵¹⁷
- 393** In August 2021, Crown adopted a new Part B to the 2020 Joint AML/CTF Program.⁵¹⁸ The Part B was amended to reflect several updates, including to reflect that Crown no longer deals with junkets and only deals with customers who are individuals. In addition, the new Part B reflected the updates for processes for electronic verification, responding to discrepancies, record keeping and identification of politically exposed persons.⁵¹⁹
- 394** The PCRC concludes that:
- a. the 2020 Joint AML/CTF Program was based upon the June 2019 risk assessment and not external reviews that were provided to Crown from November 2020;

- b. the June 2019 risk assessment was inadequate in assessing the full extent of the inherent ML/TF risk associated with the operations of, relevantly, Perth Casino; and
- c. the 2020 Joint AML/CTF Program was therefore inadequate as a program for the identification and management of the inherent ML/TF risk associated with the gaming operations of, relevantly, Perth Casino.

Enterprise Wide Risk Assessment and December 2021 Program

- 395** In December 2021, Crown completed its first enterprise wide risk assessment (**EWRA**).⁵²⁰ An EWRA is an end-to-end risk assessment conducted and held by a reporting entity. The Crown EWRA assessed:
- a. the ML/TF risk;⁵²¹ and
 - b. the extent to which each reporting entity identifies, mitigates and manages the identified ML/TF risks.
- 396** The EWRA was conducted with the assistance of PricewaterhouseCoopers, acting as an external AML consultant to Crown, and provides a holistic, point-in-time identification and assessment of the ML/TF risks across the Crown DBG, and the controls in place to manage those risks. The assessment period for the EWRA was 1 July 2020 to 30 June 2021.⁵²²
- 397** The PCRC AML experts did not have an opportunity to review the EWRA. Instead, Murray Waldren reviewed the risk methodology and design authority for the EWRA.⁵²³ They expressed the view that the risk methodology was largely consistent with regulatory expectations and industry practice.⁵²⁴ Murray Waldren noted that the ML/TF risk assessment approach would need to be continually refined, and the next EWRA may have very different data points and outcomes as a result of several factors, including but not limited to Melbourne Casino's re-opening, Crown Sydney Gaming Pty Ltd (**Barangaroo Licensee**) commencing serving designated services and any changes made to AML/CTF legislation or guidance from AUSTRAC.⁵²⁵
- 398** The EWRA assessed the inherent ML/TF risk of both BNL and the Crown DBG to be 'high'.⁵²⁶
- 399** Under the EWRA methodology, both controls coverage and controls effectiveness can be scored as 'satisfactory', 'marginal', 'unsatisfactory', and 'not assessed'.⁵²⁷ The assessment of mitigating controls involved assessing the 'coverage' of the controls (that is, the extent to which the Crown entities have some or all of the relevant controls within their business relevant to the particular risk) and their 'effectiveness' (that is, the extent to which the controls in place have been assessed as effective in identifying, mitigating and managing ML/TF risk).⁵²⁸
- 400** Crown's controls were divided into nine categories, including governance; policies and procedures; customer due diligence; enhanced customer due diligence; transaction monitoring; employee due diligence; reporting and independent review and assessment.⁵²⁹
- 401** Assessing 'coverage' of controls in an ML/TF risk assessment involves identifying what the minimum expected controls are for identifying, mitigating and managing a particular ML/TF risk and then assessing whether a reporting entity has controls in place that match the description of the minimum expected controls.
- 402** In a witness statement to the PCRC dated 19 January 2022, Armina Antoniou (**Antoniou**) (the Group Executive General Manager Financial Crime Risk/Money Laundering Risk Officer from 1 November 2021) said:⁵³⁰
- a. the 'coverage' of each control category was assessed as 'Marginal', save for enhanced customer due diligence and independent review and assessment, each of which was assessed as 'Unsatisfactory'; and

- b. 'independent review and assessment' was graded as 'Unsatisfactory' because, at the time of completion of the EWRA, an independent review of Part A of the then current 2020 Joint AML/CTF Program had yet not been completed.⁵³¹
- 403** Antoniou said Crown was unable to assess the 'effectiveness' of any of the control categories, as almost every aspect of Crown's financial crime control framework was going through or about to go through substantial change. Antoniou said:⁵³²
- In my experience, assessing the "effectiveness" of controls is more complex and involved than assessing the "coverage" because the controls need to have been operating for a sufficient period of time for the effectiveness to be properly and fairly assessed. Assessing the "effectiveness" of controls during a period of significant change is challenging because the controls are evolving during the assessment period. An assessment of a superseded control does not provide an accurate view of current state effectiveness and, therefore, of "residual" risk.
- This is the situation Crown faced as it approached the assessment of the effectiveness of its controls for the purpose of the EWRA, with almost every element of Crown's financial crime control framework going through, or about to go through, significant change. Further, while various external reviews had been conducted during the assessment period, Crown did not have a comprehensive or holistic assessment of how each control category ... had performed in practice, in particular for the full review period. As a controls rating can potentially lower the "residual" risk score compared to the "inherent" risk score, an inaccurate controls rating may lead to an overly optimistic or positive "residual" risk rating.
- 404** As a consequence, Crown rated its 'residual' risk the same as its 'inherent' risk: 'High'.⁵³³
- 405** Crown, BNL, CML and the Barangaroo Licensee also adopted a revised Joint AML/CTF Compliance Program in December 2021 and January 2022 (**December 2021 AML/CTF Program**).⁵³⁴
- 406** As to the December 2021 AML/CTF Program, Antoniou said:
- a. Part A summarises the key findings of the EWRA and provides for systems and controls to address identified ML/TF risks. It includes enhancements to a number of areas, including risk assessment, transaction monitoring and governance;⁵³⁵
 - b. the date by which business units and the FCC team must have 'adopted changes' to comply with this new Part A is 31 January 2022;⁵³⁶ and
 - c. on 21 December 2021, the CRL board also adopted an AML/CTF Policy which reflects, at a high level, the minimum requirements and obligations that employees are required to meet under the December 2021 program and provides employees with key information regarding who to contact with questions regarding AML/CTF compliance.⁵³⁷
- 407** In December 2021, Crown engaged Exiger to conduct an independent review of Part A of the December 2021 Joint AML/CTF Program.⁵³⁸ The review by Exiger will assess:⁵³⁹
- a. the effectiveness of the December 2021 Joint AML/CTF Program having regard to the ML/TF risk of each reporting entity in the DBG;
 - b. whether the December 2021 Joint AML/CTF Program complies with the AML/CTF Rules;
 - c. whether the December 2021 Joint AML/CTF Program has been effectively implemented; and
 - d. whether each reporting entity in the DBG has complied with the Joint AML/CTF Program.

- 408** Crown has said that it will share the results of the independent review and Crown's response with relevant regulators, which will include the GWC. This review is expected at the end of March 2022. Crown says that it will undertake to have a further independent review conducted twelve months after the independent review.⁵⁴⁰
- 409** Although the EWRA, the December 2021 Joint AML/CTF Program and the new AML/CTF Policy were all considered and approved by the CRL board on 21 December 2021, Crown did not produce all the documents to the PCRC until 20 January 2022. The PCRC has not had an opportunity to interrogate those documents through the examination of witnesses. The documents have not been reviewed by the PCRC's AML experts. The PCRC is not therefore in a position to evaluate the outcome of the EWRA or the adequacy of the December 2021 Program and the new AML/CTF Policy. The BNL board approved the adoption of the December 2021 Joint AML/CTF Program on 18 January 2022.⁵⁴¹ There is no evidence of the BL board noting or approving the adoption of the December 2021 Joint AML/CTF Program.
- 410** The PCRC concludes that:
- a. the risk methodology underpinning the EWRA was largely consistent with regulatory expectations and industry practice;
 - b. there has been no independent review of the EWRA or the December 2021 Program. The PCRC AML experts have not had an opportunity to review those documents. As a result, the PCRC is not in a position to say whether or not the EWRA and the December 2021 Program are effective to manage the ML/TF risk;
 - c. the effectiveness of the ML/TF controls to manage the risks identified in the EWRA have not been assessed by Crown in the EWRA, on the basis that all of the controls are subject to substantive change; and
 - d. until the change to the ML/TF controls has reached a stable state, and been the subject of independent review, it is not possible to conclude that the overall system for the management of the ML/TF risk at Perth Casino is effective.

Policies and procedures

- 411** Crown has significantly reformed its policies and procedures during 2020 and 2021 relevant to both the first and second line of defence.
- 412** Crown's Policy Uplift Program (**PUP**) is a work stream in the FCCCP which aims to deliver a consolidated policy hierarchy to set consistent expectations for all Crown staff. In an update to the BL board on 23 August 2021, it was reported that the uplift of priority policies and standards had commenced.⁵⁴² The current PUP initiative is being driven from the AML team (second line).
- 413** The PCRC has identified changes to the following policies and procedures that generally improve the effectiveness of the management of the ML/TF risk at Perth Casino.

Third Party Transfers and Money Remitters Policy and Return of Funds policies

- 414** In April 2020, Felstead informed relevant staff that Crown would no longer make or receive payments to or from third parties including money remitters, and this change applied to all local, domestic and international customers.⁵⁴³ This instruction was formalised in the Third Party Transfers and Money Remitters Policy dated 16 November 2020.⁵⁴⁴
- 415** The Return of Funds Policy, issued on 4 January 2021, builds on the Third Party Transfers and Money Remitters Policy, by requiring Crown to not knowingly accept funds from third parties and only accept transfers made in line with the 'Bank Transfer Notification' policy. The Bank Transfer Notification policy was circulated to Perth Casino's platinum and black

membership patrons in December 2020 informing patrons that certain transaction types, including cash deposits and funds receipted from non-Crown casinos, would no longer be accepted into the Crown patron bank accounts. It advised that mandatory information, such as the patrons full name, Crown reward number and non-misleading narratives, had to accompany any transfers.⁵⁴⁵ A revised version of this policy states that if a cash deposit is received from a third party, or it is otherwise not in accordance with the policy, it is to be returned to the sender via a specific process.⁵⁴⁶

- 416** On 24 May 2021, Perth Casino cage staff were instructed that funds from casinos (other than Crown properties) were no longer to be accepted.⁵⁴⁷
- 417** These steps were designed, in part, to address a specific deficiency in the first line of defence, as described in Part Four of this chapter, where third parties, particularly money remitters, were known to be responsible for transferring multiple deposits into the bank accounts used for Perth Casino patrons under the \$10,000 threshold and yet cage staff would accept the funds and not raise an SMR, despite the behaviour being indicative of structuring.⁵⁴⁸
- 418** By prohibiting the acceptance of any telegraphic transfers from third parties or money remitters into Perth Casino patron accounts, the risk of structuring via a third party is eliminated.
- 419** On 5 October 2021, a combined Third Party Transfers and Return of Funds Policy was signed off by the Cage and Count General Managers of each property and by the policy owner, John Salomone (**Salomone**) (CFO, Australian Resorts).⁵⁴⁹
- 420** In an interview with the PCRC AML experts, Salomone confirmed that, as a result of the various iterations of the Third Party Transfers and Return of Funds Policy:
- a. there have been no instances of cash deposits into Crown bank accounts in 2021;
 - b. there have been no instances of funds being receipted from non-Crown casinos since the policy change in May 2021 preventing this; and
 - c. any funds received from patrons contrary to policy requirements (including transfers from third party, or transfers where the transfer sender name does not match the patron or misleading narration) have been returned to patrons.⁵⁵⁰
- 421** The Third Party Transfers and Returns of Fund Policy also addresses another deficiency in the first line whereby Perth Casino permitted third parties to collect funds at the cage which had been sent by TT by a patron through a Perth Casino bank account.

No aggregation of deposits

- 422** On 24 September 2020, Brown sent a direction to Perth Casino cage employees to cease aggregating deposits on TT Forms and SYCO.⁵⁵¹ This direction was later reflected in the TT SOP and AUSTRAC Reporting SOP.⁵⁵²
- 423** As examined in Part Four, the aggregation of deposits by the cage conceals the nature of the transaction from the AML team, preventing the AML team from raising SMRs when required. The direction (if followed) was presumably intended to prevent the practice of aggregation occurring. However, the PCRC observes that the direction does not inform the cage team to consider reporting patterns of transactions that they would previously aggregate. In other words, it is not just a matter of stopping the practice but also recognising that the multiple deposits are indicative of structuring and should be reported.

Enhanced Customer Due Diligence / Significant Player Review / Know your Customer

- 424** Crown has adopted an enhanced customer due diligence process regarding customer risk assessments, and how customers who are high or critical risk are to be escalated.
- 425** In March 2021, the Significant Player Due Diligence Review Policy was created to provide guidance to table games and gaming machines management to escalate patrons who trigger certain thresholds. In response, the AML team undertakes a proactive due diligence of patrons that may pose a risk from an ML/TF, regulatory compliance or reputational risk perspective.⁵⁵³
- 426** The Significant Player Due Diligence Review Policy improves Perth Casino's process to review and, where appropriate, ban patrons who pose a higher ML/TF risk. By placing an obligation on the table games and gaming machine management, this policy raises general awareness of AML obligations, but is limited to patrons who trigger certain criteria.
- 427** In April 2020, Crown commissioned Deloitte to undertake a review of its junket due diligence and 'Persons of Interest' (**POI**) process. Crown received the final report in August 2020 and its recommendations were adopted by CRL's board on 21 October 2020.⁵⁵⁴ Recommendations in relation to customer due diligence have been implemented, including the creation of a new group-wide POI Committee, implementation of a POI Decision Assessment tool, and provision of updates from the POI Committee to the CRL Risk Management Committee.⁵⁵⁵
- 428** On 12 November 2020 Crown introduced its 'Escalation of Critical Risk Customer Policy', which requires specific matters to be addressed to determine whether a critical risk customer should be retained.⁵⁵⁶ This new process has introduced rigour and governance into the process of risk rating patrons in relation to Perth Casino.
- 429** The PCRC AML experts reviewed the KYC data obtained for a sample of patrons obtained since the introduction of Escalation of Critical Risk Customer Policy in November 2020. Their work indicated that the checks required were generally being performed and that the KYC data obtained appeared sufficient for Crown to undertake the significant player review categorisation.⁵⁵⁷ The PCRC AML experts noted that 11 patrons had been banned in the five months to 21 September 2021 as a result of the significant player review process with a total of 139 patrons being banned for reasons of either financial crime, junket related reasons or non-financial crime.⁵⁵⁸
- 430** During the Survey and Focus Groups conducted by the PCRC AML experts with Perth Casino employees, participants appeared to have a good understanding of the KYC obligations.⁵⁵⁹

Source of Funds

- 431** In December 2020, the Significant Cash Transactions (Source of Funds) Policy was created with the most recent version being approved in May 2021.⁵⁶⁰ This policy requires patrons to complete a declaration to explain the source of the funds they have presented for buy-in once they have presented cash at Perth Casino which exceeds a prescribed limit on any calendar day.
- 432** On 18 February 2021, Crown restricted cash deposits at the cage and tables, with certain thresholds of cash deposits only to be accepted at Perth Casino if a Source of Funds declaration and written approval from certain senior management is provided.⁵⁶¹
- 433** Since July 2021, Crown requires all cash buy-ins at tables for \$5,000 or greater to only commence when a table game manager is present and for the transaction to be recorded on a Crown Rewards member's record or for appropriate identification to be provided and a record created.⁵⁶² The same limit is set to be imposed for transactions through the cage, subject to the resolution of IT arrangements.⁵⁶³

434 McGrathNicol has considered the introduction of the Significant Cash Transaction Policy with the requirement to obtain Source of Funds statements at an unprecedentedly low threshold to be an important operational amendment which signalled to both employees and customers an intent to record the behaviours of customers. They opined that this action could reasonably be expected to have a deterrent effect on those who are using the casino for criminal activity and enable Crown to improve its data on customers as a basis for interpreting and assessing future behaviour.⁵⁶⁴

Review of potential aggregation and patron accounts

- 435** The Bank Statement Monitoring Rule was introduced on 16 November 2020 and requires that the FCC team at each casino property conduct a manual review of the patron account bank statements to identify potentially suspicious transactions.⁵⁶⁵
- 436** The FCC team now has access to the same information available to the cage.⁵⁶⁶ Crown's Group Credit Control function reviews patron bank accounts on a daily basis to verify that no aggregation has occurred and Crown's FCC team conducts a further review on a weekly basis.⁵⁶⁷
- 437** The PCRC again observes that this direction does not educate the cage team on reporting patterns of transactions that they would previously aggregate. Instead, it places further reliance on the FCC second line of defence team. The effectiveness of this policy depends upon staff in the FCC team having the skills and resources to conduct an effective manual review of the patron bank accounts.

Transaction monitoring program tool

- 438** Crown's transaction monitoring program comprises a suite of systems and controls which includes an automated transaction monitoring function known as 'Sentinel'.⁵⁶⁸ Sentinel is the dashboard which alerts the FCC team when there is a response to AML/CTF data analytics rules relevant to the monitoring of transactions for relevant ML/TF typologies.⁵⁶⁹
- 439** Sentinel is designed to calculate a risk score via a series of rules based on the risk assigned to a particular activity. This risk is then modified by the assessed risk rating of the customer. Once a customer reaches a pre-defined threshold score, an alert triggers a further investigation by Crown.⁵⁷⁰
- 440** Murray Waldren has considered the automated transaction monitoring program and has observed that it has been progressively modified and improved. It considered that the rules were designed to capture a broad range of typologies and are relatively sophisticated in that they operate with differing thresholds based on the risk rating of the patron undertaking the transactions.⁵⁷¹ At the time of its review, Murray Waldren identified as key matters yet to be implemented:
- a. alignment of the transaction monitoring processes with the EWRA to ensure that the system is appropriately risk based; and
 - b. an assurance function to review the effectiveness of the transaction monitoring processes.⁵⁷²
- 441** Deloitte in its Phase 3 report concluded that Sentinel represented a 'significant shift' in Crown's transaction monitoring capabilities. However, Sentinel is 'inherently complex' and, while it noted that the system was 'still being fine-tuned', it opined that the process and documentary infrastructure required to ensure ongoing effectiveness 'is not yet sufficiently mature'.⁵⁷³
- 442** Perth Casino staff in the McGrathNicol focus groups said that transaction monitoring has become more effective since the introduction of Sentinel.⁵⁷⁴

443 The PCRC considers that the improvements to the automated transaction monitoring program aid in rectifying the previous deficiency in the second line of defence, that is, the AML team relying on SYCO generated reports to manually identify instances of potential money laundering.

Regulatory reporting

444 In November 2020 Crown introduced a new 'unusual activity report' (**UAR**) framework.⁵⁷⁵ The UAR portal is digital, replacing the previous paper based system.⁵⁷⁶ It is from this framework that an SMR is generated for lodgement with AUSTRAC.

445 In his evidence to the PCRC, Blackburn said that the first line of defence will work with the second line in identifying reportable matters. The first line, namely staff in the cage, will identify 'unusual activity', but they will not identify 'suspicious activity' as that is a determination made solely by experts in the second line function. Blackburn said:⁵⁷⁷

So whenever an unusual activity report is received from anyone in the front line, Cage or otherwise, the second line team, so the Financial Crime team, will then investigate/review that UAR in the context of what we know about the customer, so in the context of the Know Your Client, KYC, for that customer, together with their behavioural activity, and determine whether or not the activity actually constitutes something suspicious, which then triggers our reporting requirement to AUSTRAC.

446 McGrathNicol has considered the UAR process and observed as follows:

- a. UAR reviews and dispositions were consistent with policy and procedures and the disposition decisions appeared reasonably based on the information reviewed.
- b. UARs were subject to daily triage so that priorities were constantly reassessed and higher risk UARs prioritised for review.
- c. UARs were emanating from a range of business units and a wide range of typologies. This supports the proposition that there is a widespread understanding of AML and a preparedness to report observed activities. This is consistent with the responses and commentary obtained through the Survey and Focus Groups.
- d. Overall, Crown appeared to be addressing UARs assessed as having a high priority. However, there was a backlog of UARs. Lower priority UARs remained un-investigated since April to June 2021.
- e. A risk to responding to UARs in an appropriate time is Crown applying the appropriate resources.⁵⁷⁸

447 The PCRC considers that the UAR framework will assist the first line of defence in identifying behaviour and reporting that behaviour to the second line of defence. The availability of the UAR portal for all first line of defence staff to use suggests a cultural shift towards all staff being responsible for identifying and reporting suspicious behaviour indicative of money laundering.

Standard operating procedures

448 Murray Waldren has observed that, historically, there have been many different processes and procedures in place at Perth Casino, such that processes may not be consistent and that documentation has not always been updated to reflect existing practices.⁵⁷⁹

449 It appears that some of the Perth Casino SOPs relating to AML have been updated to reflect the changes to policies and procedures discussed above. The SOPs relating to security, surveillance, table games, gaming machines and the cage were sent to Danielle Slattery

- (**Slattery**) (Perth Casino AML Compliance Manager from January 2021) in April 2021. In her evidence to the PCRC, Slattery said that she reviewed these SOPs from an AML perspective to ensure that they aligned with the subsequent changes to the way CRL and Perth Casino conducted their business, including treatment of cash deposits, third party transfers, junkets and the UAR process.⁵⁸⁰
- 450** Blackburn in his evidence to the PCRC said that he did not review Perth Casino's SOPs at the time of his assessment of Crown's financial crime maturity in May 2021. Blackburn agreed that the SOPs are critical to the delivery of the AML/CTF program. Blackburn said that enhancing those SOPs is 'part of the challenge' and one of the things he is attempting to uplift through the PUP.⁵⁸¹
- 451** Blackburn, giving evidence in late October 2021, could not say whether the current SOPs at Perth Casino were effective to implement the then current joint AML/CTF program. He said he had no reason to believe they were not. The remediation program, according to Blackburn, was an opportunity to consolidate the SOPs, to update them as the program evolves, rather than to completely rewrite them.⁵⁸²
- 452** Blackburn's evidence was that there will likely be some SOPs bespoke for each property. The individual business units will prepare the specific SOPs, not the FCC.⁵⁸³ He regards it as a first line obligation. Blackburn expects that, for an amended SOP that relates to the operations of the Cage & Count in Perth, the General Manager of cage in Perth would at least prepare the initial draft of the document. The SOPs will, however, be reviewed by the second line to ensure consistency and to ensure that they are appropriate.⁵⁸⁴
- 453** Blackburn is aware that there were instances where SOPs had been amended in Perth in the latter part of 2020 and 2021 that had not been reviewed by a second line of defence. He described this as 'problematic'. The second line did not then have sufficient capacity to conduct the second line review.⁵⁸⁵
- 454** Bossi gave evidence that, as the then CEO of Perth Casino, he could implement an SOP at Perth Casino without getting it approved at Group level.⁵⁸⁶
- 455** Perth Casino SOPs produced to the PCRC expressly state that:⁵⁸⁷
- Cage Shift Manager or above has the right to override these SOP's but must not breach any of the Internal Controls.
- 456** Blackburn said that he was not aware of the notation until the day before he gave evidence to the PCRC. He could not explain what was meant by 'Internal Controls'.⁵⁸⁸ When asked whether the notation would survive the PUP, his response was 'I can assure you it will not'.⁵⁸⁹
- 457** The Perth Casino remediation plan update of 14 October 2021 noted:
- a. AML related SOPs had been largely updated and are subject to ongoing review;⁵⁹⁰ and
 - b. AML related policies were in progress, either drafted and awaiting sign off or waiting for appropriate training materials to be developed.⁵⁹¹
- 458** However, this is inconsistent with Blackburn's evidence to the PCRC in late October 2021 that he could not comment on whether the current standard operating procedures at Perth Casino were effective to implement the then current joint AML/CTF program. In any event, there is now the December 2021 Program which will necessitate further adjustments to the Perth Casino SOPs to ensure the SOPs are aligned with the EWRA and the December 2021 Program.⁵⁹²
- 459** Murray Waldren expressed the view that there will need to be ongoing engagement with, and involvement from, first line business units across Crown properties to update the SOPs.⁵⁹³ Blackburn, in his interview with the PCRC AML Experts, acknowledged that the AML team will likely be required to support the first line to put in place updated procedures

due to capacity and capability in the first line. Murray Waldren said that changes to any processes will require training, time for businesses to embed and ongoing monitoring and testing to determine whether they are implemented and complied with.⁵⁹⁴

Review of effectiveness of policies and procedures

- 460** The Deloitte Phase 1 report, completed 26 March 2021, assessed the design and operating effectiveness of a number of controls applied to patron accounts over an almost three month period which were designed to detect and prevent structuring, cuckoo smurfing, cash deposits and transfers to and from the account by persons others than the patron. These controls comprised processes and procedures put in place by Crown, including in respect of Perth Casino, to implement two of the policies that have been considered above, namely the Third Party Transfers and Money Remitters Policy and Return of Funds Policy.
- 461** Deloitte considered that the design of Crown's controls was aligned with industry practice and its controls were effective in addressing structuring and cuckoo smurfing occurring in patron accounts if executed correctly and once they were of sufficient maturity so to be effective on a sustainable basis.⁵⁹⁵ Deloitte also commented that it was evident from its work that Crown is constructively embracing the opportunity to address money laundering risk within its bank accounts and that the new controls represent a significant and positive shift in the way that Crown operates its patron accounts.⁵⁹⁶
- 462** McGrathNicol has opined that key controls over patrons depositing funds into Crown bank accounts have been effective at stopping the behaviours reported as indicative of potential money laundering in the Bergin Inquiry.⁵⁹⁷
- 463** McGrathNicol summarised the matters discussed in the Focus Groups regarding the AML/CTF policies and procedures as follows:⁵⁹⁸
- a. the volume of memos and SOPs received by on the floor staff and the 'ever-changing' Crown rules make real-time AML/CTF compliance difficult;
 - b. while there is a lot more consistency in how Perth and Melbourne operate processes and implement policies, improvements still need to be made; and
 - c. communication of AML/CTF policies and procedures is reactive, where change is forced by an incident occurring.
- 464** Overall, McGrathNicol has opined that the limited scope investigation, review and testing undertaken indicated that generally Crown had implemented policies, procedures and controls in accordance with its documented policies, processes and procedures.⁵⁹⁹

Conclusions

- 465** The PCRC concludes that:
- a. Crown has significantly reformed its policies and procedures during 2020 and 2021 relevant to both the first and second line of defence;
 - b. the new or uplifted policies and procedures have successfully addressed the specific deficiencies in relation to patron accounts identified in the Bergin Inquiry and, as a result, have effectively eliminated the ML/TF risk through patron accounts; and
 - c. there is significant further work to be done as:
 - i. the policies and procedures are largely reactive to specific events and address very specific ML/TF risks or typologies. The policies and procedures do not address the changes required in the first and second line of defence to control and mitigate ML/TF risk at a broader, more comprehensive, level;

- ii. the policies and procedures are not adequate to support the cultural change required of the first line of defence staff to appreciate their importance in identifying and reporting suspicious behaviour and the essential role they play in Perth Casino complying with its AML obligations;
- iii. there remains a significant gap between group level policies and procedures and the Perth Casino SOPs. Steps should be taken immediately to ensure Perth SOPs cannot be implemented or amended without second line oversight; and
- iv. the Perth SOPs regarding the identification and management of ML/TF risk should be reviewed and brought into line with the EWRA, the December 2021 Program and group level policies and procedures.

AML/CTF Training

- 466** Over the last two years, there has been a significant increase in AML/CTF awareness training at all levels across the Crown group.
- 467** The AML/CTF awareness training comprises AML training in the new-starter orientation program, mandatory online training for all staff, face-to-face targeted training for specific staff roles with a focus on relevant topics such as structuring and how to identify signs of money laundering and face-to-face training for the BL board.⁶⁰⁰ All types of AML training are tracked internally, and the non-completion of training is flagged to the relevant staff member's manager for resolution.⁶⁰¹
- 468** In the 20 December 2021 version of the Remediation Plan, Crown reports that approximately 94% of Crown employees have completed the AML/CTF Awareness Training. Over 9,000 contractors across all three properties have also completed the training. Targeted training has been delivered to 2,600 Crown staff. This training is face-to-face and is business-unit specific in table games, gaming machines, cage, security and surveillance, hotels, and food and beverage.⁶⁰²
- 469** A new face-to-face AML/CTF training module was delivered to the boards of CRL, the Barangaroo Licensee, CML and BL on 8 March 2021.⁶⁰³ The People, Remuneration and Nomination Committee has overseen the development and implementation of induction and continuing professional development programs for directors, including requiring annual AML/CTF training and requiring any new directors in future to attend induction AML/CTF training and appropriate governance courses offered through the Australian Institute of Company Directors (**AICD**) and Governance Institute of Australia.⁶⁰⁴
- 470** Slattery gave evidence that delivering training and providing education across Perth Casino has been a big part of her role to date. She has given a lot of formal and informal training to the first line business units about financial crime. This included training in respect of the new online portal for UARs and an internal Responsible Practices and Ethical Decision-Making workshop.⁶⁰⁵ Her day-to-day work included running both formal and informal training sessions for business units on financial crime, including induction training for new employees, targeted and specialised training for particular business units, and various ad hoc training and briefing sessions on financial crime risks.
- 471** While Slattery had not yet delivered targeted training to cage staff, she understood it had been delivered in about November 2020, before she commenced in her role.⁶⁰⁶
- 472** Information from the Focus Groups and Survey conducted by the PCRC AML experts indicates that:
- a. respondents to the survey and focus group participants had a sound understanding of money laundering,⁶⁰⁷

- b. Crown has delivered AML/CTF training for some time, but in recent times this training has been more frequent, focused and involved more face-to-face training;
- c. there has been an increased focus on AML/CTF awareness and engagement, particularly with the front-line business since early 2021 with the appointment of Slattery;⁶⁰⁸
- d. 22% of respondents said they had not had AML training since early 2019. This included 23% of cage respondents, 24% EGM respondents and 26% of table games respondents;⁶⁰⁹
- e. 73% of respondents believe that money laundering is at least likely to be occurring currently at Perth Casino;
- f. less than half of respondents agreed that Crown staff are encouraged to report any unusual or suspicious behaviour or transactions which may indicate money laundering;⁶¹⁰
- g. a large majority of survey respondents indicated that they felt well equipped and confident that they would recognise money laundering indicators, however a significant proportion of employees from the gaming floor disagreed that they were aware of and knew how to use the AML Portal to create a UAR to report such behaviours;⁶¹¹
- h. 29% of cage respondents were not aware of the daily cash threshold trigger which requires a source of funds form to be completed;⁶¹² and
- i. despite the apparent unawareness of the daily cash threshold trigger referred in paragraph g above, 85% of cage respondents agreed they were 'confident' they could identify indications of money laundering while doing their job.⁶¹³

473 McGrathNicol was provided with extracts of training material that had been delivered to Crown employees to address the risk of money laundering at the casino, the typologies and the indicators to look out for and what to do if they notice potential indicators of money laundering.⁶¹⁴

474 While it was apparent to McGrathNicol that, by about mid-October 2021, there had been a substantial uplift in training over the last 12 months, the uplift program was still underway.⁶¹⁵ McGrath Nicol opined that with ongoing change at Crown, the embedding of AML training and training in the purpose, policies and procedures will require continued focus and investment.⁶¹⁶

475 The PCRC concludes that:

- a. there has been a significant improvement in AML/CTF training at all levels at Crown. That training has effectively improved the level of staff awareness of the ML/TF risk;
- b. Slattery's approach to training Perth Casino staff is a valuable addition to the second line of defence at Perth Casino; and
- c. however, there remains further work required in this regard:
 - i. given their importance in the first line of defence, the 23% of cage staff who have not received AML training since early 2019, the 29% who were not aware of daily cash threshold triggers and the 15% who are not confident they could identify indications of money laundering, are an unacceptably high proportion of staff.
 - ii. a significant proportion of staff on the gaming floor are unaware of how to use the AML Portal to create a UAR to report such behaviours. For the new UAR system to have utility, staff must be able to act confidently and promptly to report unusual activity when they see it.

- iii. ongoing training will be required in conjunction with revised SOPs with which first line of defence staff will be required to comply, as successful implementation of an enhanced AML/CTF program depends on competent staff in the first line of defence executing on required operating procedures on a daily basis.

First line of defence – the cage

- 476** The PCRC considers that the enhanced training program and the new policies and procedures outlined above will assist the cage staff to perform their role in the first line of defence to mitigate ML/TF risk and identify potentially suspicious transactions.
- 477** The present deficiencies in the training for Perth Casino cage staff and the SOPs are examined above. As already explained, the SOPs are the primary source of guidance for cage staff to enable them to identify indications of money laundering.
- 478** As to to the supervision of Perth Casino cage staff, Campbell will formally depart Crown on 31 May 2022. There is no evidence before the PCRC regarding Campbell’s replacement in the role of General Manager of Cage and Count.
- 479** In his evidence to the PCRC, Blackburn said that he does not anticipate a material increase of staff in the first line of defence (including the cage staff). His evidence to the PCRC was that was a way in which a casino was different from a financial institution, for in the latter (at least in large organisations) one would see considerable resources in the first line dedicated solely to financial crime. Blackburn has decided to keep ‘operational functions’ in the second line, such as customer due diligence, enhanced customer due diligence, and investigative processes. Some additional staff may be added to the first line, for instance for technology and procurement.⁶¹⁷
- 480** Murray Waldren has opined that the significant increase in second line financial crime resources is unlikely to be replicated across the first or third lines and, in some instances, resourcing has been reduced (albeit temporarily) as a result of COVID-19.⁶¹⁸ It has opined that, for the successful implementation and embedment of any change program, first line resources need to have a clear understanding of what is required and be sufficiently resourced to implement and comply. It was not clear to it how the significant FCCCP change program will be transitioned from design phase in the FCC team to implementation and embedment into the first line.
- 481** Murray Waldren considered that Slattery as Perth Casino’s AML Manager (now Manager Financial Crime Advisory) had been playing an instrumental role in engaging with Perth Casino’s first line businesses since starting her role in January 2021.⁶¹⁹
- 482** McGrathNicol summarised discussions with first line staff in the focus groups as follows:⁶²⁰
- a. staff were faced with the difficulty of balancing their AML obligations and their responsible gaming obligations to customers. Staff are trying to juggle multiple responsibilities simultaneously; and
 - b. cage staff raised concerns over the complexity and number of systems used, noting that multiple systems (which do not communicate effectively) were required to complete UARs.
- 483** The PCRC concludes that:
- a. as the primary source of guidance for cage staff, the deficiencies in the SOPs may negatively impact the cage’s ability to effectively identify and report indications of money laundering;
 - b. all cage staff should have received AML training since 2019. They should all be

- confident that they can identify and report indications of money laundering. Based upon the McGrathNicol focus groups and survey results, that is not the case;
- c. cage staff are experiencing difficulties in coping with multiple systems required to complete UARs;
 - d. with the very recent departure of Campbell, the PCRC cannot assess the adequacy of the direct oversight and supervision of Perth Casino cage staff; and
 - e. overall, the PCRC cannot be satisfied that cage staff and processes presently operate as an effective first line of defence.

Second line of defence - Financial Crime and Compliance Team

- 484** In May 2021, Crown introduced the FCC Team. This team is responsible for managing policies and procedures, establishing and maintaining risk methodologies, conducting active assessment and developing intelligence to identify inherent risk and overseeing the controls to understand whether they are reducing risk.⁶²¹
- 485** The FCC team operates independently of Crown's operating business units and reports directly to Blackburn.⁶²² Blackburn's evidence to the PCRC was that he was resistant to the idea of 'dotted lines' into the business for integrity functions second line and third line business units needed to be independent of each other, and independent of first line.⁶²³
- 486** The FCC has increased from 56 members in May 2021 to 100 members, with 18 roles still to be filled.⁶²⁴ According to CRL, recruitment is substantially complete with approximately 94% of target roles filled.⁶²⁵ This significant increase in headcount no doubt is required because of the significant amount of work required under the Remediation Plan including for the FCCCP. It demonstrates, however, how under-resourced Crown was in relation to the management of ML/TF risk prior to the commencement of remediation.
- 487** The FCC is a group-wide team. There are currently four dedicated Perth-based resources: the AML Compliance Manager, two financial crime analysts and a senior manager in the Financial Crime Intelligence Unit.⁶²⁶
- 488** Crown explained the advantages of a group structure for the management of ML/TF being that it provided Crown with the:
- a. capacity to pool expertise and learning, such as access to all patron data across all casinos. Blackburn identified the siloed approach to AML/CTF compliance as one of the root causes of Crown's prior AML/CTF failings; and
 - b. ability to attract and retain better talent than would otherwise be possible. Western Australia has less depth of AML/CTF personnel in comparison to the eastern states.⁶²⁷
- 489** In the focus groups conducted by McGrathNicol, second line staff indicated there had been improvements in shared resources across the different properties over the last 12 months.⁶²⁸
- 490** Despite the significant increase in resourcing the second line of defence, the PCRC observed signs that the demands of multiple inquiries and the significant change required to implement the FCCCP meant that the second line at Perth Casino was experiencing capacity issues. As set out above, Blackburn referred to a lack of capacity in the second line as the reason why the Perth Casino SOPs had been amended without second line oversight.
- 491** Murray Waldren has opined that, since late 2020 and throughout all of 2021, the AML team was operating under extreme pressure in responding to external inquiries and challenging deadlines.⁶²⁹ This was unlikely to reduce in the medium term as Crown deals with outcomes of the ILGA inquiry and potential outcomes of the RCCOL and the PCRC as well as current AUSTRAC enforcement action.⁶³⁰ This continued to have a significant (and increasing) impact

on resources, timeframes, and the team's ability to effectively manage business as usual activities.

492 In the September 2021 Financial Crime (AML/CTF) update to the Crown Risk Management Committee, Blackburn noted that 'management are considering means by which to deploy additional, temporary resources on a tactical basis and technology solutions on a strategic basis'.⁶³¹

493 Deloitte in its Phase 3 report in August 2021 observed:⁶³²

It was evident from our review that the Crown AML team is building significant capability and capacity and has strong intent, but that a lack of capacity and the extreme pressure of the ongoing regulatory enquiries is a significant limitation on the team's effectiveness.

Second line assurance function

494 On 12 October 2021, the PCRC AML Experts met with Kavitree Seevathian (**Seevathian**), the newly appointed Group Executive Manager Financial Crime Assurance and Testing recruited to lead the second line AML assurance function, an initiative introduced by the FCCCP.⁶³³ Seevathian said that, as this is a new function for Crown, there are a number of 'building blocks' required to be built to underpin the development of the assurance framework. It was not expected to be fully operational until late 2022.

495 In the interim, Seevathian will take responsibility for ensuring that, should deficiencies be identified within the control environment, they will be investigated, remediated and resolved in a manner which provides assurance that they have been fully addressed.⁶³⁴

Key personnel

496 The key personnel in the second line of defence for Perth Casino are Antoniou, as the Group Executive General Manager Financial Crime Risk/Money Laundering Risk Officer, and Slattery as the most senior AML officer on the ground in Perth.

Antoniou

497 Antoniou joined Crown on 1 November 2021 and reports to Blackburn.⁶³⁵

498 Antoniou was most recently employed by Tabcorp Assets Pty Ltd, part of the Tabcorp Holdings Limited group (**Tabcorp**). She joined Tabcorp in February 2011 in the Wagering & Media Legal team and in 2014 she began to take on roles which included AML/CTF responsibilities. Antoniou's most recent role at Tabcorp was the position of General Manager Financial Crime Risk, which she held from August 2015 until October 2021.⁶³⁶ In this role, Antoniou reported directly to Tabcorp's Chief Risk Officer (and later, the Chief Legal and Risk Officer) and was registered with AUSTRAC as the AML Compliance Officer. Antoniou was appointed to this role to lead Tabcorp's financial crime uplift program, which had been initiated as a result of enforcement action taken by AUSTRAC.⁶³⁷

499 Antoniou was responsible for oversight and maintenance of Tabcorp's joint AML/CTF program. Antoniou led efforts to improve AML/CTF compliance at Tabcorp in a range of ways, including:

- a. drafting and leading Tabcorp's first and then subsequent EWRA's;
- b. drafting and leading the implementation of Tabcorp's new AML/CTF Program; and
- c. creating a Financial Crime Operations Team – that was solely dedicated to AML/CTF operations - and another Financial Crime Risk team that was solely dedicated to AML/CTF frameworks, policy and intelligence.⁶³⁸

500 Given the recency of her appointment, Antoniou did not give oral evidence to the PCRC. As a result, the PCRC has not had an opportunity to directly examine Antoniou's suitability for this key role. However, the PCRC considers that Antoniou's experience at Tabcorp will be of considerable assistance to Crown and to Blackburn. Her appointment as the AML/CTF Compliance Officer will mean that her skills and experience will bear directly on the ongoing remediation of the management of ML/TF risk at Perth Casino. This is a valuable addition to the second line of defence at Perth Casino.

Slattery

501 Slattery worked for the Australian Criminal Intelligence Commission (ACIC) from 2006 until commencing with Perth Casino as the AML Compliance Manager in January 2021. Slattery is part of the FCC team in the sub-group 'FC Advisory'. In broad terms, the role of FC Advisory is to advise all of the business units about financial crime, including AML/CTF risks and controls. The objective is to help the business units operate as an effective first line of defence by giving them the tools and knowledge to make informed decisions about financial crime.⁶³⁹

502 Slattery's role in conducting training to Perth Casino staff has already been considered. In addition to training, Slattery in her evidence to the PCRC described her day-to-day work as including the following.

- a. reviewing AML/CTF-related SOPs to ensure that they are aligned with relevant policies and procedures;
- b. responding to queries from business units about their AML/CTF obligations and general financial crime risk management;
- c. reviewing samples of UARs for quality assurance and supervising Perth based analysts who submit SMRs and conduct customer due diligence;
- d. liaising with law enforcement agencies; and
- e. assisting to implement AML/CTF-related recommendations and remedial changes as a result of the inquiries and external reviews of Crown's operations, including implementing the wider FCCCP changes.⁶⁴⁰

503 Slattery said that at the time of preparing her statement for the PCRC (20 October 2021) she was the only Perth-based member of the FC Advisory subdivision. Perth had four FCC team members, comprising Slattery, two FC Analysts – Investigation, and a Senior Manager in the Financial Crime Intelligence Unit.⁶⁴¹

504 One of the FC Analysts who will work with Slattery is Chrissie Hart (**Hart**). Hart worked in the Perth Casino cage for about 10 years, which means she has considerable engagement with cage staff on a daily basis, including giving remedial training when required.⁶⁴²

505 The PCRC considers that Slattery's approach to her role, on the ground in Perth, with a particular emphasis on training, will support the implementation within the business units of Perth Casino of the FCCCP. This is a valuable addition to the second line of defence at Perth Casino.

506 As to the changes to and the current effectiveness of the second line of defence, the PCRC concludes that:

- a. Crown has invested in new staff and governance structures in and involving the second line of defence and this is likely to contribute to the enhanced management of ML/TF risk in respect of Perth Casino;
- b. there is merit in a model of sharing services within the Crown group for ML/TF risk management, provided there is a dedicated and substantive local presence in Perth for Perth Casino and effective governance oversight at the local level;

- c. the introduction of a second line assurance function is a positive development; and
- d. as a result of the changes implemented by Crown at Perth Casino, the second line of defence is operating effectively.

Third line of defence – internal audit

- 507** Crown’s reform of the internal audit function is examined in the Chapter Four: Corporate Governance. This section considers proposed changes to the internal audit of AML/CTF risk management practices. The internal audit is the third line of defence.⁶⁴³
- 508** Despite the FCCP containing an acknowledgment of the importance of internal audit as the third line of defence, the FCCCP does not include any provision for revision of the scope of the internal audit process in relation to ML/TF risk, nor any adjustment to the resources to be employed in the conduct of such an internal audit.
- 509** Jessica Ottner (**Ottner**) (CRL Group General Manager – Internal Audit from 21 May 2021) in her evidence to the PCRC said that, when she first commenced in her role, there was one Group Internal Audit Manager who sat across Perth Casino, Melbourne Casino and Barangaroo Casino. Ottner considered that an Internal Audit Manager in Perth was required. Ottner’s view was that casinos run largely independently and decisions often get made at a casino level. They also operate under different regulatory frameworks. For an Internal Audit Manager to understand the roots of what is happening at Perth Casino properly, it is necessary to walk the floor of the casino, interact with staff and have a good understanding of the regulations governing Perth Casino, including the Casino Manual.⁶⁴⁴
- 510** An Internal Audit Manager in Perth has now been appointed. She has been at Perth Casino in other roles since January 2015, knows the business and gaming and has very good relationships within the Perth Casino business. Ottner considers her to be a suitable appointment.⁶⁴⁵ There are a further three full time internal auditor positions in the Perth team who report to the Internal Audit Manager. There is also a newly created Senior IT Auditor position in Perth largely focussing on Perth Casino matters.⁶⁴⁶
- 511** Ottner identified the need to rely upon external resources until such time as she was comfortable in the approach of the casino’s in-house team’.⁶⁴⁷ Ottner said that the internal audit team had a lot of new staff and it would take time to ensure they had all the training and skills they would need to conduct the AML audit.⁶⁴⁸
- 512** Insofar as the design of the AML/CTF audits for the future are concerned, it is Ottner’s intention that one of their features will be to assess not only whether it complies with AML/CTF legislation, but whether its design is effective to capture all risks. This will be done partly by Ottner’s team and partly by an independent review, which was to commence in December 2021.⁶⁴⁹
- 513** The PCRC concludes that:
- a. Ottner’s skills and experience, and her approach to the internal audit function generally, will be a valuable addition to the third line of defence in respect of managing ML/TF risk at Perth Casino;
 - b. the presence of an experienced, competent internal audit manager on the ground in Perth together with a sufficient number of internal auditors is necessary to ensure effective assurance of AML/CTF at Perth Casino;
 - c. the internal audit function is not included in the FCCCP and it is not known whether and to what extent there are any changes proposed to be made to the nature or scope of internal audits in respect of ML/TF risk;

- d. currently, external assistance is required to conduct an effective audit of the management of the ML/TF risk at Perth Casino which has not yet been procured; and
- e. in the absence of such external assistance, there is a significant risk that the internal audit team is not, and will not be in the short to medium term, an effective third line of defence to manage ML/TF risk at Perth Casino.

AML reporting structures and governance

- 514** The Group AML/CTF Committee has been replaced with the FCOC and the Financial Crime Working Group (**FCWG**).⁶⁵⁰
- 515** The FCOC is chaired by Blackburn and is accountable to each of the Crown boards. All chief-level executives of CRL and each Crown entity are members. The purpose of the FCOC is to improve financial crime and compliance risk reporting, to improve governance and to assist the board and senior management in discharging their oversight responsibilities.⁶⁵¹
- 516** The FCWG is chaired by the AML Compliance Officer and is accountable to the FCOC. General Managers from all three lines of defence are members. The FCWG monitors and reviews Crown's AML/CTF compliance program and provides the FCOC with information to assist it with its oversight role.⁶⁵²
- 517** The Perth ERCC no longer has any responsibility for the oversight of the management of financial crime risk at Perth Casino.
- 518** The PCRC concludes that the revised structure, including:
- a. the clear demarcation and separation of the three lines of defence;
 - b. the separation of the FCOC from operating business units and from the ERCC; and
 - c. Blackburn's role as chair of the FCOC reporting directly to the Crown boards, is an appropriate structure for the oversight of the management of ML/TF risk.

Assessment of financial crime maturity

- 519** In his presentation to the CRL board on 24 May 2021, Blackburn assessed Crown's financial crime program maturity level as 'foundational', out of the four levels in his ML/TF risk maturity model. The four levels are initial, foundational, advanced and optimal. This was based on his findings that most processes were being documented, there were foundational resources and capability in place, largely manual processes deployed and basic controls and systems in operation.⁶⁵³
- 520** In his evidence to the PCRC, Blackburn said that, applying a risk-based approach, Crown may not seek to reach 'optimal' for all elements of its FCCCP. He explained that in many ways the 'optimal' target is modelled on banks or financial institutions that have comprehensive systems across their organisations, maybe in multiple jurisdictions, but also lend themselves to automation in every way. For a casino, the aspirational point is a mixture of automation and manual systems because observation is a critical component to managing financial crime risk at a casino.⁶⁵⁴
- 521** The CRL board has endorsed a target of 'advanced' financial crime maturity by 31 December 2022. Blackburn said that significant investments would be required with respect to capability, capacity, system/infrastructure and the underlying processes, all of which were contemplated under the FCCCP.⁶⁵⁵ He said:⁶⁵⁶

The [FCCCP] contemplates significant changes across all core elements of Crown's financial crime and compliance programs... Should the FC&C Change Program be supported and successful, we will achieve the aspirational target

maturity state ... by 31 December 2022, with several outcomes delivered prior to that date.

- 522** As the PCRC's AML experts observed, Blackburn's assessment of financial crime maturity was inclusive of a number of changes which had been implemented in the months leading up to 31 May 2021 including:
- a. approval of the 2020 Joint AML/CTF Program for the DBG in November 2020;
 - b. increase in full-time equivalents in the financial crime team from five to 20 between December 2020 and May 2021;
 - c. engagement of Promontory, an external AML specialist advisor, to conduct a review of AML vulnerabilities (to inform a EWRA yet to be undertaken) with the final report delivered on 24 May 2021;
 - d. new automated transaction monitoring program, Sentinel, launched 2 February 2021;
 - e. unusual Activity Report regime launched 12 April 2021;
 - f. online financial crime awareness training released in early 2021 with 90% completion rate; financial crime training provided to the board in March 2021;
 - g. cessation of Crown dealing with junkets;
 - h. source of funds declaration requirement for all customers depositing greater than \$25,000 for cash in a day introduced from 21 May 2021; and
 - i. a number of patron account controls introduced.⁶⁵⁷
- 523** Despite these enhancements, Blackburn was only able to assess Crown's financial crime maturity system overall in May 2021 as 'foundational', and that included a number of components in transition to that stage from 'initial'. 'But for developments in the months leading up to the assessment, more elements of the financial crime and compliance ecosystem would likely have been assessed as 'initial' and it would have been difficult to support a view that overall the system could have been assessed at a maturity level greater than 'initial'.⁶⁵⁸
- 524** The PCRC's AML experts opine that it is a serious indictment on Crown's focus on and investment in AML/CTF over its life, and particularly since the AML/CTF legislation was introduced in 2006, that Blackburn assessed the overall AML/CTF framework in May 2021 as 'foundational' and that many elements were not assessed at having reached even the 'foundational' level of maturity.⁶⁵⁹
- 525** Blackburn gave evidence to the PCRC that, according to his assessment in May 2021:⁶⁶⁰
- Crown in most ways was effectively managing financial crime risk, not entirely, and that's why enhancements were required.
- 526** It can be inferred, however, from the nature and scope of the FCCCP, within the context of the Remediation Plan generally, that the 'enhancements' required were substantial, and that Blackburn considered that Crown should strive to implement those 'enhancements'. The PCRC infers that the CRL board, in approving the FCCCP, accepted this position.

External review of effectiveness of current ML/TF risk management

- 527** As examined above, in carrying out its EWRA, Crown has not assessed the effectiveness of its AML controls. The explanation given by Antoniou is that 'almost every element' of Crown's financial crime control framework is 'going through, or about to go through, significant change'.⁶⁶¹

528 In addition to the views expressed by PCRC’s AML experts above, there has been some assessment of the effectiveness of Crown’s existing AML controls by Deloitte and Kroll.

Deloitte Phase 3 review

529 Crown engaged Deloitte to conduct a review of the effectiveness of the design and operational effectiveness of a set of Crown’s AML/CTF controls that were in place as at 30 April 2021 to determine the extent to which Crown has in place appropriate systems and controls to mitigate the risk of money laundering activity occurring through patron accounts.⁶⁶² The Deloitte Phase 3 review was completed on 19 August 2021.⁶⁶³

530 Deloitte observed that, in aggregate, the new controls effectively addressed a range of relevant money laundering typologies.⁶⁶⁴ Furthermore, Crown’s operational execution of processes supporting the controls were generally effective.⁶⁶⁵ However, further focus and investment was required to ensure that new processes and controls are embedded and can be sustainably effective.⁶⁶⁶

531 Deloitte’s review of the controls noted the absence of an EWRA, including an assessment of customer risk, which results in an inability to be confident that the controls in place are appropriately directed to Crown’s actual risk.⁶⁶⁷ As noted above, an EWRA has now been completed.

532 Deloitte considered that the resources applied to the performance, assurance and oversight of the relevant controls was not sufficient and there was a lack of clarity about roles and responsibilities across the three lines of defence. Deloitte opined that AML/CTF roles and responsibilities must be clearly articulated and supported by structured, risk-based training.⁶⁶⁸

533 Overall, Crown agreed to take steps to address Deloitte’s Phase 3 recommendations and has brought the responsive actions into its FCCCP initiatives.⁶⁶⁹

Overall conclusion about current effectiveness of management of ML/TF risk

534 The reactive remedial steps taken from late 2019 into 2020 were effective in preventing apparent structuring of deposits into Perth Casino’s bank accounts. However, these reactive remedial steps were directed towards preventing transactions, rather than a comprehensive improvement in Perth Casino’s ML/TF risk management system and processes, including in the three lines of defence.

535 From May 2021, the Remediation Plan and the FCCCP have reflected a more proactive approach to identification and management of ML/TF risk across the Crown’s casino businesses, including Perth Casino. Crown’s commitment to execution of the FCCCP, as part of the broader Remediation Plan, demonstrates a recognition of the significance of the remediation task at hand.

536 The various initiatives in the Remediation Plan and the FCCCP have put in place systems, by way of policies and technology solutions, which have addressed the areas of ML/TF risk exposure identified in 2019 and into 2020. While early signs are positive, as examined in this chapter, it is too early to assess whether in fact those enhanced or new systems are effective. Crown’s EWRA in late 2021 was unable to assess the effectiveness of implemented controls.

537 Further, Crown has not implemented, as in ‘embedded’, an AML/CTF program (namely the December 2021 program) that is properly based on an EWRA. Crown has not yet obtained an external assessment of the December 2021 program (Exiger’s review is scheduled for March 2022).

- 538** The appointments of Blackburn, Antoniou, Slattery and Ottner are positive developments. They have the skills and experience to perform their respective roles. Their appointments have enhanced the second and third lines of defence.
- 539** The departures of Preston (in 2020), Brown (in 2020), Barton (in 2021) and Campbell (in 2022) are positive developments in the sense that it is refreshment of key personnel in critical roles. Those who have left played key roles in the lines of defence to manage the ML/TF risk in the troublesome period 2010 to 2019 up until the time of the media allegations of money laundering in mid-2019. They did not satisfactorily fulfil their roles during that period. In addition, Preston's decision not to engage external assistance to investigate whether there were indications of money laundering in the Southbank and Riverbank accounts, despite Lane's recommendation in August 2019 and Initialism's recommendations in August 2019 and September 2020, was unsatisfactory given the nature of those media allegations.
- 540** Crown has recruited extensively into the second line of defence and, although this is primarily at a group level, it is intended to directly benefit the operations of Perth Casino. This is coupled with considerably improved governance and reporting lines.
- 541** However, remedial steps in respect of the first line of defence have only partially been completed. With the exception of the imminent departure of Campbell, there has not been a material change to first line of defence staff, including cage staff at Perth Casino. This means that the first line staff are essentially the same staff who worked in the first line before the remediation plan was commenced. A material issue for the effective management of ML/TF risk at Perth Casino at this time is the extent to which instruction, training and supervision of first line staff has meant that they will perform their role in identifying and reporting 'unusual activity' or 'suspicious behaviour'. The PCRC is not satisfied that this is the case.
- 542** The FCCCP did not include any provision for revision of the scope of the internal audit process in relation to ML/TF risk, nor any adjustment to the resources to be employed in the conduct of such an internal audit. The internal audit function is not included in the FCCCP and it is not known whether and to what extent there are any changes proposed to be made to the nature or scope of internal audits in respect of ML/TF risk. Currently, the internal audit team requires external assistance to conduct an effective audit of the management of the ML/TF risk at Perth Casino. That assistance has not yet been procured. In the absence of such external assistance, there is a significant risk that the internal audit team is not an effective third line of defence to manage ML/TF risk at Perth Casino.
- 543** McGrathNicol's survey results suggest that there is considerable progress still required to instil a culture in which most staff feel confident to come forward and report suspicious (or unusual) activity. As is discussed further in this report, the culture at Perth Casino in this regard will take time to change.
- 544** Overall, and acknowledging that advancements have been made, the PCRC cannot conclude that Crown is currently managing ML/TF risk at Perth Casino effectively.

Part Seven: The path ahead in respect of ML/TF risk management

- 545** Crown's concessions following the Bergin Inquiry, to the RCCOL and to the PCRC demonstrate that Crown has, for the most part, accepted and confronted the serious deficiencies in the identification and management of ML/TF risk at Perth Casino. This is an important step towards substantive remediation.
- 546** The PCRC does not consider it necessary to evaluate whether the term 'advanced' could be applied to the financial crime maturity level of Crown if it were to complete the FCCCP.

The appropriate assessment is whether the FCCCP will be sufficient to remedy the current identified deficiencies, and if the PCRC can be satisfied that Crown will be effectively managing ML/TF risk at Perth Casino. That assessment may only be conducted by the PCRC in relation to the FCCCP and its potential outcome, in the absence of any other remediation plan that has been identified by Crown.

- 547** Murray Waldren, in its report to the PCRC, reviewed the FCCCP and concluded that it referenced the necessary components required to uplift Crown's financial crime maturity. Further, Murray Waldren considered that the calibre of senior resources recruited to deliver against a wholesale change program and to lead broader organisational and cultural change in relation to financial crime compliance (including Blackburn) to be appropriate for the task at hand.⁶⁷⁰
- 548** On balance, the PCRC considers that Crown will likely be in a position whereby it is effectively managing the ML/TF risk at Perth Casino if Crown:
- a. completes its FCCCP as planned;
 - b. updates and improves the Perth Casino SOPs and ensures they are and remain consistent with Group level policies and procedures;
 - c. enhances the training and supervision of Perth Casino cage staff; and
 - d. supplements its internal audit function with external expert AML audit assistance or improves the experience and training of its in-house audit team.
- 549** In forming this view, the PCRC is cognisant of the pending external review of the December 2021 Program by Exiger. The PCRC trusts that the review will be adequately performed and any actions identified by the review will be carried out by Crown. The adequacy of the December 2021 Program is fundamental to the effectiveness of ML/TF management. Until that has been tested and relevant adjustments made, there will be significant uncertainty regarding the system's adequacy.
- 550** Further, there must be ongoing testing of implemented controls, given Crown's EWRA has not been able to test the effectiveness of those controls. The assurance process must continue during 2022, with adjustments to be made along the way as may be required to ensure effective remediation. If the next EWRA identifies that controls have not been effective, further remedial actions may be required.
- 551** McGrathNicol observed that the key risks to achieving the desired uplift in Perth, Melbourne and Sydney are people, technology, and funding.⁶⁷¹ These risks may impact both the ability to fulfil the plan and the timing of completion.
- 552** The PCRC considers that Blackburn and Ottner are necessary for the performance of the second and third line of defence respectively. It is important that each of these individuals, or other people of their calibre work for the benefit of Perth Casino, at least until the completion of the FCCCP.
- 553** Blackburn is intent on pursuing upgrades in technology to assist with the management of ML/TF risk, in particular in respect of the transaction monitoring program. This will simplify identification and reporting and relieve the burden on staff conducting extensive manual review processes.⁶⁷²
- 554** Recent internal Crown reports have indicated that IT support and resources are lagging and workaround solutions have been required to overcome technology problems.⁶⁷³ This will have a detrimental effect on achieving milestones in the FCCCP.
- 555** Although there was limited evidence on the funding which has been made available for completion of the FCCCP, the PCRC AML experts reported that in their interview with Blackburn he stated that he has not been denied any of the resources he needs to execute his plan.⁶⁷⁴

- 556** Given the extent of the deficiencies in the systems and processes to identify and manage ML/TF risk at Perth Casino, as examined in Parts Four and Six, remediation of those deficiencies will take some time. The CRL board set the aspirational target maturity state of Crown’s financial crime program to be ‘advanced’ by 31 December 2022.⁶⁷⁵ This anticipates the FCCCP initiatives to be fully designed, implemented and embedded across the casinos by that date. In May 2021, Blackburn described that target as ‘challenging’ and ‘ambitious’.⁶⁷⁶
- 557** Murray Waldren opined as follows:
- a. the reports of the progress of the FCCP to date are largely for the ‘design’ phase of the plan, with implementation in some instances not envisioned until late 2022 or 2023;⁶⁷⁷
 - b. even though Crown’s commitment to change and improvement is apparent, over time the competing priorities in the first line are likely to manifest in compromise or failure to meet key FCCCP deliverables and timeframes, unless sufficient support is provided to implement and embed the uplifted policies/procedures/controls;
 - c. the ongoing pressures of the external environment are having, and will continue to have, an impact on the timeframes committed to in the FCCCP;⁶⁷⁸ and
 - d. existing resources were insufficient to manage Crown’s current business as usual activity effectively and were unlikely to be sufficient to embed the FCCCP across Crown’s three lines of defence model.⁶⁷⁹
- 558** McGrathNicol opined as follows:
- a. at the time of its review, Crown was five months into an ‘an extraordinarily large and complex program of works’;⁶⁸⁰ and
 - b. the December 2022 target for ‘advanced’ maturity was a challenging target when it was set in May 2021 and is now arguably more challenging, given the impact of extended COVID lockdowns, the additional requirements to be met to obtain a licence for the Barangaroo Casino and the delays in opening that property.⁶⁸¹
- 559** A key milestone in the FCCCP was the design, implementation and embedment of the EWRA and the revised December 2021 Joint AML/CTF Program.⁶⁸² These steps were targeted to be ‘implemented’ by 25 November 2021 and ‘embedded’ by 17 December 2021.⁶⁸³ This did not occur. The EWRA report and December 2021 AML/CTF Program were not adopted by Crown until 22 December 2021⁶⁸⁴ with the program then proposed to be ‘implemented’ by 31 January 2022.⁶⁸⁵ The PCRC has no evidence as to whether the implementation date was achieved. The PCRC also has no evidence as to what ‘implementation’ means in this context. For instance, it cannot mean that the changes brought about by the December 2021 Program have filtered down into amended SOPs for the cage in Perth Casino, for the evidence indicates that this will take the remainder of 2022 and into 2023.
- 560** The PCRC is cognisant of views expressed by Deloitte in its Phase 3 Report and the PCRC AML experts regarding the work to be completed and the resource pressures which will impact upon that work. This remediation process is complicated by the fact that the December 2021 Program may result in changes to the SOPs and/or training that have not been contemplated to date under the prior AML/CTF Program.
- 561** Crown’s commitment to execution of the FCCCP, as part of the broader Remediation Plan, demonstrates a recognition of the significance of the remediation task at hand and a public commitment to complete that task in a timeline which has, to some extent, been defined. It is to be expected that Crown’s commitment to the FCCCP will continue beyond the date when the PCRC delivers its final report.
- 562** On balance, it is not clear that Crown will be able to implement, and embed, across the first and second lines of defence, the complete FCCCP by 31 December 2022. Further, there is

no evidence of a timeline for the required enhancements to the internal audit function in respect of the management of ML/TF risk at Perth Casino.

- 563** However, with the benefit of the independent review of the December 2021 Program by Exiger (due in about March/April 2022), and with the benefit of completion of the second EWRA for the period 1 July 2021 to 30 June 2022 (which should be available by December 2022), Crown should be in a much better position to complete any outstanding work required to implement the FCCCP and reform the internal audit function, thereby effectively managing the ML/TF risk in respect of Perth Casino. The PCRC anticipates that in the second half of 2022, Crown will be in a much better position to provide an update on the timings of completion of the outstanding work which is estimated to be complete in 2023.
- 564** Finally, the PCRC considers that the GWC better appreciates its regulatory obligations in respect of mitigating the risk of money laundering at Perth Casino, and appears to be taking proactive steps towards discharging its AML responsibilities. This is likely to mean an additional level of accountability will be imposed on Crown which, in conjunction with any associated regulatory reform (a matter dealt with in Chapter Fourteen: Evaluation of Regulation of Perth Casino), will likely regulate, and benefit Crown as it seeks to achieve effective management of ML/TF risk at Perth Casino.

Endnotes

- 1 Western Australia, Government Gazette, No 45 (12 March 2021) [PCRC.0026.0001.0001] 1080 [8].
- 2 Explanatory Memorandum, *Anti-Money Laundering Amendment (Gaming Machine Venues) Bill 2012* (Cth) [PUB.0007.0008.2472] 4; Australian Crime Commission, *Organised Crime in Australia*, report (2011) [PUB.0007.0008.2493] 50.
- 3 McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report', expert report (28 October 2021) [PCRC.0021.0001.0121_R2] 15 [3.5.1].
- 4 GWC, transcript [TRA.0001.0001.0001] 1386 – 1387.
- 5 Western Australia, Government Gazette, No 45 (12 March 2021) [PCRC.0026.0001.0001] 1080 [9] – [10].
- 6 Western Australia, Government Gazette, No 45 (12 March 2021) [PCRC.0026.0001.0001] 1080 [1] – [5].
- 7 Western Australia, Government Gazette, No 45 (12 March 2021) [PCRC.0026.0001.0001] 1080 [6].
- 8 FATF, 'Vulnerabilities of Casinos and Gaming Sector', report [INQ.130.001.2034] 25 [86].
- 9 McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report', expert report (28 October 2021) [PCRC.0021.0001.0121_R2] 152 [3.1.2].
- 10 *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007 (No 1)* (Cth) [PUB.0016.0034.0064] r 1.2.1.
- 11 AUSTRAC, 'Junket Tour Operations in Australia', report (2020) [CRW.512.041.0001] 5.
- 12 AUSTRAC, 'Money laundering in Australia 2011', report (2011) [PUB.0004.0018.0315] 7 – 8; McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report', expert report (28 October 2021) [PCRC.0021.0001.0121_R2] 12 [3.2.1].
- 13 McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report', expert report (28 October 2021) [PCRC.0021.0001.0121_R2] 14 – 15 [3.4.1].
- 14 This could be a transaction by which money is received by a casino from a patron or third party ('cash-in'), or a transaction in which money is paid by a casino to a patron or third party ('cash-out').
- 15 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) [PUB.0016.0034.0439] s 142 – s 143.
- 16 AUSTRAC, 'Money laundering in Australia 2011', report (2011) [PUB.0004.0018.0315] 16.
- 17 RCCOL Report vol 1 [PUB.0030.0001.0001] 185 – 186 [19] – [20].
- 18 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) [PUB.0016.0034.0439] s 5.
- 19 FATF, *Who We Are* (8 November 2021) [PUB.0033.0010.0001]; FATF, 'RBA Guidance for Casinos', guidance (23 October 2008) [PUB.0004.0018.0468] 7 [28].
- 20 McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report', expert report (28 October 2021) [PCRC.0021.0001.0121_R2] 16 [3.6.6].
- 21 Basel Committee on Banking Supervision, 'Sound management of risks related to money laundering and financing of terrorism', guidelines (January 2014) [PUB.0004.0018.0406] 9 – 11, [19] – [31]; P Jones, 'Risk and compliance: rethinking the three lines of defence', article (30 October 2020) Australian Institute of Company Directors [PUB.0029.0009.0005] 4; Blackburn, witness statement [CRW.998.001.0036_R] [14] – [16].
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58 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) [PUB.0016.0034.0439] s 51B.

59 While table three of s 6 is expressly concerned with gambling services, it is also possible that a casino will provide financial services and so provide a designated service for the purposes of table one of s 6 (items 31 and 32, which deal with providing a 'remittance service', are relevant).

60 *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) [PUB.0016.0034.0439] s 139.

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252 Campbell, transcript [TRA.0001.0001.0001] 4832.

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- [CRW.709.143.5587] 2; Perth Casino, Legal Compliance Meeting minutes (18 October 2018 meeting) [CRW.008.014.5937] 2.
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- 258 Brown, transcript [TRA.0001.0001.0001] 4622 – 4623.
- 259 Brown, transcript [TRA.0001.0001.0001] 4649.
- 260 Brown, transcript [TRA.0001.0001.0001] 4695 – 4696.
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- 263 Brown, transcript [TRA.0001.0001.0001] 4652.
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- 265 Brown, transcript [TRA.0001.0001.0001] 4654 – 4655.
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- 325 Murray, transcript [TRA.0001.0001.0001] 4446 – 4447.
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- 330 Preston, transcript [TRA.0001.0001.0001] 1717.
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- 336 Other members at its formation were Adam Sutherland, Claude Marais, Michelle Fielding, Anne Siegers, Jacinta Maguire, David Devine, Cori Cairns, Brett McCallum, Shannon Blake, Stephen Hancock, Anne Puthikarun, Craig Walsh, Brian Lee, Chrissy Hart, Matthew Christie, Kierren Gersbach, Paige Mischker and Jan Williamson.
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- 359 Barton, witness statement [WIT.0012.0001.0001_R] [3], [20] – [21].
- 360 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 107 [107].

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362 Barton, transcript [TRA.0001.0001.0001] 2358.
363 Barton, transcript [TRA.0001.0001.0001] 2361.
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381 McGregor, witness statement [CRW.998.002.0219_R] [111].
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388 McGregor, transcript [TRA.0001.0001.0001] 2485.
389 McGregor, transcript [TRA.0001.0001.0001] 2488 – 2489.
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20 EGM Players FY18 (December 2017) [CRW.700.045.6515_R] 1; Melbourne Casino, Patron Deposits/Withdrawal
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- 530 Antoniou's statement was received from the Crown entities by the PCRC after the close of evidence, and after the date by which closing submissions from any interested party were required to be provided to the PCRC. Her statement nonetheless pertains to matters of relevance to the PCRC's consideration of ToR 1-5, and paragraph (C) of the Operative Part of the ToR. Insofar as Antoniou's evidence refers to confidential documents which have been tendered to the PCRC, PCRC has reviewed those documents and is satisfied that Antoniou's summary of those documents is accurate. The PCRC has received Antoniou's statement into evidence.
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- 532 Antoniou, witness statement [CRW.701.011.9213_R] [31] – [32].
- 533 Antoniou, witness statement [CRW.701.011.9213_R] [33].
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- 550 McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report', expert report (28 October 2021) [PCRC.0021.0001.0121_R2] 133 [5.1.4] – [5.1.5].
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- 552 Perth Casino, Standard Operating Procedures Telegraphic Transfer (23 September 2021) [CRW.700.102.5172_R] 2; Perth Casino, Standard Operating Procedures, AUSTRAC Reporting (11 August 2021) [CRW.701.006.3732_R] 5.
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- 556 CRL, Remediation Plan (23 December 2021) [CRW.701.011.5919_R] 39.
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CHAPTER 9

Other Criminal Activity

CHAPTER NINE

Other Criminal Activity

Purpose of Chapter

- 1 The strategic risk of criminal infiltration of Perth Casino's gaming operations by or through its junket operations and the strategic risk that Perth Casino's gaming operations may be used by criminals for the purpose of money laundering have been examined in Chapter Eight: Money Laundering and Chapter Six: Junkets respectively.
- 2 In Chapter One: Subject Matter of Inquiry and Terms of Reference, the PCRC identified other related strategic risks to the attainment of the broad objectives of casino regulation, relevantly:
 - a. the strategic risk that organised crime (and other criminal elements) will infiltrate and use the operations of Perth Casino for socially undesirable or illegitimate purposes;
 - b. the strategic risk of criminal infiltration of casino operations by employees, including by organised crime; and
 - c. the strategic risk of other criminal activity on the casino premises, including the use of proceeds of crime for casino gaming.
- 3 This chapter examines:
 - a. the regulatory framework;
 - b. regulation and oversight by the GWC; and
 - c. governance and risk management by the Burswood entities,relevant to the mitigation of these other related strategic risks.
- 4 ToR 8 requires the PCRC to inquire into and report upon the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address these strategic risks.
- 5 The GWC's regulation and oversight of the management of the risks of criminal infiltration of Perth Casino's operations and other criminal activity on the casino premises are also an appropriate subject of inquiry by the PCRC pursuant to ToR 9 and ToR 10.
- 6 As set out in Chapter One: Subject Matter of Inquiry and Terms of Reference, an assessment of the management by or on behalf of Perth Casino of these strategic risks also bears relevantly on the assessment of suitability that the PCRC is required to undertake pursuant to ToR 1 to 5.
- 7 Part One of this chapter provides some brief background and context for the discussion that follows. Part Two of this chapter examines the regulatory framework relevant to criminal infiltration of Perth Casino's operations and other criminal activity on the casino premises. That examination comprises two parts: the regulation of criminal infiltration and activity generally; and the regulation of criminal infiltration and activity specifically through the licensing of casino employees. Part Three examines the governance and risk management by the Burswood entities relevant to those strategic risks.

Part One: Context for examination of other criminal activity

Vulnerability of casinos to criminal infiltration and activity

- 8 Casinos are attractive venues for criminals and are targeted by them for criminal influence and criminal exploitation.¹ Criminals may attempt to infiltrate casinos to facilitate theft, fraud, money laundering and other crimes.²
- 9 The vulnerability of casinos to the risks of criminal infiltration and activity have long been recognised and are well understood.³
- 10 With respect to the vulnerability to those risks of Perth Casino specifically, a number of Crown directors and senior management, in evidence to the PCRC, accepted that Perth Casino is, in general, vulnerable to attempts by criminal elements to infiltrate its operations.⁴ They accepted that such infiltration may undermine public confidence and trust in the credibility and integrity of Perth Casino's operations.⁵ These risks include the risk of criminal activity such as theft, fraud, money laundering and other possible crimes such as loan sharking and distribution of drugs on the premises.⁶
- 11 In particular, Brian Lee (**Lee**), the General Manager of Security and Surveillance at Perth Casino, gave evidence that the casino is vulnerable to criminal infiltration, not just because it is mainly a cash-based business, but also because it is a facility that attracts approximately 10 million people each year. With that many patrons, Lee stated that there will be criminal elements visiting the premises.⁷

Part Two: Regulation of criminal infiltration and activity by the Gaming and Wagering Commission

Regulation of criminal infiltration and activity generally

GWC's understanding of its role

- 12 David Halge (**Halge**), a former Chief Casino Officer (**CCO**), said that during his tenure (which ended in 2007), casino departmental inspectors were told that they were not responsible for investigating criminal activities and were told not to investigate whether criminal elements were seeking to infiltrate Perth Casino.⁸ He considered that the GWC had a legislative responsibility regarding the infiltration of criminal elements but explained that there was no 'mechanism to bring that up to the [GWC]' as, once the police unit disbanded, the inspectors were not trained in that area so they were not in a position to provide reports to the GWC.⁹
- 13 Michael Connolly (**Connolly**), another former CCO, gave evidence that the GWC did not manage the risk of possible or potential criminal activity of any other kind occurring or being facilitated by Perth Casino and that audits had never been conducted for the purpose of detecting criminal activity of any kind.¹⁰
- 14 Barry Sargeant (former Director General of the Department, and former chair and member of the GWC) (**Sargeant**) accepted that there was a risk that Perth Casino would attract criminal activity but said there was no way for the GWC to know who those people were unless WAPOL provided that information.¹¹ Sargeant also gave evidence that, if there was criminal activity within the casino footprint, there was a responsibility for the GWC to do something about it which, in the first instance, would involve WAPOL.¹²

- 15 Sargeant gave evidence of the expectation of casino departmental inspectors who were carrying out audit and inspection tasks to report criminal activity if it was 'obvious'.¹³ That evidence was corroborated by a former casino departmental inspector.¹⁴
- 16 Sargeant also gave evidence that the GWC left the investigation of criminal activity to agencies specifically tasked with that responsibility¹⁵ and relied on those agencies to raise with the GWC any concerning behaviour at Perth Casino and to advise whether the GWC could use its powers 'to investigate something which may not be directly related to the casino at that point[,] but could have some impact on the casino'.¹⁶

Legislative powers

- 17 Under s 32 of the *Casino Control Act 1984* (WA) (**CC Act**), if an officer of the GWC suspects that a person has contravened certain provisions of that Act,¹⁷ s 44 of the *Gaming and Wagering Commission Act 1987* (WA) (**GWC Act**) or a provision of *The Criminal Code Compilation Act 1913* in relation to gaming operations at Perth Casino, they can detain that person until the arrival of the WAPOL.
- 18 The PCRC has no evidence as to whether this provision has been utilised by any GWC officers.

Directions in force and the Casino Manual

- 19 The GWC has issued directions to the Perth Casino licensee pursuant to s 24 of the CC Act and these have been consolidated as the Burswood Casino Directions (**Directions**).¹⁸
- 20 Direction 7.3 requires Perth Casino to ensure that, where practicable, its closed-circuit television system is useable, and is used for, relevantly:
- 'the detection of cheating, theft, embezzlement or other illegal activities in the Casino, including the count rooms, change booths, Keno areas, Trackside areas, chip bank and cashier's cage';¹⁹
 - 'the video taping of illegal or unusual activities monitored';²⁰ and
 - 'the surveillance of such other areas as the [GWC] may in writing require'.²¹
- 21 Direction 7.4 provides that:²²
- Upon the detection, or the detection and taping, of cheating, theft, fraud, embezzlement or other illegal activity the Casino Operator shall cause the duty government inspector to be notified as soon as is practicable.
- 22 Directions 8.1 to 8.5 and dir 8A.1 to dir 8A.4 (inclusive) are focused upon the security of the casino premises and the casino operations. Those directions impose requirements for the deployment of security officers and restriction of access to certain areas of the casino and to specific gaming equipment.
- 23 Direction 8.2 provides that:²³
- Upon being informed of the detection, by a security officer, of an illegal act carried out by a person, the Casino Operator shall cause the duty government inspector to be notified as soon as is practicable.
- 24 Direction 18.1 requires Perth Casino to provide such office accommodation and security surveillance facilities in the vicinity of Perth Casino for the use of the GWC or its officers as the GWC may require. Such facilities are provided.²⁴
- 25 The Directions require Perth Casino to maintain the Casino Manual (Operations) (**CM(Ops)**), but as examined in Part Six of Chapter Five: Regulation of Perth Casino, the Directions make only some part of the CM(Ops) binding on the Perth Casino licensee.

- 26** Section 16 of the CM(Ops) addresses 'Security Operations' and sets out numerous procedures such as those related to identification badges for visitors to the casino and identifies that the role of Perth Casino's security department includes:
- a. maintaining a strong and visible presence on the gaming floor as a deterrent to criminal activity;
 - b. actively participating in all forms of gaming and criminal intelligence gathering; and
 - c. maintaining close relationships with law enforcement and other regulatory agencies.²⁵
- 27** Compliance with s 16 of the CM(Ops) appears to be binding as dir 8.5 requires the casino operator to ensure the procedures set out in the CM(Ops) relating to security are complied with.
- 28** Section 17 of the CM(Ops) addresses 'Surveillance Operations' with the objective of ensuring that surveillance operations in relation to gaming activities are adequately documented and performed in a controlled and secure manner.²⁶
- 29** Compliance with s 17 of the CM(Ops) appears to be binding as dir 7.10 requires the casino operator to ensure the procedures set out in the CM(Ops) relating to surveillance are complied with.
- 30** Section 18 of the CM(Ops) addresses 'Gaming Related Incident Management'. The first part of that section relates to incident management and:
- a. outlines the use of Perth Casino's Incident Management System to record, monitor and report on all 'incidents' at Perth Casino, including suspected criminal activity; and
 - b. lists the various employee positions at Perth Casino and their associated responsibility.²⁷
- 31** The second part of s 18 relates to incident procedures in respect of suspected illegal acts. For example, it sets out that a security shift manager is responsible for determining whether to contact WAPOL.²⁸
- 32** There is nothing in the Directions addressing incident management procedures, so on that basis it appears s 18 of the CM(Ops) is not binding.

Loan sharking

- 33** A loan shark is someone who lends money at an excessive rate of interest.²⁹ A loan shark often operates outside the law, in respect of the terms of lending or the methods of debt enforcement used, or both.³⁰
- 34** Lee gave evidence to the PCRC that loan sharking was historically a focus for Perth Casino in terms of risk management. He stated that eight or nine years ago, Perth Casino became aware of loan sharks seeking to lend money to patrons on the gaming floor, particularly in the Pearl Room.³¹ Perth Casino's management of the risk of loan shark activity on the casino premises is examined in Part Three of this chapter.
- 35** Relevantly to the GWC, the current framework of casino regulation does not expressly require the casino licensee to mitigate or prevent the specific risk of loan sharking at Perth Casino.

Conclusions

- 36** The GWC's primary function and responsibilities, relevant to the risks of criminal infiltration of Perth Casino's operations and of other criminal activity on the casino premises, are to regulate and oversee the mitigation of those risks at Perth Casino. The GWC does not have a primary function or responsibility to detect criminal infiltration or activity, nor to enforce the

criminal law. However, where criminal behaviour associated with Perth Casino's operations is brought to its attention, it should be expected that the GWC will inform the relevant law enforcement agencies (usually, WAPOL).

- 37 The evidence of Sargeant and former CCOs suggests that individuals within the GWC and Department may not have always had a clear understanding of the GWC's function and responsibilities in this regard.
- 38 Nevertheless, the Directions relevant to the mitigation of the risks of criminal infiltration and activity (other than the regulation of junkets and money laundering risks) appear generally adequate to mitigate those risks. The Directions require the licensee to provide security on the casino premises, and with respect to its operations, that will both prevent and detect illegal activity. The requirement in the Directions that the licensee report illegal activity to departmental inspectors permits the GWC to meet the expectation that it will inform relevant law enforcement agencies of criminal activity which has been brought to its attention.
- 39 However, having regard to the history of loan sharking activity at Perth Casino, the PCRC considers that it would be desirable if dir 7.4 was amended to expressly refer to loan sharking as a matter to be reported, when detected, to a departmental inspector.
- 40 It is unclear whether and to what extent the GWC inspects and audits compliance with the Directions relevant to the mitigation of the risks of criminal infiltration and activity. While one former casino departmental inspector referred in his evidence to how dir 7.4 and dir 8.4 was complied with in practice,³² the PCRC:
- a. heard evidence that the overall purpose of audit and inspection activities carried out at Perth Casino is to ensure the State receives all of the tax it is entitled to, and that all games are played fairly;³³ and
 - b. heard no evidence that the audit and inspection programme specifically canvassed Perth Casino's compliance with the directions above.
- 41 The PCRC concludes that the directions relevant to the mitigation of the risks of criminal infiltration of Perth Casino's operations and of other criminal activity on the casino premises (other than the regulation of junkets and money laundering risks) are generally adequate to mitigate those risks.

Regulation of the risk of criminal infiltration of casino operations by casino employees, including by organised crime

Licensing of casino employees

- 42 The GWC is empowered by the regulatory framework to license 'casino employees' and 'casino key employees', differentiated by their level of duties and responsibilities.
- 43 A licensing regime has been established, primarily through the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985 (WA) (CCBILE Regs)*,³⁴ which is examined in Chapter Three: Overview of Regulatory Framework for Casino Gaming.
- 44 The employee licensing regime is one regulatory approach utilised by the GWC to address the risk of criminal infiltration of casino operations. The licensing of casino employees also assists with addressing other strategic risks, such as the risk to the integrity of casino operations.
- 45 Under the CCBILE Regs, the GWC has a broad discretion to grant or refuse a licence application or renewal.³⁵ However, it must first consider the recommendation of the CCO, who is required to make an assessment of the 'suitability' of the applicant.³⁶

- 46 The CCBILE Regs do not provide a definition of suitability or any guidance as to how it is to be assessed. It can be inferred from reg 4(2) that suitability includes at least appropriate training or qualifications. Regulations 5(1) and 5(2) indicate that an acceptable criminal history and good financial standing are relevant to suitability. The (good) character of an applicant is treated in reg 5(1) as an attribute distinct from suitability.
- 47 There is a distinction in the CCBILE Regs between an application for a new licence and a renewal application. For renewals, the CCO does not appear to have a discretion to cause an investigation by WAPOL into the character and (or) suitability of the applicant.³⁷
- 48 It is presumably because of the limited guidance in the CCBILE Regs as to how suitability is to be assessed, that the GWC has adopted a 'Probity assessments policy' for the assessment of licence applications and renewals.³⁸
- 49 The policy identifies that, for a licence application for a casino key employee, a WAPOL report is required, but not for the renewal of a casino key employee licence. The PCRC infers that the WAPOL report is a report on an investigation caused by the CCO under reg 5.³⁹
- 50 For an application for a renewal of a casino employee licence, a national police clearance certificate is all that is required.⁴⁰
- 51 Since 1 July 2000, all licences expire after five years. Minutes of a GWC meeting in April 2005 indicate that the GWC considers that the licence renewal system is 'an important control in maintaining the integrity of casino operations'.⁴¹
- 52 The PCRC considers that an employee licensing regime, such as is in place, that provides for licences to expire and then be renewed is, in principle, an effective means of regulating the continuing suitability of long-term employees. However, it is not obvious why the CCO should be precluded from causing a WAPOL investigation into the suitability of an applicant for renewal of a licence.
- 53 The PCRC concludes that the effectiveness of the employee licensing regime would be enhanced if reg 7(3) were amended to confer upon the CCO a discretion to cause an investigation by WAPOL into the character and (or) suitability of an applicant for the renewal of a licence. Subject to that caveat, the PCRC concludes that the employee licensing regime contained in the CCBILE Regs adequately addresses the risk of criminal infiltration of casino operations by employees.

Delegations

- 54 The GWC has delegated its authority to approve applications for casino employee licences to the CCO, the Director Licensing and Industry Services and the position of Customer Service Officer.⁴²
- 55 The most recent delegation to the Director Licensing and Industry Services dated 23 October 2018, relevantly delegates:⁴³
- Pursuant to regulation 8(1)(a) of the Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985, to grant an application for a casino key employee licence or a casino employee licence in respect of applicants considered suitable.
- 56 Similarly, that power was delegated to the position of Customer Service Officer on 27 June 2017, save that it was limited to 'where no criminal convictions or other adverse issues are reported'.⁴⁴
- 57 The most recent delegation to the CCO dated 27 June 2017, relevantly delegates the GWC's powers:⁴⁵
- Pursuant to regulation 8(1)(a) of the Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985, to grant an application for a casino

key employee licence or a casino employee licence in respect of applicants considered suitable.

Its powers under regulation 9(4) of the Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985.

- 58 With respect to reg 8(1)(a), the effect of the delegation to the CCO is that they are empowered to consider their own recommendation in respect of the applicant, and to decide whether to grant the application for a licence. In that way, the grant of a licence is left in the absolute discretion of the CCO, albeit with guidance from the delegation instrument, the Probity assessments policy and the CCBILE Regs.
- 59 The practical effect of the delegation to the CCO, therefore, is to conflate the two distinct processes required by the CCBILE Regs, being investigation, assessment and recommendation by the CCO on the one hand, and the exercise by the GWC of the discretion to grant or refuse the application having received the recommendation, on the other.
- 60 The PCRC observes that the terms of the instruments of delegation do not delegate the power under reg 8(1)(a) to grant an application for a renewal of a casino key employee licence or casino employee. Having regard to the fact that, on review of the GWC's minutes, it does not appear the GWC makes any decisions about renewal, except when an applicant has undeclared convictions,⁴⁶ the PCRC infers that the GWC in fact intended to also delegate its power in respect of licence renewals.
- 61 None of the instruments of delegation with respect to reg 8(1)(a) delegates the GWC's power to refuse an application.
- 62 The PCRC finds that the GWC has acted inappropriately in delegating to the CCO its power under reg 8(1)(a) of the CCBILE Regs to grant applications for a licence, as the delegation has the practical effect of conflating:
- a. the obligation of the CCO pursuant to reg 7(1) to assess the suitability of the applicant and to recommend to the GWC that the application be granted or refused; and
 - b. the discretion the GWC is to exercise pursuant to reg 8(1)(a), having considered the CCO's recommendation, to grant or refuse the application.
- 63 Regulation 9(4) empowers the GWC to vary or replace a licence if it becomes aware of fresh information or any changed circumstances. The CCBILE Regs do not specify or guide what kind of information is relevant, nor the standard of satisfaction that must be reached about any particular matter, before the power to vary or replace a licence may be exercised. These matters are not addressed in the instrument of delegation.
- 64 The PCRC finds that the delegation to the CCO of the GWC's power under reg 9(4) of the CCBILE Regs is inappropriate because the GWC has not provided any, or any sufficient, guidance to the CCO as to how and the circumstances in which the power should be exercised.

Administration of licensing regime

- 65 The Department uses a technology system called Navigate to process applications for, and renewals and terminations of, licences.
- 66 Detailed procedure manuals guide the use of Navigate and the making of decisions by departmental officers, being:
- a. Navigate, Licensing Procedures, Application for Casino and Casino Key Employees (**Application procedure**);⁴⁷
 - b. Navigate, Licensing Procedures, Application for the Renewal of Casino and Casino Key Employee Licences (**Renewal procedure**);⁴⁸ and

- c. Navigate, Licensing Procedures, Terminating a Casino Employee Licence (**Termination procedure**).⁴⁹
- 67 The Renewal procedure contemplates that a departmental officer may make a decision to renew a licence. For the reasons already explained, that is inconsistent with the apparent limits of the instruments of delegation, although consistent with the GWC's apparent intention as to the extent of those delegation.
- 68 The Termination procedure contains the steps required to record a cancellation of a licence, but not to make such a decision.⁵⁰ That is consistent with the position of the GWC to consider and decide for itself, rather than delegate, whether to take any disciplinary action against a licensee.⁵¹
- 69 There is evidence that the GWC was notified of the fact of the use of Navigate in relation to licence applications and renewals, and in one instance considered a change to Navigate to require confirmation by applicants of their awareness of the requirement to declare convictions.⁵² It does not appear, however, that the GWC has considered and approved more generally the content of the procedures and the use of Navigate.
- 70 In circumstances where delegates are exercising the GWC's powers through the use of Navigate, the GWC should first consider and approve the Application procedure and Renewal procedure and the use of Navigate in guiding the exercise of delegated powers to grant applications for, or to renew, licences.
- 71 In the Application procedure and Renewal procedure, there is the following statement:⁵³
- Gaming and Wagering Commission Approval required / Or GWC to be advised of action taken.
- Some applications will need to go to the GWC for approval. If the application meets this criteria please ensure the required submissions are obtained before referring to the Coordinator to create the agenda paper.
- In some instances the Chief Casino Officer or another officer with delegation may determine the application on behalf of the Commission out of session. Where appropriate an agenda paper may be required to be created to retrospectively advise the Commission of this. If it is a non complex matter the Coordinator may instead note this action on the monthly 'Approvals Under Delegation' paper.
- 72 There does not appear to be any formal guidance to departmental officers regarding the circumstances in which applications for licences should be presented to the GWC for decision.
- 73 Halge gave evidence that in around 2004 or 2005, the licensing of casino employees was streamlined:⁵⁴
- ... [if][t]he application, the report from the police, and if everything was clean, I would approve the licence. If there was anything untoward such as an offence, jail, jail time or whatever, I would wait for the police report and then I would put that up to the Commission.
- 74 Janine Belling (**Belling**) gave evidence that, in her capacity as Director Licensing and CCO, she was required to, amongst other things, oversee the team that processed casino employee licence applications.⁵⁵ Belling also stated that, as CCO, she:⁵⁶
- ...was responsible for administrative functions, such as the approval of casino employee applications, that were discharged on a self-directed basis without direction. That is, applications were routinely processed and approved by me or my officers consistent with the relevant Act, Regulations, policy and procedure guidelines and instrument of delegation. These matters were considered straightforward and low risk and did not require the GW Commission's intimate

knowledge. Nevertheless, I reported at each GW Commission meeting on these matters, the exercise of delegation and delivery of services by the Department.

75 Belling further explained:⁵⁷

Probity assessment was conducted on all applications for casino employee and key casino employee applications, including security personnel. If and when a probity issue was identified, the fitness and propriety of the individual was referred to the GW Commission for consideration.

76 It appears that the lack of guidance from the GWC as to when applications are to be referred to it for decision has resulted in successive CCOs implementing their own parameters, such as when an application which discloses 'nothing untoward', or is 'routine', 'straightforward' or 'low risk'. The imprecision inherent in such descriptors is undesirable. The GWC should establish or approve clearly stated and objectively ascertainable parameters for when licensing decisions are to be referred to the GWC.

77 The PCRC finds that the GWC has not acted appropriately in the exercise of its powers and responsibilities and in the discharge of its obligations in that:

- a. it has not considered and approved the Application procedure and Renewal procedure and the use of Navigate in guiding the exercise of delegated powers to grant applications for, or to renew, licences; and
- b. it has not provided guidance to departmental officers regarding the circumstances in which applications for licences should be presented to the GWC.

Disciplinary actions and offences

78 Section 37(2)(a) of the CC Act permits regulations to be made in respect of all of the matters specified in sch 2 of the CC Act, including, relevantly, the licensing of casino key employees and casino employees, and applicable licence conditions and fees; and disciplinary actions that the GWC may take in relation to such people, including any combination of letters of censure, fines up to \$1,000, and cancellation or suspension of licences.⁵⁸ Section 37(2)(b) of the CC Act permits regulations to be made which create offences and prescribe a penalty not exceeding \$2,000.⁵⁹

79 Regulation 15(3) of the CCBILE Regs makes it a condition of every casino key employee licence and casino employee licence that the licence holder must self-report within seven days if they have been convicted of an offence. Non-compliance with that condition is an offence attracting a penalty of up to \$500.⁶⁰

80 In relation to non-compliance with the conditions of an employee licence more generally, the GWC may:

- a. cancel or suspend the operation of a licence;⁶¹
- b. serve a letter of censure;⁶²
- c. impose a fine of not more than \$1000;⁶³ or
- d. combine two or all of the punitive measures set out above.⁶⁴

81 The inconsistency between the two provisions as to the maximum penalty amount for non-compliance with the licence condition to report a conviction should be addressed.

82 As regards the exercise of the GWC's power to suspend, cancel, censure or fine licensed casino employees for non-compliance with reg 15(3), Duncan Ord (**Ord**) gave the following evidence:⁶⁵

A lot of our regulation was dependent upon ... the compliance of Crown staff who operate the casino to take their licence very seriously, the requirements

under that licence, the probity aspects of their employment and so on, they were such a large employer. A lot of our business was identifying people when their licences were up for renewal or it became apparent to us because they self-referred that they had failed in their reporting requirements to us around offences, like traffic offences and things where they have been convicted in the courts ... we were calling people in, we did have the capacity to fin[e] them or cancel their licence. Our belief was that that was highly punitive to do so, taking away someone's income. We thought a better approach was to firstly to obviously counsel them about --- and put them on notice ... that they shouldn't repeat those matters.

- 83** The PCRC has identified numerous instances prior to September 2019 of the GWC resolving to issue letters of censure to employees who have not self-reported convictions.⁶⁶
- 84** In about September 2019 the GWC became concerned about the amount of non-compliance in respect of the self-reporting condition.⁶⁷ As a result, a letter dated 10 January 2020 was sent to all licensed employees which outlined the GWC's concerns and advised recipients that the GWC was more likely to take disciplinary action in the future.⁶⁸
- 85** Separately to the disciplinary regime in the CCBILE Regs, the CC Act contains a number of offence provisions that operate directly or indirectly upon the manner of discharge of a casino employee's duties and which are directed at maintaining the integrity of gaming and mitigating the risk of criminal activity in the course of or through casino gaming. Offences include:
- a. a casino key employee or casino employee participating as a player in any game at Perth Casino which attracts a penalty of up to \$1,000;⁶⁹
 - b. a casino key employee or casino employee conducting casino games for a benefit by fraudulent means which attracts a penalty of up to \$10,000 and (or) two years' imprisonment;⁷⁰
 - c. a person possessing any:
 - i. token (such as gaming chip) known to be counterfeit;⁷¹
 - ii. gaming instrument known to be tampered with;⁷² or
 - iii. machine or equipment that facilitates fraud, cheating or stealing,⁷³
 - d. which attracts a penalty of up to \$10,000 and (or) two years' imprisonment;
 - e. a person forging or counterfeiting any casino token or document concerned with casino operations; which attracts a penalty of up to \$5,000 and (or) one year imprisonment;⁷⁴
 - f. a person impersonating a licensed casino employee, licensed key casino employee, casino employee or other person concerned in the organisation or management of casino operations or an officer of the GWC; which attracts a penalty of up to \$5,000 and (or) one year imprisonment;⁷⁵ and
 - g. an employee, responsible for the organisation or management of gaming operations or acting in relation to the gaming operations, contravening any of the Directions which apply, attracts a fine of up to \$2,000.⁷⁶
- 86** Prosecutions for such offences can be commenced by WAPOL, the CCO or a person authorised by the Minister or the GWC.⁷⁷
- 87** The PCRC finds that:
- a. reg 15(3) of the CCBILE Regs is an effective means of regulating the risk of criminal infiltration of casino operations by its employees; and

- b. the GWC has acted appropriately and effectively to enforce compliance with that regulation.

88 The PCRC finds that the:

- a. offence provisions of the CC Act are adequate to address the risk of criminal activity by casino employees on the casino premises; and
- b. penalties for a breach of those offence provisions appear to be adequate.

Part Three: Perth Casino's systems, policies and procedures

Security and surveillance teams

- 89 Monitoring to detect and deter criminal activity, other than junkets and money laundering, is primarily the responsibility of two teams within Perth Casino: the security team and the surveillance team. Those teams are managed by Lee, who gave evidence to the PCRC that Perth Casino's security concerns include violence on the casino premises, counter-terrorism, outlaw motorcycle gangs and antisocial behaviour.⁷⁸
- 90 Each of the security and surveillance departments are governed by standard operating procedures (**SOPs**) and are the owners of policies dealing with specific risks of criminal activity, including the Unacceptable Behaviour Policy and the Loan Sharking, Begging and Money Lending Policy (discussed further below). Together, the security and surveillance team have an annual budget of \$24 million, \$20 million of which is allocated to payroll.⁷⁹
- 91 The responsibilities of the security and surveillance teams include:
- a. ensuring the safety and security of staff, patrons and contractors;
 - b. monitoring, reporting and responding to patron behaviour;
 - c. ensuring the safety and security of Perth Casino's assets, such as the movement of chips and cards on the gaming floor;
 - d. ensuring the integrity of gaming operations, and identifying and reporting on any issues arising;
 - e. ensuring compliance with regulatory requirements, including under the CC Act and the *Liquor Control Act 1988* (WA); and
 - f. oversight of particular events on-site and working with WAPOL and the Australian Federal Police on VIP protection matters.⁸⁰
- 92 A range of technology is available to the surveillance team, including cameras installed throughout Crown Perth Resort, access control on doors, duress alarm facilities and fire monitoring systems.⁸¹
- 93 The PCRC has had the benefit of a site visit to Perth Casino and the opportunity to review its surveillance operations. Information was provided to the PCRC about Crown's surveillance systems and technology.⁸²
- 94 Since February 2020, Perth Casino has also used facial recognition software to identify persons of interest or patrons who, for whatever reason, have been banned.⁸³
- 95 Cameras with facial recognition capability are currently stationed at all casino entrance points and the majority of main thoroughfares to the property, including the entrance to the Pearl Room (Perth Casino's high-roller room).⁸⁴

- 96 Perth Casino has an incident management system (**iTrak**). Derek Burling (**Burling**), the Investigations and Compliance Manager at Perth Casino, has been responsible for the management of the data in the iTrak system since 2018.⁸⁵ iTrak contains incident information, patron details and snippets of relevant CCTV footage taken by surveillance.
- 97 Since 2018, each of the security and surveillance teams has included an investigative and compliance team,⁸⁶ known as the Corporate Investigations Team (**CIT**).⁸⁷
- 98 The CIT manages all investigations undertaken by the surveillance and security teams and reports to Burling, who in turn reports to Lee.⁸⁸ There is no document which prescribes the role and responsibilities of the CIT.⁸⁹ However, Burling gave evidence to the PCRC that the role of the CIT includes:
- a. liaison with law enforcement agencies (**LEAs**);
 - b. investigations into matters of criminality, including but not limited to: stealing, property damage, assaults, trespass, matters initiated by Perth Casino's legal team, customer and/or staff complaints, and protected disclosure matters;
 - c. active participation in the Persons of Interest (**POI**) Sub-committee, including activities related to barring of patrons;
 - d. provision of internal training on security and surveillance topics (primarily legislation);⁹⁰ and
 - e. preparation of various shift and other reports generated from iTrak, some of which are provided to the Department.⁹¹
- 99 The PCRC concludes that the security and surveillance system at Perth Casino appears effective to detect criminal activity occurring on the casino premises.

Interactions with Western Australia Police Force and other law enforcement agencies

- 100 The relationship between Perth Casino and WAPOL is documented as part of a Memorandum of Understanding (**MOU**) signed in 2014.⁹² An updated MOU is being developed.
- 101 Burling gave evidence to the PCRC that he is in regular informal contact with WAPOL officers on a broad range of matters. Perth Casino responds to formal requests for information from WAPOL, including the provision of CCTV footage, but does not produce the material without a formal written request.⁹³
- 102 Deputy Commissioner Colin Blanch (**Blanch**) gave evidence to the PCRC that WAPOL and Perth Casino have a 'positive relationship' which is facilitated by Perth Casino's security team,⁹⁴ and which results in 'significant amounts of information' being provided to WAPOL.⁹⁵
- 103 Further, there are SOPs entitled 'Liaison with Law Enforcement Agencies' that outline the procedures in respect of LEA enquiries or requests for records.⁹⁶ These SOPs require that communication by LEAs is made through CIT. Requests from LEAs for surveillance material may be made formally through a notice to produce or a written request but may also initially be made informally through a discussion with Burling.⁹⁷
- 104 The PCRC concludes that there is a cooperative and productive working relationship between WAPOL and Perth Casino for the detection of criminal activity occurring on the casino premises.

Unacceptable behaviour

- 105** Perth Casino maintains an Unacceptable Behaviour Policy which seeks to prohibit 'unacceptable behaviours' at Perth Casino considered to be inconsistent with community standards. Under this policy, where a Perth Casino staff member becomes aware of unacceptable behaviour, a referral must also be made to the relevant LEA, where appropriate.⁹⁸
- 106** Depending on the nature of the unacceptable behaviour, security staff may request the patron to leave the premises, physically remove a patron from the premises, detain the patron or exclude the patron through the issue of a notice of revocation of licence (**NRL**).⁹⁹
- 107** On the documentary evidence before the PCRC, it appears that the most prevalent identified behaviour resulting in the issue of a NRL to a patron is theft, assault (including on security), and disorderly conduct.¹⁰⁰ While a greater number of NRLs appear to be issued for 'undesirable' behaviour, the PCRC cannot draw any conclusions as to the nature of that behaviour.¹⁰¹
- 108** Crown has provided information to the PCRC that there are approximately 10 million visitors to Crown Perth Resort per annum. Further, Blanch gave evidence to the PCRC that engagement between WAPOL and Perth Casino staff around disorderly behaviour 'is what it should be' and is 'working well'.¹⁰² He said further that he did not believe a permanent police presence to be in the interests of WAPOL or the Western Australian community at this time.¹⁰³
- 109** The PCRC concludes that the maintenance and implementation of the Unacceptable Behaviour Policy is an effective means of managing the risk of criminal activity such as theft, assault and disorderly conduct on Perth Casino premises.

Sexual harassment and assault of casino employees

- 110** Burling gave evidence to the PCRC of a number of instances of patrons assaulting Perth Casino staff.¹⁰⁴ He said further that, following investigation and confirmation of such assaults, the matter would be referred to WAPOL. He gave evidence to the effect that, where he was in charge of the relevant investigation, the patron was excluded on each occasion.¹⁰⁵
- 111** The PCRC also heard some private evidence regarding instances of sexual harassment and violence perpetrated by patrons on staff at Perth Casino, particularly in the Pearl Room, in circumstances where it was alleged that there was not appropriate action taken to protect staff. The PCRC determined it appropriate that this evidence be heard in private due to its subject matter. The PCRC acknowledges that, consequently, the evidence was untested and does not put weight on it in the assessment of suitability.
- 112** The PCRC is appreciative of the witnesses' willingness to tell their stories. The PCRC acknowledges the fundamental right of staff in any workplace to be protected from assault and harassment.

Loan sharking

- 113** As explained in Part Two, Lee gave evidence to the PCRC of an issue in relation to loan sharking emerging at Perth Casino, particularly in the Pearl Room, some eight or nine years ago.
- 114** Once Perth Casino became aware that there was a problem, steps were taken to exclude suspected loan sharks from the premises by issuing NRLs.¹⁰⁶
- 115** Perth Casino also implemented a Loan Sharking, Begging and Money Lending Policy in 2015 which provides that:
- a. the practice of loan sharking is inconsistent with the standards of behaviour expected by Perth Casino and its customers and will be regarded as 'unacceptable behaviour';¹⁰⁷

- b. where requests for money or repayment demands between customers create an adverse 'incident' that comes to the attention of a Perth Casino staff member, such activity and behaviour will be regarded as 'unacceptable behaviour' and appropriate action will be taken;¹⁰⁸
 - c. where a Perth Casino staff member becomes aware that a patron is making unwelcome requests for a gift or loan of money, or is demanding repayment related to an alleged loan, security must be notified immediately. The security staff member will assess the situation and where appropriate deal with the matter in accordance with the Unacceptable Behaviour Policy (discussed below);¹⁰⁹ and
 - d. the surveillance department is to be contacted by security and advised of the incident. Surveillance will assess and compile information in iTrak for further investigation. The Manager – Investigations and Compliance must be notified in all instances.¹¹⁰
- 116** Lee stated that, when Perth Casino started issuing NRLs to a significant number of loan sharks, the practice appears to have largely ceased. The last NRL he could recall being issued by Perth Casino to a loan shark was around five or six years ago.¹¹¹
- 117** Lee gave evidence to the PCRC that, in the last six months or so, Perth Casino has put a policy in place that bans patrons from lending money to each other whilst at the casino.¹¹²
- 118** Despite Lee's confidence that loan sharking largely ceased some years ago, the case study of Patron S immediately below is some indication of the continuation of the practice at Perth Casino since that time.

Case study – Patron S

- 119** Patron S is the director and licensee of liquor and food outlets in Perth's entertainment district.¹¹³ The patron became a member of Perth Casino's loyalty programme many years ago and attained premium 'Black' tier membership (the highest tier available under the programme).¹¹⁴
- 120** In 2008 to 2009, Patron S came to the attention of Perth Casino staff, being suspected of money laundering and loan sharking at the casino.¹¹⁵ The patron's risk rating was increased from 'moderate' to 'significant'.¹¹⁶ The suspicious activity by Patron S included exchanging bank cheques (or cash) for large quantities of gaming chips and providing them to other patrons.¹¹⁷ On one occasion in 2015, Patron S provided gaming chips to the value of \$50,000 to another patron to gamble.¹¹⁸ Patron S's risk rating was increased again, from 'significant' to 'high', and the patron maintained that rating after 2015.¹¹⁹
- 121** Between December 2008 and February 2020, Perth Casino noted more than 40 separate occasions of suspected money laundering and (or) loan sharking involving Patron S.¹²⁰
- 122** In 2019, Patron S turned over approximately \$20.5 million at Perth Casino.¹²¹
- 123** It was not until March 2020 that Perth Casino revoked the gaming licence of Patron S for 'undesirable behaviour'.¹²² Perth Casino did not issue an NRL to Patron S until March 2020.
- 124** Lee gave evidence to the PCRC that the exclusion of Patron S occurred after he received an email about the patron from Nick Stokes (**Stokes**) (CRL's Group General Manager – AML), and, around that time, concerns were raised by WAPOL in regard to suspicious activity relating to Patron S.¹²³
- 125** Burling gave evidence to the PCRC to the effect that he was aware of iTrak notifications in respect of Patron S for suspected loan sharking, but that many of those incident reports did not note any untoward behaviour.¹²⁴ Burling gave evidence that Patron S was dealt with by other persons (although he did not recall who), nor did he recall having any discussions with law enforcement about Patron S.¹²⁵

- 126** Lee gave evidence that any concerns about Patron S would have been noted in iTrak by security or surveillance team staff, and that he did not have any particular knowledge about the iTrak notifications in relation to Patron S.¹²⁶
- 127** The large number reports of suspected money laundering and (or) loan sharking involving Patron S over a 12 year period indicates that:
- Perth Casino has an effective system of detection and internal reporting of criminal activity on Perth Casino's premises; and
 - until at least March 2020, Perth Casino did not have an effective system for responding to the detection and internal reporting of criminal activity on Perth Casino's premises by, for example, barring patrons.

Persons of Interest committees

2013 to 2020

- 128** The documentary evidence before the PCRC indicates that:
- a Perth Persons of Interest Committee (**Perth POI Committee**) was established in mid-2013;¹²⁷
 - the purpose of the Perth POI Committee appears to have been to support the Perth Executive Risk and Compliance Committee (**Perth ERCC**);¹²⁸
 - the Perth POI Committee met fortnightly and considered a range of investigations and criminal activity;¹²⁹ and
 - the Perth POI Committee was a management committee and not a board committee.
- 129** Regular meetings were held between Joshua Preston (**Preston**), who was then the Executive General Manager Legal Services, and the AML & Compliance Officer, at which patron risk ratings were assigned.¹³⁰ Documentary evidence before the PCRC indicates that a report was provided to the Perth ERCC regarding risk ratings of patrons.¹³¹ However, there is no evidence before the PCRC as to how patron risk ratings were assigned in respect to suspected or alleged criminal activity, or if this occurred separately from the AML/CTF risk register process. The Perth ERCC had a discretion to allow Perth Casino to do business with a patron and despite the patron having a high-risk rating or adverse reports.
- 130** Crown did not implement a consistent national barring policy that applied across both Melbourne and Perth Casinos until about June 2021.¹³² The case study of Patron R below indicates the utility of a cross-property information sharing system between Crown's Australian casinos.

Case study – Patron R

- 131** Patron R is a 60-year-old who lives in Victoria,¹³³ first becoming a Crown patron in 2006¹³⁴ and then began gaming as a junket patron in 2012. Patron R later became a junket representative for large junket operators.¹³⁵ Since Patron R was not a junket operator, there was less scrutiny when Crown due diligence checks were undertaken.¹³⁶
- 132** In 2006 and 2017 to 2019, the Australian Taxation Office had requested Patron R's individual and junket gaming records from Crown.¹³⁷ In 2013, the Australian Federal Police alerted Crown that Patron R was a person of interest in sex trafficking offences.¹³⁸ In 2012 and 2014, allegations were made that Patron R ran brothels and was laundering money through Crown casinos.¹³⁹

- 133** In February 2019, Patron R was banned for three months from Melbourne Casino for bringing other banned patrons into the Mahogany Room (Melbourne's high roller room) and abusing casino staff when asked to register to enter the casino.¹⁴⁰ He was again banned from Melbourne Casino in August 2019.¹⁴¹
- 134** Despite having been banned from Melbourne Casino, Patron R continued to attend Perth Casino's Pearl Room 29 times after August 2019.¹⁴² Further, a banning notice was issued by Perth Casino in late 2019, however Patron R continued to gamble in the Pearl Room until late December 2020 and early 2021.¹⁴³
- 135** Perth Casino investigated the procedural failures that permitted Patron R to continue to enter Perth Casino to gamble in the Pearl Room.¹⁴⁴ It was found that multiple Crown accounts enabled Patron R to bypass the security procedures and the banning notice that was implemented in Perth.¹⁴⁵ In addition, Lee gave evidence that there were failures in the facial recognition software, which have subsequently been rectified.¹⁴⁶

2020 to present

- 136** In approximately late 2020 or early 2021, the Crown POI Committee was created, as a cross-property, cross-disciplinary group that facilitates a common process for dealing with POIs across Crown (**Crown POI Committee**).¹⁴⁷
- 137** Upon the creation of the Crown POI Committee, the former Perth POI Committee was superseded by a new sub-committee at Perth Casino (**Perth POI Sub-committee**), which comprises representatives of Perth Casino's security, surveillance and AML teams, and meets fortnightly.¹⁴⁸
- 138** The Charter of the Perth POI Sub-committee states that its role is to ensure that Perth Casino remains free from criminal influence or exploitation, by reviewing persons of interest who are brought to its attention due to a variety of behaviours, such as drugs, money laundering, thefts, frauds, terrorism financing and assaults.¹⁴⁹
- 139** The Perth POI Sub-committee considers information available in relation to a patron and enters it into the POI Decision Assessment Form (**PDA tool**).¹⁵⁰ The PDA tool is a template containing a risk matrix for a POI with different risk considerations identified and which is populated with information relevant to the POI by Lee.¹⁵¹
- 140** In addition, the CIT carries out background checks using information from open sources, iTrak and discussions with LEAs, and provides information orally to the Perth POI Sub-committee.¹⁵²
- 141** A decision whether or not to exclude a patron is made by Lee, based on that information and the PDA tool.¹⁵³
- 142** The Perth POI Sub-committee reports to the Crown POI Committee.¹⁵⁴
- 143** The effectiveness of the Perth POI Subcommittee and the Crown POI Committee is examined in Chapter Eight: Money Laundering.

Endnotes

- 1 Financial Action Task Force, 'Vulnerabilities of Casinos and Gaming Sector', report (March 2009) [INQ.130.001.2034] 26 [92].
- 2 Financial Action Task Force, 'Vulnerabilities of Casinos and Gaming Sector', report (March 2009) [INQ.130.001.2034] 26 [92].
- 3 See Chapter Two: History of Perth Casino.
- 4 Poynton, transcript [TRA.0001.0001.0001] 1400 – 1401; Roberts, transcript [TRA.0001.0001.0001] 1615; Felstead, transcript [TRA.0001.0001.0001] 2117; Alexander, transcript [TRA.0001.0001.0001] 2817; Barton, transcript [TRA.0001.0001.0001] 2333; Preston, transcript [TRA.0001.0001.0001] 1722; Bossi, transcript [TRA.0001.0001.0001] 1915.
- 5 Preston, transcript [TRA.0001.0001.0001] 1723; Roberts, transcript [TRA.0001.0001.0001] 1615 – 1616; Felstead, transcript [TRA.0001.0001.0001] 2118; Burling, witness statement [CRW.998.002.0786_R] [31].
- 6 Preston, transcript [TRA.0001.0001.0001] 1722.
- 7 Lee, witness statement [CRW.998.002.0559_R] [99].
- 8 Halge, transcript [TRA.0001.0001.0001] 921.
- 9 Halge, transcript [TRA.0001.0001.0001] 922.
- 10 Connolly, transcript [TRA.0001.0001.0001] 222, 232.
- 11 Sargeant, transcript [TRA.0001.0001.0001] 185.
- 12 Sargeant, transcript [TRA.0001.0001.0001] 182.
- 13 Sargeant, witness statement [GWC.0003.0019.0001_R] [32].
- 14 Toyne, witness statement [DLG.0001.0004.0016_R] [27].
- 15 Sargeant, transcript [TRA.0001.0001.0001] 184.
- 16 Sargeant, transcript [TRA.0001.0001.0001] 184.
- 17 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 22(7), 23(2)(ii), 26(1d), 26(6), 27(3), 27(3a), 27A(4), 30(3), 3.
- 18 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R].
- 19 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R] dir 7.3(e).
- 20 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R] dir 7.3(f).
- 21 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R] dir 7.3(g).
- 22 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R] dir 7.4.
- 23 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R] dir 8.2.
- 24 Toyne, transcript [TRA.0001.0001.0001] 1034 – 1037.
- 25 Crown, Casino Manual (Operations): Section 16 Security Operations (23 June 2020) [CRW.700.001.1431_R] 4.
- 26 Crown, Casino Manual (Operations): Section 17 Surveillance Operations (17 January 2020) [CRW.700.001.1601_R] 6.
- 27 Crown, Casino Manual (Operations): Section 18 Gaming Related Incident Management (2 September 2016) [CRW.700.001.1464] 5 – 8.
- 28 Crown, Casino Manual (Operations): Section 18 Gaming Related Incident Management (2 September 2016) [CRW.700.001.1464] 9 – 10.
- 29 *Macquarie Dictionary*, '[loan shark]' [PUB.0029.0012.0001].
- 30 Wikipedia, Loan Shark (12 January 2022) PUB.0033.0048.0001.
- 31 Lee, witness statement [CRW.998.002.0559_R] [154].
- 32 Toyne, transcript [TRA.0001.0001.0001] 1016.
- 33 Toyne, witness statement [DLG.0001.0004.0016_R] [4]; Connolly, witness statement [MCN.0001.0001.0001_R] [14], [220] – [223]; Connolly, transcript [TRA.0001.0001.0001] 223 – 224; Meadows, witness statement [GWC.0003.0014.0021_R] [110].
- 34 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) [PUB.0033.0015.0006].
- 35 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) [PUB.0033.0015.0006] reg 8.
- 36 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) [PUB.0033.0015.0006] reg 7.

37 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) [PUB.0033.0015.0006] 7(3); 5(1).
38 Department, Probity Assessments Policy (2 August 2019) [PUB.0028.0001.0015].
39 Department, Probity Assessments Policy (2 August 2019) [PUB.0028.0001.0015] 2.
40 Department, Probity Assessments Policy (2 August 2019) [PUB.0028.0001.0015] 2 – 3.
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CHAPTER 10

Tax

CHAPTER TEN

Tax

Purpose of Chapter

- 1 This chapter examines:
 - a. the regulatory framework;
 - b. the conduct of Crown Resorts Limited (**CRL**) and the Burswood entities (collectively, Burswood Limited (**BL**), Burswood Nominees Ltd (**BNL**) and Burswood Resort (Management) Limited (**BRML**));
 - c. regulation and oversight by the GWC; and
 - d. the support of the GWC by the Department of Local Government, Sport and Cultural Industries or its predecessors (depending on context) (**Department**), relevant to the proper assessment and due payment of casino tax.
- 2 ToR 8 requires the PCRC to inquire into the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address certain extant and emerging strategic risks identified by the PCRC.
- 3 The PCRC has identified Chapter One: Subject Matter of Inquiry and Terms of reference, the risk that there is not proper assessment and due payment of casino tax owing to the State of Western Australia as a strategic risk for the purposes of ToR 8 and therefore an appropriate subject for the PCRC's inquiry.
- 4 The appropriateness of the exercise of powers and discharge of functions and responsibilities of the GWC with respect to casino taxes is also relevant to ToR 9. Likewise, the capability and effectiveness of the GWC in discharging its functions and responsibilities with respect to casino taxes and the Department in supporting the GWC is relevant to ToR 10.
- 5 BNL, as the casino operator, is obliged to pay casino tax to the State of Western Australia. Any incorrect calculation and payment of casino taxes by or on behalf of BNL as the Perth Casino licensee may bear relevantly on the assessment of suitability that the PCRC is required to undertake pursuant to ToRs 1 to 5.
- 6 In the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**), Crown Melbourne Limited (**CML**) acknowledged that since at least 2012 it had underpaid casino tax owed to the State of Victoria. In July 2021, CML paid approximately \$61.5 million to the State of Victoria on account of unpaid casino tax (including penalty interest). There is an unresolved question as to whether the underpayment was significantly greater than the amount CML acknowledged and paid.¹
- 7 Both the current GWC members and the Department have stated that they are not currently satisfied that BNL has paid the correct amount of casino tax to the State of Western Australia.²
- 8 Separately, dealings and communications between CRL and the Burswood entities, on the one hand, and the GWC and the Department, on the other, with respect to casino taxes may also have implications for suitability given that such dealings and communications should be open, competent and accountable. While casino tax is not a matter identified in ToR 6, the PCRC considers the adequacy of communications in relation to the calculation and payment of casino tax to be a matter reasonably incidental to its inquiry pursuant to ToRs 1 to 4 and therefore an appropriate matter for inquiry pursuant to ToR 7.

- 9 This chapter contains the following parts:
- a. Part One examines the regulatory framework relevant to casino tax;
 - b. Part Two examines the calculation of casino tax in relation to non-cashable credits. Specifically, it examines whether 'receipts' in the form of bets placed using non-cashable credits and 'outgoings' in the form of winnings paid out on bets placed with such credits and other non-cash bonuses are to be included in the calculation of casino tax;
 - c. Part Three examines the calculation of casino tax in relation to tournament fees; and
 - d. Part Four examines how the GWC has regulated the assessment and payment of casino tax and the level of support provided by the Department to the GWC in carrying out this task. It examines the role of the GWC and the Department in verifying that the systems and procedures of Perth Casino correctly and accurately record and allocate 'receipts' and 'outgoings' in the assessment of casino taxes.

The PCRC's approach

- 10 There are two parts to the assessment of the correct amount of casino taxes.
- 11 The first involves determining the meaning and effect of the expression 'Casino Taxable Revenue' in the Casino (Burswood Island) Agreement (**State Agreement**) and, specifically, what kinds of receipts and outgoings should be included in the calculation of Casino Taxable Revenue.³ That is a legal question.
- 12 The second part involves applying the determined meaning of 'Casino Taxable Revenue', to the books and other records of the casino licensee's operations to ascertain the actual receipts and outgoings of the business. That is a factual question.
- 13 While the PCRC has inquired into these issues, it has not sought to determine the legal or factual issues and, in particular, has not sought to determine if, as a matter of fact, the correct amount of casino taxes have been paid. That is a matter for a court of competent jurisdiction if and to the extent there is a relevant dispute between the casino licensee and the State.
- 14 With respect to the GWC, the PCRC's inquiry has instead focussed on the questions of appropriateness, capability and effectiveness in relation to regulation of the proper assessment of casino tax.
- 15 With respect to Crown and the issue of suitability, in Chapter One: Subject Matter of Inquiry and Terms of Reference the PCRC explained that, because of the special nature of a casino licence, there is a standard expected of a person suitable to hold, or to be involved in the operation of, such a licence. That standard includes, amongst other things but relevantly, the person being:
- a. of good character and reputation, being honest, acting with integrity and competently to ensure compliance with all obligations of the casino gaming licensee; and
 - b. honest, open, competent and accountable in their dealings with the casino regulator.
- 16 The PCRC's inquiry the subject of this chapter has examined whether Crown has met this standard in its conduct and approach relevant to the calculation and payment of casino tax by Perth Casino.
- 17 Crown's calculation of casino tax in relation to non-cashable credits was comprehensively examined in the RCCOL. The PCRC relies upon relevant findings and conclusions in the RCCOL to provide background and context for its own factual analysis, conclusions and findings.

Part One: Regulatory framework relevant to casino tax

Obligation to pay casino tax

- 18** Section 20 of the *Casino Control Act 1984 (WA)* (**CC Act**) provides that a public company entering into a casino complex agreement with the Minister is to undertake in the casino complex agreement to pay, on becoming a casino licensee:⁴
- a. to the GWC, a casino gaming licence fee in an amount; and
 - b. to the Treasurer, a tax at a rate,
- specified in the casino complex agreement at times specified in that agreement.
- 19** Clause 23 of the State Agreement provides that BNL, as Trustee, is to pay to the Treasurer of the State casino taxes on a monthly basis at the rates and in the matter specified in the schedules to the State Agreement.⁵
- 20** The Treasurer has the right to enforce the obligation under the State Agreement and the CC Act to pay the tax and penalties.⁶
- 21** Pursuant to the State Agreement, casino tax is calculated as a percentage (rate) of 'Casino Taxable Revenue'.⁷ 'Casino Taxable Revenue' has the following meaning:⁸
- 'Casino Taxable Revenue' where used in relation to a particular Casino Tax Activity means all sums...received in any month from the conduct of the Casino Tax Activity, less the total of all sums paid out as winnings during that month in respect of the Casino Tax Activity.

GWC role in assessment and payment of casino tax

Gaming and Wagering Commission Act 1987 (WA)

- 22** The obligation to pay casino taxes is owed to the Treasurer, not the GWC. Nonetheless, pursuant to the provisions of the *Gaming and Wagering Commission Act 1987 (WA)* (**GWC Act**) and the CC Act, the GWC has both the power and the duty to ensure the proper assessment of the amount of casino tax payable.
- 23** Section 7 of the GWC Act provides, relevantly, that it is the duty of the GWC to administer all matters relating to any licensed casino pursuant to the CC Act and any casino complex agreement.⁹ That therefore includes a duty to ensure the proper assessment of casino tax payable under and in accordance with the State Agreement.
- 24** Section 8(1) of the GWC Act provides that the GWC has all such powers as are necessary to carry out its duties.¹⁰ Specific powers relevant to the proper assessment of casino tax payable include a power to require a person to produce books for inspection and attend and answer questions or provide information with respect to books and to enter, and remain in, any part of a casino complex and inspect any books.¹¹
- 25** Significantly, the powers of the GWC include a power for a GWC member to sign a certificate stating the circumstances and provision under which an amount of casino tax and any penalty became payable and certifying the amount payable and that the amount has not been paid. Such a certificate is evidence that the amount so specified is payable in accordance with the CC Act and has not been paid.¹² Further, if, by reason of a failing of one of its powers to obtain evidence and information, the GWC is unable to ascertain the amount properly payable, the GWC may estimate the amount payable and that amount is recoverable and (or) may be used in a certificate as evidence of the amount due and payable.¹³

- 26 It is therefore the duty of the GWC to ensure that casino taxes are assessed in accordance with the law (that is, on the proper construction of the State Agreement) and in accordance with the facts (that is, on the basis of the actual 'receipts' and 'outgoings').

Directions and Casino Manual

- 27 As noted in other chapters of this report, the GWC may give directions to a casino licensee with respect to the system of internal controls and administrative and accounting procedures that apply to the gaming operations of the casino licensee (**Directions**).¹⁴ It is a condition of a casino gaming licence that the casino licensee complies with Directions.¹⁵ Contravention of the Directions is an offence.¹⁶
- 28 Direction 4.1(a) provides that within eight days after the last day of each month the Casino Operator is obliged to furnish the GWC with 'a statement of the Casino Gross Revenue earned by the Casino operations for each day during the month, certified by the Chief Executive Officer of the Casino Operator'.¹⁷ The expression 'Casino Gross Revenue' is not defined in the Directions, however, expressions used in the Directions are to have the meanings of those expressions used in, amongst other things, the State Agreement.¹⁸
- 29 The expression 'Casino Gross Revenue' was a term defined in the State Agreement in its original form as made on 20 February 1985.¹⁹ However, the definition was deleted from the State Agreement by the Eight Supplementary Agreement made on 18 June 2003.²⁰ At that time, the definition of 'Casino Taxable Revenue' was added to the State Agreement. Therefore, although the Directions have not been amended to reflect the change in terminology in the State Agreement, the PCRC takes the reference to 'Casino Gross Revenue' in the Directions to mean 'Casino Taxable Revenue'.
- 30 As examined in Chapter Three: Overview of Regulatory Framework for Casino Gaming, Directions issued by the GWC require, among other things, the licensee to keep records and accounts of the gaming and casino operations at Perth Casino in accordance with the Casino Manual Operations (**CM(Ops)**),²¹ and to ensure that the procedures in the CM(Ops) are complied with.²² If the Perth Casino licensee seeks to amend any part of the Casino Manual that is subject to a Direction, they must obtain GWC approval.²³
- 31 Section 25, cl 4.2 of the CM(Ops) requires that all vouchers in drop-boxes are to be included in the count process used for the calculation of 'sums ... received' on table games.²⁴

Part Two: Non-cashable credits and casino tax

Background – underpayment by Melbourne Casino

- 32 The issue of the calculation and payment of casino tax in relation to non-cashable credits was examined in the RCCOL.
- 33 CML is obliged to pay casino tax to the State of Victoria under the terms of a management agreement made between CML and State of Victoria dated 20 September 1993 (**Management Agreement**).²⁵ The amount of tax is a percentage of 'Gross Gaming Revenue' (**GGR**). GGR under the Management Agreement is defined in a similar way to 'Casino Taxable Revenue' under the State Agreement.
- 34 GGR is defined to mean:²⁶
- the total of all sums...received in any period by the Company from the conduct or playing of games within the ... Melbourne Casino ... less the total of all sums paid out as winnings during that period in respect of such conduct or playing of such games by excluding any Commission Based Players' Gaming Revenue.

- 35 GGR is, in substance, the difference between ‘sums ... received ... from playing games’ and ‘sums paid out as winnings’.²⁷ The substance of the meaning of Casino Taxable Revenue under the State Agreement is the same.²⁸
- 36 The issue of underpayment of casino tax to the State of Victoria arose in connection with the operation of the Crown loyalty programme and promotions at Melbourne Casino. CML, incorrectly, did not include certain amounts as ‘sums received’ and incorrectly included other amounts as ‘sums paid out as winnings’, thereby incorrectly calculating a lower amount of casino tax than was correctly due and payable.
- 37 As examined in Chapter Twelve: Harm Minimisation, Crown has a loyalty program known as ‘Crown Rewards’. Members of the program receive various benefits and privileges. Members accrue Crown Rewards points that can be exchanged for goods and services from various outlets. The Crown Rewards program is operated at Perth Casino.
- 38 Melbourne Casino and Perth Casino use different systems for recording and tracking patrons’ gambling activities. In Melbourne, the system is known as the DACOM System. In Perth, the system is known as the IGT Advantage System (**Advantage System**).²⁹ As explained below, there are important differences between the manner in which these systems operate such that some of the issues identified and inquired into and reported upon in the RCCOL Report do not arise at Perth Casino.
- 39 At Melbourne Casino, members accrue Crown Rewards points that can be exchanged for goods or services from outlets located at the Crown Melbourne Resort. These outlets are operated by CML and third parties. If a member uses points at an outlet, CML pays the supplier the cost of the goods or services. Points may also be used to obtain car parking, meals and hotel accommodation.³⁰
- 40 CML also offers benefits to Crown Rewards members as part of its promotions. These benefits fall into one of eight categories:

Category 1	Pokie Credit Rewards (Welcome Back/Free Credits Program)
Category 2	Mail Outs (Bonus pokie offers)
Category 3	Pokie credits (Matchplay)
Category 4	Random Riches (Carded Lucky Rewards)
Category 5	Jackpot Payments
Category 6	Consolation
Category 7	Pokie Credit Tickets
Category 8	Bonus Jackpots (dining, hotel accommodation and parking)

- 41 Benefits, apart from some in category 5 and all of categories 3, 6 and 8, are provided in the form of credits that can be used to gamble on an electronic gaming machine (**EGM**). Category 3 rewards (Matchplay) are loyalty points that a patron has converted into credits to gamble on an EGM. Category 5 rewards are time-based prizes distributed at random by playing on participating EGMs during scheduled promotional times. The prizes include pokie credits, cash, food and beverage vouchers and third-party gift cards. Category 6 rewards allow a member to double their winnings on an EGM.³¹
- 42 For benefits in categories 1 to 7, in the calculation of GGR, CML accounts for the benefits when redeemed as a sum received and deducts the value of the benefits as a sum paid out as winnings. By that method, the benefits have no effect on the calculation of casino tax.³² The method is used because of the manner in which the DACOM system records and tracks information. It is configured in that way, in effect, to ensure that placing ‘free’ bets are not counted as ‘sums ... received’ in the calculation of GGR.³³

- 43 CML treated category 8 (Bonus Jackpots: dining, hotel accommodation and parking) differently. One of CML's promotions was a gaming loyalty food program. The program allowed a member to earn points on EGMs and table games that could be used to purchase a meal or obtain a discount at a Crown restaurant. The loyalty points used were not recorded in the DACOM system in the same way that 'free' bets were recorded. That is, there was no amount recorded as a sum received and immediately deducted as a sum paid out as winnings. However, CML configured the DACOM system to treat the costs of the benefits provided (meals, accommodation and parking) as sums paid out as winnings in the calculation of GGR.³⁴
- 44 The RCCOL found that CML had received legal advice to the effect that the category 8 bonus Jackpots benefits could not be treated as sums paid out as winnings. CML's managers and employees involved in the decision to treat Bonus Jackpots benefits in that way did not believe it to be legitimate. CML was not open with the VCGLR in response to an inquiry the VCGLR made into the Bonus Jackpots issue. Further, the possible underpayment of casino tax was not raised with the RCCOL in response to a specific request for information of that character.³⁵
- 45 Ultimately, CML acknowledged that the category 8 Bonus Jackpot deductions, and some category 5 deductions, should not have been made. It agreed to a reassessment of its casino tax obligation for the years 2013 to 2021. That resulted in payment of approximately \$61.5 million to the State of Victoria.³⁶
- 46 The RCCOL concluded that CML also significantly underpaid casino tax in relation to category 3 (Matchplay) and that there was a possible underpayment of casino tax in respect of categories 1, 2, 4 and 7.

Non-cashable credits redeemable for EGM play at Perth Casino

- 47 The Crown Rewards program and promotional activities operate at Perth Casino in broadly the same way as they operate at Melbourne Casino. However, the Crown Rewards program at Perth Casino has a different origin and the terminology and specifics of the program and promotions have locational differences.
- 48 In 2009, BNL acquired the system known as the Advantage System. The Advantage System was used in conjunction with the loyalty programme operated at Perth Casino then known as 'Club Burswood'. The Advantage System was able to keep track of allocated reward points to members of Club Burswood.³⁷ Club Burswood was rebranded 'Crown Rewards' in 2016.³⁸
- 49 The Advantage System has a feature known as 'bonusing'. Bonusing involves offering patrons additional rewards. These are 'non-cashable credits'.
- 50 At the time of the introduction of the Advantage System, the Burswood entities obtained advice from Mallesons Stephens Jacques (**Mallesons Advice**).³⁹ The Mallesons advice described the operation of the Advantage System, the bonusing of non-cashable credits and the manner in which loyalty points could be redeemed and converted into non-cashable credits:⁴⁰

As with the IGS System, the Advantage System will be separate from, but connected to, the EGMs. In contrast to the IGS System, the Advantage System will:

- (a) Require the player to redeem their loyalty club points at the EGM in the form of non-cashable credits which cannot be redeemed for cash, but which must be played at the EGM.
- (b) Award the player non-cashable credits, as an additional reward, depending on their level of play, their birthday, or some other special event, which may be played at the EGM either at the time the non-cashable credits are

awarded or subsequently during that playing session, or during a future visit – effectively this is providing the player with free games. These non-cashable credits are known as extra credits.

- (c) Award the player non-cashable credits, as an additional reward, in similar circumstances to those described in (b) above, but in this case for play during a subsequent or return visit to the casino only. The Advantage System is completely configurable, but may be configured so that the non-cashable credits awarded for play during a subsequent or return visit may expire after a predetermined period (for example 14 days) These non-cashable credits are also known as extra credits.

The types of credits explained at paragraphs (a) to (c) above are collectively referred to as Non-Cashable Credits.

Non-Cashable Credits and loyalty club points will be stored within the Advantage System. A player's balance of Non-Cashable Credits and loyalty club points may be viewed on a window or screen at an EGM that is part of the Advantage System hardware connected to the EGM.

- 51** Relevantly, the bonusing of non-cashable credits redeemable to play at an EGM for joining the loyalty program, for birthdays, as a reward for patronage, as a consolation prize or as a special promotion⁴¹ broadly correspond with categories 1, 2, 4 and 7 referred to in the RCCOL Report.
- 52** The conversion of loyalty points into non-cashable credits redeemable to play at an EGM (referred to at Perth Casino as Point Play) correspond with category 3 (Matchplay) referred to in the RCCOL Report.
- 53** The Mallesons Advice explains the mechanism for using non-cashable credits on EGMs. The EGM technology does not provide a meter for recording non-cashable credits on the EGM. The only meter on the EGM is a meter that records cash, notes and tickets inserted into the EGM together with any accumulated winnings. When a bet is placed, the meter deducts the amount of the bet from the total and adds the amount of any winnings at the end of the game. A player is able to 'cash out' the amount recorded on the meter.⁴²
- 54** If non-cashable credits were able to be transferred directly from the Advantage System to the EGMs, a player could 'cash out' and thereby convert a non-cashable credit into cash. To avoid non-cashable credits becoming cashable in that manner, a player must have a total on the credit meter of the EGM at least equal to the amount of the non-cashable credit. That is, the player must have actual cash in amounts loaded or won on the EGM equal to the value of the non-cashable credit before it can be used to place a bet on the EGM. A bet is then placed, the EGM credit meter deducts the value of the bet and the game is played. After the game is completed, irrespective of whether or not the player won or lost on the game, the Advantage System reduces the non-cashable credit balance by the value of the bet and the EGM increases the amount of the EGM credit meter by the value of the bet.⁴³
- 55** As an example, a player must load \$100 of credit onto an EGM to redeem \$100 worth of non-cashable credits. If the player were to place a \$100 bet and lose the game, at the conclusion of the game the EGM meter would be restored to \$100. At the same time, the player's non-cashable credit balance would be reduced by \$100.

Dining, accommodation and parking – Bonus Jackpot issue

- 56 Loyalty points may also be used to acquire goods and services from various outlets participating in the Crown Rewards programme. These may be Crown outlets or third-party outlets.⁴⁴ This corresponds to category 8 (Bonus Jackpots: dining, hotel accommodation and parking) in the RCCOL.
- 57 Where a Crown outlet provides a good or service, the cost of that good or service is an expense to the Crown entity which provides the good or service. That expense is charged to Perth Casino and is recorded as an expense of the casino and revenue of the entity which provides the good or service.⁴⁵
- 58 Where a third-party outlet provides a good or service, Perth Casino pays the third party for the good or service. That is recorded as an expense of the casino.⁴⁶
- 59 The provision to Crown Rewards members of free or discounted accommodation, food and beverage and parking is not accounted for at Perth Casino in the same way as they were accounted for at Melbourne Casino. A reason for the difference in accounting lies in the differences between the DACOM system used at Melbourne Casino and the Advantage System used at Perth Casino.
- 60 The Advantage System is a 'drop-based' system. It is configured to count the value of bets placed in the 'drop' and to count the value of winnings paid out against bets. The Advantage System is therefore not configured to account for turnover. The cost of providing benefits such as free or discounted accommodation, food and beverage and parking is not part of the 'drop-based' accounting of the Advantage System and, therefore, is not counted as 'sums paid out as winnings' in the calculation of Casino Taxable Revenue.
- 61 Crown has informed the GWC and the Department that the costs associated with free or discounted accommodation, food and beverage and parking has not been included as 'sums paid out as winnings' in the calculation of Casino Taxable Revenue. Various witnesses have given evidence to this effect to the PCRC.⁴⁷
- 62 The PCRC accepts this evidence and concludes that the costs associated with the provision of free or discounted accommodation, food and beverages and parking to patrons at Perth Casino has not been deducted from BNL's calculation and payment of Casino Taxable Revenue.
- 63 Accordingly, the PCRC concludes that the incorrect calculation of casino tax in relation to Bonus Jackpots by CML identified in the RCCOL is not an issue for Perth Casino.

Non-cash prizes

- 64 As part of certain promotions at Perth Casino, patrons may win non-cash prizes such as motor vehicles or other goods and services,⁴⁸ obtained by Crown from a third-party. A cost is incurred to provide that prize in that the motor vehicle or other goods and services are purchased from a third-party.⁴⁹
- 65 Alan McGregor (**McGregor**) (the current CFO of CRL) gave evidence to the PCRC that Crown is verifying its position in relation to deductions for third party prizes such as gift cards and non-cash jackpots such as motor vehicles and motorcycles. Crown has sought advice from senior counsel in respect of that aspect of the calculation of Casino Taxable Revenue.⁵⁰
- 66 McGregor accepted that as CFO of CRL (and, previously as CFO – Australian Resorts)⁵¹ he has responsibility for ensuring that BNL ascertains and pays the correct amount of casino taxes.⁵² It is to be expected, therefore, that if Crown receives advice from senior counsel (or anyone else) to the effect that BNL has not been correctly treating non-cash prizes in the calculation of Casino Taxable Revenue, that will be brought to the attention of the GWC and the Department and any underpayment, together with appropriate penalties, will be promptly paid.

Matchplay and conversion from loyalty points

- 67** The RCCOL considered the question of whether conversion of loyalty points into 'pokie points' at Melbourne Casino and the use of those points to place bets (category 3 Matchplay) resulted in 'sums received' for the purposes of calculating GGR for CML. The RCCOL observed that there is a difference between non-cashable credits that are provided 'free' as bonuses and those that result from the conversion of loyalty points.⁵³
- 68** In the case of 'free' non-cashable credits, they cannot be converted into cash or goods or services and can only be used to place 'free' bets at the casino.⁵⁴ When a patron uses such 'free' credit the casino operator does not 'receive' anything of value in return for the bet that is placed.
- 69** Non-cashable credits that result from the conversion of loyalty points are in a different category. Loyalty points are able to be converted into good or services. Members of Crown Rewards have contractual rights associated with earning and redeeming the points. Upon the creation of a loyalty point, there is a contingent liability to fulfil the contractual obligation to provide a good or service. If the loyalty point is converted into a non-cashable credit and used to place a bet on an EGM, the contingent liability is discharged and, thereby, a benefit is received in the form of the value of the contingent liability that has been discharged.⁵⁵
- 70** This is illustrated in Crown's table in which it explained to the PCRC the manner in which non-cashable credits are treated from an accounting perspective at Perth Casino.⁵⁶

Non-cashable credit	Accounting impact
Loyalty point – Table Games	<p>Upon a player earning loyalty points, a loyalty point expense is recognised in the profit and loss with a corresponding loyalty point liability recognised on the Balance Sheet.</p> <p>When the complimentary voucher is presented at the table, it goes down the drop box and is recognised as table games revenue with a corresponding entry to reduce the Loyalty Points Liability.</p>
Loyalty Point Conversion – EGM Extra Play	<p>Upon a player earning loyalty points, a loyalty point expense is recognised in the profit and loss with a corresponding loyalty point liability recognised on the Balance Sheet.</p> <p>When the loyalty points are converted to Extra Play, the loyalty point liability is reduced with a corresponding credit to the profit and loss loyalty point expense account. The loyalty points expense in the profit and loss is the sum of points earned less points redeemed.</p>
Complimentary / Matchplay vouchers – Table Games	Upon redemption at a table, the vouchers go down the drop box and are recognised as table games revenue with a corresponding expense to a marketing expense account in the profit and loss.
Extra Play award as EGM jackpot / bonus prize	There are no accounting entries recognised.
Extra Play reward to Crown Rewards member	There are no accounting entries recognised.

- 71** As the above table demonstrates, upon a patron receiving a loyalty point, an expense is recognised in the profit and loss statement and a 'loyalty point liability' is recognised in the

balance sheet. In the case of a table game, when the voucher is presented, the loyalty point liability is reduced and table game revenue is recognised. In the case of EGMs, when loyalty points are converted to non-cashable credits, the loyalty point liability and expense account are both reduced. That is, in effect, it reverses the entry by which the loyalty point was created and the liability was incurred.

- 72 The RCCOL expressed the view that CML is liable to pay tax on all sums received (through pokie points) from Matchplay. That is, the conversion of loyalty points to pokie points and use of them to place bets on EGMs results in 'sums ... received ... from the conduct or playing of games' within the meaning of GGR. Similar reasoning may be equally applied to 'sums ... received ... from the conduct of the Casino Tax Activity' within the meaning of Casino Taxable Revenue in the State Agreement.
- 73 Since the introduction of the Advantage System in 2009 at Perth Casino, non-cashable credits (whether resulting from conversion of loyalty points or provided as bonuses or gifts) used to place bets on EGMs have not been counted as 'sums ... received' in the calculation of Casino Taxable Revenue.⁵⁷ The position Crown has taken in that regard appears to be based upon the Malleons Advice obtained in 2009.
- 74 The Malleons Advice is founded on the view that, for the purposes of the definition of Casino Taxable Revenue, a sum of money must be received and, further, the concept of 'receipt' involves the taking, acceptance or acquisition of something that is given or offered. The Malleons Advice expresses the opinion that under the Advantage System BNL:⁵⁸
- ...will not take, accept or acquire any sum, or anything else of value, when players are awarded Non-Cashable Credits or redeem those credits for free games. Burswood will not receive anything when players are awarded loyalty club points or Non-Cashable Credits. Similarly, Burswood will not receive anything when players use Non-Cashable Credits to play free games. Therefore, the redemption of Non-Cashable Credits under the Advantage System should not be included in the calculation of Casino Taxable Revenue in relation to EGMs. (Emphasis added).
- 75 The reasoning of the RCCOL calls into question the reasoning in the Malleons Advice to the effect that BNL receives nothing of value when non-cashable credits are used to place bets. The conversion of loyalty points into non-cashable credits has value. That value is arguably 'received' from the conduct of gaming by way of EGMs.
- 76 In short, there is a question as to whether non-cashable credits derived from the conversion of loyalty points should be treated as 'sums...received' and included in the calculation of Casino Taxable Revenue. If that question is answered in the affirmative, BNL has not paid the correct amount of Casino Taxable Revenue for gaming by way of EGMs played using non-cashable credits.

Winnings on 'free' bets

- 77 In the course of considering if CML had underpaid casino tax as a result of category 3 (Matchplay), the RCCOL considered, in the event that pokie points were not 'sums... received', whether amounts paid out as winnings on 'free bets' were 'sums paid out as winnings' for the purposes of the calculation of GGR.
- 78 In the context of the dispute between CML and the VCGLR over tournament fees discussed below, CML relied on a submission prepared by MinterEllison that, on the proper construction of GGR in the Management Agreement, there is a relationship of interdependency between: (1) 'sums ... received from the conduct or playing of games'; and (2) 'sums paid out as winnings ... in respect of such conduct or playing of games'. By that relationship, the 'sums received' from the playing of games must refer to the sums that enter the pool of funds from which winnings are paid out.⁵⁹

- 79 The RCCOL observed that, if CML's contention that there is no sum received from Matchplay is correct, then:⁶⁰
- Applying the MinterEllison analysis (which may be correct) winnings from a bet where there is no sum received are not deductible from the GGR calculation. The result is that winning paid out from 'free' Matchplay bets are not deductible. The consequence is that Crown has underpaid casino tax, but in a different amount than if the first line of reasoning is applied.
- 80 The RCCOL also identified a possible underpayment of casino tax in respect of categories 1, 2, 4 and 7. These are benefits provided in the form of pokie credits with each credit having a specific value when used in an EGM. Apart from their use to play a game in an EGM, the credits have no value to the member. These are of the same character as the bonus non-cashable credits for Perth Casino.
- 81 The RCCOL considered that there is a possible argument that bets placed with 'free' pokie credits may also result in 'sums ... received' for the purposes of calculating GGR. However, if not, then as a result of the interdependence analysis, winnings paid on 'free' bets are arguably not 'sums paid out as winnings' for the purposes of calculating GGR. The same issue occurs in relation to the calculation at Perth Casino.
- 82 There are differences in the text of the definition of GGR and Casino Taxable Revenue and, more broadly, between the text and context of the Management Agreement and State Agreement that mean there are limits on the extent to which a construction of GGR can be applied to Casino Taxable Revenue. Nonetheless, given the similarity in the text of 'Casino Taxable Revenue' and the broad purpose or object of the agreement, a similar analysis of interdependency is open and available for 'sums ... received from the conduct of the Casino Tax Activity' and 'sums paid out as winnings' in respect of the Casino Tax Activity in the definition of Casino Taxable Revenue.
- 83 The PCRC does not express any view as to the relative merit of that construction for the purposes of the State Agreement. However, the availability of the construction and interdependency analysis creates uncertainty as to whether BNL has paid and will pay the correct amount of casino taxes under the State Agreement. James Sullivan (**Sullivan**) appears to recognise this issue.⁶¹

Inconsistent treatment for table games

- 84 In contrast to its position in respect of non-cashable credits used for bets on EGMs, BNL counted and continues to count non-cashable credits used to place bets on table games as 'sums ... received'. Crown contends that cl 4.2 of s 25 of the CM(Ops) requires that vouchers be included in the count for purposes of calculating Casino Taxable Revenue and those vouchers include those issued in exchange for non-cashable credits. Crown has also said that it intends to clarify the position for table games with the GWC.⁶²
- 85 If the Mallesons Advice is correct, when bets are placed as a result of using a non-cashable credit, it does not result in 'sums ... received'. Whether the credit is delivered to the player electronically on the meter of an EGM or physically as a paper voucher would have no bearing on that legal question and neither would the provisions of cl 4.2 of s 25 of the CM(Ops).
- 86 As set out in Part One of this chapter, although the Directions require the Casino Operator to keep records and accounts of the gaming and casino operations in accordance with the CM(Ops) including Section 25, the Directions also require the Casino Operator to provide the GWC with a (correct) statement of Casino Taxable Revenue for each day of each month and that statement is to be certified by the CEO of the Casino Operator.
- 87 At the time that s 25 was inserted into the CM(Ops), the Burswood entities identified the inconsistency of the treatment of non-cashable credits between EGMs and table games. In

an internal note dated 29 July 2015 sent to employees of BRML who then held the positions of Executive General Manager Legal & Corporate Services, General Manager of Legal & Compliance, and the Gaming and Regulatory Compliance Officer, the author said:⁶³

So far as Crown Perth is concerned the following points are relevant:

the WA legislation is different to the Victoria legislation in that the definition of 'casino taxable revenue' in WA differs marginally to the definition of 'Gross Gaming Revenue' in Vic

In addition, unlike Victoria, there is no stipulation in WA legislation that gaming chips can only be issued if they are paid for in money.

Crown has previously provided advice to the GWC to the effect that complimentary gaming machine credits should not be included in Casino Taxable Revenue.

This advice was referred to the SSO ... and DRGL subsequently agreed.

The basis of the advice is generic to complimentary gaming machines credits and complimentary chips – the principle advanced by the opinion is that there needs to be a sum received by Crown in order for the sum to be included as Casino Taxable Revenue.

Therefore there appears to be a sound basis for Crown Perth to go to the Regulator with a proposal that complementary chip awards are not taxable in the same way that complimentary machine credits are not taxable.

This is simply a matter of applying the law.

From a policy perspective, the danger is that the DRGL may move to change the legislation/rules if it feels there is a public interest issue at stake ie loss of tax payer revenue.

- 88** The note continues by addressing some measures that could be deployed to counter any public interest issue that the Department may raise in support of a move to change the legislation or rules.
- 89** The PCRC infers that, despite the author of the note having identified that BNL was not calculating and reporting correctly Casino Taxable Revenue (in that, BNL was treating non-cashable credits used to bet on table games as revenue and Casino Taxable Revenue was therefore higher than it should be), the Burswood entities did not draw this to the GWC's attention.
- 90** After commencement of the PCRC inquiries, the Burswood entities and CRL have taken steps to verify their position in respect of a number of casino tax matters including the treatment of non-cashable credits for table games. The entities have also indicated to the Department a desire to discuss these matters with a view to reaching a resolution of any uncertainty about payment of casino tax.⁶⁴
- 91** The PCRC concludes that:
- a. in 2015, the Burswood entities were aware of information that placed BNL at risk of contravening the Directions and the State Agreement by not calculating and reporting Casino Taxable Revenue correctly;
 - b. they should have taken steps to raise or clarify the matter with the GWC or Department. They did not do so; and
 - c. this was not conduct which was consistent with the conduct expected of a casino licensee or of persons involved in the operation of the casino licence to act with integrity and competently to ensure compliance with the casino gaming licensee's obligations to calculate and report correctly Casino Tax Revenue and to be honest, open, competent and accountable in their dealings with the casino regulator.

Oversight by the GWC and the Department

92 The GWC informed the PCRC that the current GWC members do not have an understanding of inconsistent treatment of non-cashable credits between EGMs and table games and referred the PCRC to the Department's response on the subject.⁶⁵

93 The Department gave the following information to the PCRC:⁶⁶

At all times non-cashable credits expended on table game play have been treated as Casino Taxable Revenue (in particular, they are counted as part of the Soft Count). The Department has been unable to determine why that position was adopted and so far has not found any legal advice addressing that issue.

The Department understands that, prior to the operationalisation of the IGT System in 2010, the Casino Operator provided patrons with 'Complementary Casino Vouchers' which could be redeemed for various purposes including non-cashable credit play on EGMs. The Department understands that when redeemed for credit play on EGMs these vouchers were treated as Casino Taxable Revenue and counted as part of the Soft Count⁶⁷

In seeking the GWC's approval for the IGT Advantage System, in April 2009, the Casino Operator advised it had received legal advice that, because no sum is received by the Casino Operator when non-cashable credits are awarded to or redeemed by EGM players on the IGT Advantage System, Casino Tax (specifically EGM Tax) is not payable on the use of non-cashable credits within that System. Put differently, non-cashable credits redeemed for EGM play within the IGT Advantage System are not 'casino taxable revenue' because there are no 'sums received'.

The Department sought State Solicitor's Office advice in 2010 on the issue...

While this is not entirely clear to the Department at this time, it appears that the provision and use of Complementary Casino Vouchers, at least for non-cashable credit EGM play, was phased out at or around the time the IGT Advantage System was operationalised. Therefore, the difference in approach appears to have arisen following the Department and GWC's acceptance of the Casino Operator's position as to the taxation of non-cashable credits redeemed for EGM play within the IGT Advantage System.

It appears that, in accepting that position, the Department did not go on to consider whether any further implications followed for the taxation treatment of non-cashable credit play on table games.

94 It is not clear on the evidence if the GWC accepted that non-cashable credits used to play EGMs are not 'sums ... received'. That is, it is not clear that the GWC made a decision or resolved that the value of non-cashable credits used to play EGMs are not to be counted in the calculation of Casino Taxable Revenue.

95 On 28 April 2009, the GWC approved the Advantage System in principle, but there was no resolution on the appropriate treatment of non-cashable credits from a casino tax perspective.⁶⁸ Amongst the papers for that meeting was an agenda paper in which Michael Connolly (**Connolly**) (former Chief Casino Officer) recommended approval of the Advantage System. In that paper he notes the proposal was that non-cashable credits would not be treated as sums received or as sums paid out as winnings, however it is added:⁶⁹

it should be noted however that winnings paid as a result of playing bonus credits will have the effect of reducing casino tax, i.e., winnings paid to a player as a result of playing bonus credits will be treated the same as if they were won playing any game paid for with cash.

96 On 26 May 2009, the GWC approved the use of the Advantage System.⁷⁰

- 97** On 16 June 2010, the State Solicitor's Office prepared an advice for the Department concerning the effect of non-cashable credits used on EGMs on Casino Taxes.
- 98** There is no evidence before the PCRC that the advice of the State Solicitor's Office was provided to or tabled at a meeting of the GWC. Nonetheless, the PCRC concludes that, on the whole, the GWC's duty to ensure the proper assessment of casino tax was discharged appropriately when the non-cashable credits issue was first considered in relation to EGMs.
- 99** However, as of 2009 and thereafter, the inconsistency in the tax treatment of non-cashable credits between EGMs and table games resulting from acceptance of the Mallesons Advice does not appear to have been identified, or if identified, acted upon by any person in the Department. Further, the inconsistency was not brought to the attention of the GWC. The PCRC concludes that in this regard the GWC did not discharge its duty to ensure the proper assessment of casino tax and was not supported by the Department to do so.
- 100** Presently, the current GWC members and the Department have stated that they are not currently satisfied that the Perth Casino licensee has paid the correct amount of casino tax.⁷¹

Part Three: Tournament fees

- 101** From time-to-time tournaments are held at Perth Casino. These largely consist of games of poker or baccarat. Players enter the tournament and play against one another. Perth Casino organises and conducts the tournaments.⁷²
- 102** The receipts and payments in respect of tournaments can be described as follows:⁷³
- a. players pay tournament entry fees, which includes an administration fee component and 'buy-ins' to obtain tournament chips for use during the tournament;⁷⁴
 - b. the administration fee is collected by Perth Casino to cover overheads and incidental costs associated with the tournaments. The administration fee is calculated to reflect the expected expenditure for the tournament outlay and the anticipated number of players. The administration fee does not form part of the prize pool and is a non-refundable payment;⁷⁵
 - c. the buy-in amount is 'added to the prize pool for the tournament – the total prize pool for a tournament is the sum of all buy-ins';⁷⁶ and
 - d. once the event is completed, the total amount of the prize pool is paid out as prize money to the participants.⁷⁷
- 103** As matters stand, BNL does not count tournament entry fees as 'sums ... received' and does not deduct tournament prizes as 'sums paid out as winnings' in the calculation of Casino Taxable Revenue.⁷⁸
- 104** The reason and grounds upon which tournament entry fees and tournament prizes are excluded from the calculation of Casino Taxable Revenue is unclear. On the face of the definition of Casino Taxable Revenue, amounts paid to enter a tournament appear to meet the description of 'sums ... received ... from the conduct of Casino Tax Activity'. Likewise, amounts paid as prizes for the tournament appear to meet the description of 'sums paid out as winnings in respect of the Casino Tax Activity'.
- 105** McGregor gave evidence to the PCRC to the effect that Crown is verifying its position in relation to the recognition of poker and other tournament entry fees as 'sums ... received' and has sought advice from senior counsel on that topic.⁷⁹ CML and the VCGLR are involved in an ongoing dispute as to whether tournament fees form part of GGR under the Management Agreement.

Communications with the GWC and the Department

- 106** There is no evidence of a communication in which the Burswood entities (or any of them) or CRL have provided an explanation of the grounds upon which it is contended that tournament fees and prizes are to be excluded from the calculation of Casino Taxable Revenue.
- 107** In a letter from Connolly (then Acting Director of Operations of the Department) to Michael Egan (**Egan**) (Executive General Manager Legal and Compliance of the Burswood Entertainment Complex) dated 16 January 2007, Connolly said:⁸⁰
- Casino tax is payable to the state at the appropriate and relevant percentage rate of Casino Gross Revenue for the gaming conducted. The Casino (Burswood) Island Agreement Act 1985 defines Casino Gross Revenue broadly as all sums received from the conduct of gaming less the total sums paid out as winnings.
- It is my understanding that entry fees paid to patrons do not cover all prizes paid out in winnings by the Casino Licensee.
- Where winnings paid out exceed tournament entry fees charged by the Casino Licensee there is no Casino Gross Revenue produced as a result of this activity and therefore no tax payable. Where entry fees exceed the value of prizes or winnings paid out by the Casino Licensee the balance of the entry fees less winnings paid would, by definition, be Casino Gross Revenue and subject to casino tax at the appropriate rate.
- 108** There were handwritten notations on the letter as follows:⁸¹
- Josh, As discussed at our meeting, could you discuss with Mick Connolly, Thanks Michael
- Wendy, Please scan + forward to Diana with a request to provide a draft procedure to implement. Thanks Michael
- 109** The minutes of an Operations Division meeting attended by representatives of the Department and the Burswood entities of 12 December 2006 suggest that Connolly was to send a letter to the Burswood entities 'confirming that Tournament entry fees are not considered to be Casino Gross Revenue for taxation purposes'.⁸² The PCRC infers that, either that minute is an inaccurate record of what Connolly said at the meeting, or, after further consideration, Connolly (or his superiors within the Department) formed the view expressed in the January 2007 letter that tournament fees and prizes formed part of Casino Taxable Revenue.
- 110** The minutes of an Operations Division meeting of 2 March 2007 suggest that the Department had the tournament entry fees under review and that advice would be sought from the State Solicitor's Office.⁸³ The minutes of an Operations Division meeting of 3 April 2007 record the following:⁸⁴
- The DOD [Connolly] advised that tournaments are considered to be gaming and revenue from the tournaments should be included in the Casino taxation calculation. Entry fees charged for tournaments under the game rules should also be included as gaming revenue (and taxed). On the same basis, if there is a loss incurred from a tournament, BEC [BNL] would be entitled to a deduction/offset. The SMGR [Egan] and COOG [Ejaz Dean] will prepare a submission to the DOD [Connolly] outlining the method of revenue calculation for tournaments.
- 111** Notwithstanding these communications, on 20 August 2010, Paul Hulme (**Hulme**), (former, Gaming & Regulatory Compliance Manager at Perth Casino), wrote to the Department to request amendments to the practice of poker tournaments. In the email, Hulme stated that 'the required buy-in or entry fee for Poker Tournaments do not form part of normal gaming revenue as the majority of the money, with the exception of a small administration fee, is returned to the player/s as Tournament prize/s'.⁸⁵

- 112 As of November 2010, the Burswood Entertainment Complex’s procedure manual on ‘Calculating Global GST Amount’ indicated that entry fees for gaming tournaments do ‘not form part of total amounts wagered’.⁸⁶ This statement is not consistent with the handwritten note of Egan in January 2007 directing that procedures be prepared to give effect to the Department’s direction.
- 113 In November 2013, Hulme prepared a memorandum for Joshua Preston (**Preston**, at 2013 was Perth Casino’s Executive General Manager – Legal Services), detailing correspondence between the Department and the Burswood entities on the tax implications of tournaments.⁸⁷ Hulme identified the correspondence from the Department in January 2007 and the Operations Division meeting minutes of April 2007. He stated that he was unable to locate any formal correspondence sent by the Burswood entities to the Department on the subject.⁸⁸ Hulme stated further:⁸⁹
- I can recall however there being further discussions with the Officers from the [Department], (not confirmed or evidenced in writing) who acknowledged that if entry fees are to be accounted for as Casino Gross Revenue for taxation purposes, then any losses incurred from a tournament should entitle Crown to a tax deduction. At some point, subsequent to these communications, the issue became too complex and the decision was taken to maintain the status quo. That is, entry fees are not counted as revenue nor are certain Tournament prizes deductible from revenue (which I will explain further depending on the operation of the Tournament).
- 114 Crown submits that the PCRC should accept Hulme’s account and, that based largely on that account:
- a. the letter of 16 January 2007 and the minutes of the meeting of 3 April 2007 do not state the Department’s final position;⁹⁰
 - b. the Department ‘may have resolved to maintain the prevailing position of *excluding* poker tournaments from Casino Taxable Revenue because this left the State in a better tax position’ (emphasis added);⁹¹ and
 - c. ‘the Department, acting rationally, would be content to leave the prevailing arrangement in place’.⁹²
- 115 The PCRC accepts Hulme’s statements in his memorandum, however, the PCRC does not accept Crown’s submissions.
- 116 BNL is under a legal obligation to pay casino taxes calculated in accordance with the State Agreement. That obligation must be discharged properly, irrespective of the complexity of the calculation. It is not for a taxpayer to decide not to pay the correct amount of tax because calculation of that amount is too complex. Likewise, it is not for a taxpayer to acquiesce in maladministration of its tax liability because the government agency considers calculation of its correct taxation liability too complex. Put shortly, paying the correct amount of tax is mandatory; it is not optional.
- 117 As to Crown’s submissions regarding the motives of the Department, there is no evidence (and Crown has not identified any) to the effect that the State has collected more casino taxes as a result of excluding tournament fees and prizes from the calculation of Casino Taxable Revenue. The Department, acting in the proper discharge of its functions and responsibilities, would ensure that BNL paid the correct amount of casino taxes. That does not involve discharging its duties or responsibilities in a manner that would incorrectly increase the amount of tax it collects from BNL on behalf of the State. In substance, Crown’s submission attributes an improper purpose to the Department without any foundation in the evidence.
- 118 The substance of evidence upon which Crown relies is to the effect that prizes paid from tournament fees would be deducted from Casino Taxable Revenue. But, the same

evidence indicates that, while the majority is paid in prizes, the casino retains a small percentage of the fees. Therefore, there would be a surplus of entry fees over prizes. Acting rationally and properly, the Department would ensure that casino tax was paid on the surplus in accordance with the definition of Casino Taxable Revenue in the State Agreement.

- 119** The text of the Department's letter of 16 January 2007 is clear, as are the minutes of the meeting on 3 April 2007. There is nothing in those communications to suggest that the Department was undecided or unsure whether tournament fees and prizes form part of the calculation of Casino Taxable Revenue. The best evidence of BNL's failure to include tournament fees and prizes is that a decision was made by an unidentified person or people to maintain the status quo because the issue became 'too complex'.
- 120** There is no evidence before the PCRC to the effect that the Burswood entities took any steps after Hulme's memorandum to raise and clarify the question of whether tournament entry fees formed part of Casino Taxable Revenue with the Department or the GWC.
- 121** In August 2013, CML received independent advice on the question of whether 'entry fees' were sums received by Crown from the 'conduct' of poker pursuant to the definition of GGR.⁹³ The effect of that advice was that the 'better view' is that entry fees 'form part of Gross Gaming Revenue and Crown is liable to pay casino tax on them'.⁹⁴ There is no evidence that this was provided to the VCGLR or the GWC or the Department.
- 122** In 2017, a dispute between CML and the VCGLR regarding tournament fees emerged. Barry Felstead (**Felstead**) who was then the CEO – Australian Resorts wrote to the VCGLR in which CML expressed its disagreement with the State of Victoria's position that entry fees charged to players to participate in tournaments fall within the definition of GGR. The letter attached a submission of MinterEllison made in support of CML's position.⁹⁵
- 123** The thrust of the MinterEllison submission is to the effect that entry fees are not staked or bet and, therefore, do not form part of the pool of funds out of which 'winnings' are paid.
- 124** McGregor recalled that the tax treatment of tournament entry fees was an issue at Melbourne Casino for many years, but did not recall it being an issue at Perth Casino.⁹⁶ McGregor admitted that he did not turn his mind to how the position taken by the VCGLR in relation to CML may similarly apply to Perth Casino.⁹⁷
- 125** After this issue was raised in the course of the PCRC's inquiry, the Burswood entities have advised that they are considering their position and have sought external advice.⁹⁸ During his examination, McGregor expressed the view that Crown wanted to have discussions with the regulator after it had reached its own view on various tax issues.⁹⁹ There have been subsequent communications in which Lonnie Bossi, then CEO of Perth Casino, expressed a desire to hold discussions with the Department about the tax issues referred to during McGregor's examination.¹⁰⁰
- 126** In their recent communications to the Department, the Burswood entities have not set out their position with respect to any of the tax issues raised in McGregor's examination. The Burswood entities have not said whether or not they consider that the correct amount of casino tax has been paid in the past or the reasons supporting their view. It is a mere invitation to have discussions.
- 127** In a statement provided to the PCRC, the Department said that current staff were not aware of the Department's letter of 16 January 2007 until its existence was drawn to their attention.¹⁰¹ After becoming aware that Perth Casino was not treating tournament entry fees in accordance with instructions given in 2007, the Department stated that it will seek legal advice and potentially conduct further investigations.¹⁰² The GWC was previously unaware of the issue of tournament entry fees and has stated that it 'expects any identified non-compliance to be promptly reported to it'.¹⁰³

- 128** It follows that there is no evidence before the PCRC that the Burswood entities or CRL have provided any submission or justification to the GWC or Department in support of its failure to account for tournament fees and prizes in the calculation of Casino Taxable Revenue. Neither the Burswood entities nor CRL has proffered any explanation to the PCRC about that matter.
- 129** In relation to CRL and the Burswood entities, the PCRC concludes that:
- a. there is uncertainty as to whether casino taxes on tournament fees have been correctly calculated;
 - b. the Burswood entities should have taken steps to clarify and confirm the position with the GWC and the Department in 2007 and, in any event, not later than 2013. They did not do so;
 - c. an open, competent and accountable casino licensee acting with integrity and competence to ensure compliance with its obligations to pay casino tax should have clearly articulated its position to the GWC, in writing, confirming that it has paid the correct amount of casino taxes and the reasons in favour of that view, or accepting that it has not paid the correct amount of casino taxes and offering to pay that sum and penalties together with an explanation for the past failure to pay; and
 - d. they have not done so.
- 130** As to the conduct of the GWC and the Department, there is no evidence before the PCRC regarding the reasons, if any, that there was no formal follow up or conclusion to the correspondence that commenced with the letter of 16 January 2007. Accepting the contents of Hulme's note at its highest, the statements in that note support a conclusion that there were possibly informal discussions after April 2007 between representatives of the Burswood entities and the Department. Whatever was said during those discussions, it did not result in the Department sending a formal letter in which the position articulated in the 16 January 2007 letter or minutes of the Operations Meeting of 3 April 2007 had changed. Nonetheless, after April 2007, the Department's officers acquiesced in BNL calculating and paying casino taxes in which tournament fees and prizes were not included in Casino Taxable Revenue.
- 131** The PCRC concludes that:
- a. in 2007, the Department articulated the position in a formal communication that made it plain the Department considered that tournament fees and prizes were to be included in the calculation of Casino Taxable Revenue;
 - b. thereafter, the Department did not take steps to ensure that BNL calculated and paid casino taxes on that basis. There was no formal communication resiling from that position; and
 - c. By doing neither of those things, the Department did not adequately support the GWC in the discharge of the GWC's duty to ensure the proper assessment of casino tax owing to the State.

Part Four: Regulation of the payment of casino tax

Responsibility to ensure the proper assessment of casino tax

GWC's understanding of its responsibility to ensure the proper assessment of casino tax

- 132** The GWC informed the PCRC that its regulatory focus was upon, among other things, 'the integrity of gambling and the taxable revenue generated by gambling activities'.¹⁰⁴ Insofar as that statement concerns taxable revenue, that is consistent with evidence from a number of GWC members.¹⁰⁵
- 133** The GWC also informed the PCRC:¹⁰⁶
- GWC expects any identified potential non-compliance to be promptly reported to it. GWC notes, however, that the collection of casino taxable revenue is a matter in the first instance for the Treasurer of the State, to whom such tax, together with any penalty under section 20A of the Casino Control Act 1984, is payable under section 20 of the Casino Control Act 1984, and by whom any arrears may be collected under section 20B (4)(b) as a debt due in a court of competent jurisdiction. GWC will separately consider and act on any instance of demonstrated non-compliance, if the existence of any revenue debt is disputed, after the resolution of the dispute, in assessing the implications of any non-compliance for the licensee, any casino key employee, and any close associate, complicit in that non-compliance.
- 134** To the extent that observation suggests that the Treasurer, as the person to whom the legal obligation is owed, is primarily responsible for the proper assessment of casino tax, the PCRC does not consider the observation to be accurate. As set out earlier in this Chapter, the duties of the GWC include the duty to ensure the proper assessment of casino tax. Otherwise, the observation is consistent with the GWC's duties and responsibilities regarding casino taxes.

Departmental evidence regarding audit and inspection in respect of tax assessment

- 135** Barry Sargeant, (former Director General (**DG**) of the Department and GWC chair), gave evidence of his understanding that the GWC's audits of Perth Casino's gaming accounts were for the purpose of revenue oversight, ensuring that the correct casino tax is paid and that these audits were carried out monthly.¹⁰⁷
- 136** Connolly was asked whether he was provided with an explanation of the overall regulatory purpose or objectives of the GWC when he was in the role of a casino inspector.¹⁰⁸ In response, Connolly said 'our role was and still is around ensuring the integrity of the casino gaming operations...the reporting of revenue and tax and ensuring that those are reported and collected correctly.'¹⁰⁹ Connolly went on to say 'there are revenue audits and audits of the tax calculation. So revenue audits would happen on a frequent basis'.¹¹⁰
- 137** Connolly said that protection of the State's revenue, was a significant regulatory function 'on par with the integrity of the gaming operations, [and] the conduct of gaming'.¹¹¹ In relation to the licence fee, Connolly said '[w]e calculate the licence fee and invoice for the licence fee. We don't audit it. We calculate it, provide Crown with an invoice and they pay it'.¹¹²
- 138** Leigh Radis (**Radis**), (Manager Industry Regulation and Education in the Department's Racing, Gaming and Liquor Division), stated 'the casino audit and inspection programs currently in operation are based around the casino licensee's state statutory requirements to accurately report gaming revenue and tax'.¹¹³ Radis also said that one of the two main

focuses of departmental inspectors was 'ensuring that the various controls and processes in place in regards to the collection of gaming revenue was recorded appropriately for the purposes of calculating casino tax.'¹¹⁴ Radis agreed that the audit programs developed by the regulatory services team was focused on revenue and the integrity of gaming.¹¹⁵

- 139** Having regard to this evidence, the PCRC concludes that the GWC and the Department have correctly understood the GWC's responsibility for ensuring the proper assessment of casino tax and have implemented procedures by way of an inspection and audit programme for the purpose of discharging that responsibility.

Capability of departmental software

- 140** In 2015, the Department made a change to its software that affected the capability of the Department's software to calculate casino tax payable.

- 141** Radis gave evidence about this change as follows:¹¹⁶

Prior to 2015, when there was a dedicated inspectorial presence at the casino, we used a software called the RG system. The RG system could independently calculate casino taxable revenue. On a daily basis, the Inspectors would enter financial data collected from source documentations (e.g. chip reports, unaudited master game reports, accountability gaming chip type reports) and any variances were investigated and appropriate action taken. Based on that input, the RG system would then calculate the 'end of month' tax that the casino was required to pay per month which we could compare against the final, audited, figures provided by the casino licensee to confirm a match.

...

In 2015, the RG System was retired, and a new software program titled 'Navigate' was used. Navigate was not designed to independently calculate payable casino taxes.

- 142** Prior to Navigate, the Department had the RG system for racing and gaming and another system, called LLS, which dealt with liquor. The current Navigate software, also called 'Sharperlight', was developed to unify the departmental system across all regulatory areas and was not designed to independently calculate payable casino taxes and verify casino accounts.¹¹⁷ As a consequence, the GWC now relies on the software used by the casino licensee to calculate the casino tax payable.

- 143** There is no evidence that the proposed change in the Department's capability to independently calculate casino tax payable was brought to the attention of the GWC members. There is no record in the agenda or minutes in 2015 of this change in capability. The evidence of four GWC members was that they had no recollection of the change from the RG system to Sharperlight or Navigate.¹¹⁸

- 144** In light of the change, the Burswood entities appreciated their obligation to report information correctly to the Department. In an internal email to Perth Casino staff in March 2015, Hulme wrote:¹¹⁹

controls will need to be put in place to ensure all revenue data entered into the portal is being correctly reported to the DRGL, particularly as the Government Inspectorate will no longer be taking an active role in verifying daily and end of month revenue date before tax is paid.

- 145** Lanie Chopping, (current DG of the Department and GWC chair), attached to her witness statement the adverse findings recently received from the Office of the Auditor General as to the Department's policies and procedures for assessment and collection of casino tax and revenue.¹²⁰ In substance, the Auditor General criticised the Department for not

independently validating the completeness and accuracy of the information provided by the Perth Casino licensee for the purpose of calculating the Casino Taxable Revenue and casino tax.¹²¹ The finding was rated 'Significant' with the express 'Implication' of a risk that the tax paid by Perth Casino was incorrect.¹²²

- 146** The Auditor General recommended that the Department establish an adequate independent verification and monitoring process with respect to the Casino Taxable Revenue and that the Department review its relevant compliance programs to determine whether they are fit for purpose.¹²³
- 147** It is apparent from the foregoing evidence that, when the Department moved to the Navigate (or Sharperlight) system, it changed the methodology by which the Department and, therefore, the GWC verified the amount of casino taxes payable. In substance, the methodology changed from one based on the Department's direct access to source information for the verification of Casino Taxable Revenue, to one based on only indirect access to source information as reported by the casino licensee.
- 148** The Department should not have made a unilateral decision to change the methodology in this way without reference to, or notifying, the GWC of the fact and consequences of the change. The duty to ensure the proper assessment of casino tax is devolved upon the GWC, not the Department. The GWC could not discharge that duty appropriately and effectively if it was not afforded the opportunity to make an informed decision about a fundamental aspect of the method of verifying Casino Taxable Revenue.
- 149** The Department acknowledges that it should have directly informed the GWC that the capability to independently verify the calculation of casino tax would be lost when the Department changed its software system to Navigate in 2015.¹²⁴
- 150** It is apparent that other systems and procedures were not implemented to address the consequences of the change that meant that the Department could not independently verify the licensee's reporting of Casino Taxable Revenue by reference to source information.
- 151** The PCRC concludes, as a consequence, that the Department's decision to change to the Navigate system diminished the capability and effectiveness of the GWC to ensure the proper assessment of casino tax.
- 152** The PCRC finds that the Department failed to adequately support the GWC:
- a. by not informing the GWC that the capability to independently verify the calculation of casino tax would be lost when the Department changed its software system to Navigate in 2015; and
 - b. from 2015, by not implementing a system to independently verify the licensee's reporting of Casino Taxable Revenue by reference to source information.

Casino Compliance Strategy

- 153** At the June 2015 meeting of the GWC, Connolly presented a document to the GWC called 'Casino Compliance Strategy 2015/2016' (**CC Strategy**).¹²⁵ The GWC resolved to endorse the CC Strategy.¹²⁶ There was no subsequent casino compliance strategy document presented to the GWC until November 2021 when an Interim Casino Compliance Strategy was presented to the GWC and endorsed by it.¹²⁷
- 154** One of the four objectives of the CC Strategy was to '[e]nsure that casino revenue and tax are accurately reported and paid to the State.'¹²⁸
- 155** The CC Strategy stated the activities that the Department would conduct in respect of various subject headings. For the subject heading 'Casino Revenue and Tax', the following activities were listed:¹²⁹

- Audits and inspections
 - Require ATF certification as to the completeness and accuracy of revenue and tax information collected and reported by the casino Licensee from an ATF
 - ATF audits of the Casino Licensee's revenue and tax systems every year
 - Grant and withhold approvals, within the limits of delegated authority for all related procedures, processes and systems; and
 - Make reports and recommendations to the Commission relating to submissions for amendments to procedures, processes and systems.
- 156** The Perth casino licensee manages the collection, validation, reconciliation and reporting of information relating to gross revenue.¹³⁰ As is evident from the departmental officers' above description of the audit and inspection program, which is referred to in the first dot point, that program is designed to oversee this process.
- 157** The PCRC heard evidence that the GWC's oversight of casino operations had moved from continual supervision to audit. While at one time, hard and soft count were always attended by government inspectors, the current practice is that they are now done by casino staff without supervision by government inspectors, although there is an audit program in place.¹³¹ Secondly, inspectors once attended all junket 'buy-ins' (to commence junket activity) and junket financial settlements at the end of junket activity but this moved to an auditing of buy-ins and settlements.¹³²
- 158** As to the third dot point, this contemplates that there will be annual ATF audits of the casino licensee's revenue and tax systems.
- 159** Between 2015 and 2021, there were only two audits of this kind. The first was conducted in June 2015,¹³³ and the second in June 2017.¹³⁴ Both were performed by Gaming Laboratories Australia, which is a subsidiary of Gaming Laboratories International.
- 160** The CC Strategy contemplates annual 'ATF audits of the casino licensee's revenue and tax systems'. That element of the CC Strategy has not been followed. Two audits of the casino licensee's information systems in six years is not appropriate. It has further diminished the capability and effectiveness of the GWC to discharge its duties, functions and responsibilities to ascertain and collect casino taxes in circumstances where the Department no longer has an independent capacity to calculate casino tax, no longer attends the hard and soft count, junket buy-ins and financial settlements and relies upon the accuracy of the casino licensee's information systems.
- 161** The PCRC concludes that an annual audit of the Perth Casino licensee's revenue and tax systems, as contemplated in the CC Strategy, ought to have been implemented by the Department and required by the GWC.

Addressing casino tax regulatory issues

- 162** Both the current GWC members and the Department have stated that they are not satisfied that the Perth Casino licensee has paid the correct amount of casino tax.¹³⁵
- 163** The Department has informed the PCRC that the Department considers that a comprehensive review of the extent to which Perth Casino has paid the correct amount of casino tax needs to be undertaken. The Department is currently establishing a casino tax working group comprising senior officers from the Department and the Office of State Revenue.¹³⁶
- 164** It is envisaged that the role of the working group will be to:¹³⁷
- Document the process that has been adopted in DLGSC regarding casino tax to date;

- Map all tax issues identified through this Royal Commission (and the Victorian Royal Commission);
- Develop and implement an appropriate audit of casino tax; and
- Develop a proposed way forward with regard to casino tax collection and auditing (which would include consideration of whether the role should remain with DLGSCI or be transferred to OSR).

165 As explained earlier in this chapter, there have been deficiencies in the Department's support of the GWC's discharge of its duty to ensure the proper assessment of casino tax with respect to the legal issues of non-cashable credits and tournaments and factual issue of verification or validation of the casino licensee's information. The Department's decision to establish a working group is a positive step towards rectifying these past failings.

166 The PCRC has also found that the Department failed to give adequate support to the GWC by not informing the GWC that the capability to independently verify the calculation of casino tax would be lost when the Department changed its software system to Navigate in 2015. Further, the Department has not undertaken sufficient audits of the casino licensee's information systems. While the Department was principally responsible for organising those audits, the GWC ought to have satisfied itself that these audits were occurring regularly and held the Department to the CC Strategy, which stated that those audits would be conducted every year. In this respect, the GWC has also failed to ensure that this necessary process to ensure that it was discharging its duty to ensure the proper assessment of casino taxes was being implemented.

167 The PCRC accordingly finds that:

- a. the GWC has not capably and effectively discharged its duty to ensure the proper assessment of casino taxes; and
- b. the Department has not adequately supported the GWC to discharge that duty.

Endnotes

- 1 RCCOL Report vol 2 [PUB.0030.0001.0001] 129.
- 2 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (10 November 2021) [PCRC.0024.0001.0001] 7; Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (5 November 2021) [DLG.0020.0001.0001] 6.
- 3 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9, s 3(b) [cl 2].
- 4 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20.
- 5 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1, cl 23(1)(a), 23(1)(b).
- 6 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20B.
- 7 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 14, s 4 [sch C, item 1].
- 8 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9, s 3(b) [cl 2].
- 9 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 7(1)(a)(i), 7(1)(d), 7(1)(j).
- 10 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 8(1).
- 11 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 21A(1), 21A(2)(a), 21A(2)(b).
- 12 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20B(6).
- 13 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 20B(5).
- 14 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 24(2).
- 15 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 24(1), 24(5).
- 16 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 33.
- 17 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 4.1(a).
- 18 *Burswood Casino – Directions* (23 February 2021) [GWC.0002.0012.0001] dir 1.2.
- 19 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 1 cl 2.
- 20 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9, s 3(a) [cl 2].
- 21 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R] dir 3.1.
- 22 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R] dir 7.10, 8.5, 8A.4
- 23 *Burswood Casino – Amendment Directions 2021 (23 February 2021) (DA/104)* [GWC.0001.0006.0019_R] dir 1.5.
- 24 CM (Ops), ‘Section 25 – Gaming Vouchers’ (26 July 2017) [CRW.700.001.1586_R] 11; Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, ‘Statement on Casino Tax’ (6 October 2021) [PCRC.0004.0011.0001] 4.
- 25 *Casino (Management Agreement) Act 1993* (Vic) [PUB.0016.0033.0001] sch 1 cl 22.1(b).
- 26 *Casino (Management Agreement) Act 1993* (Vic) [PUB.0016.0033.0001] sch 1 cl 2; sch 3, cl 3.1(e).
- 27 RCCOL Report vol 2 [PUB.0030.0001.0001] 134.
- 28 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9 s 3(b) [cl 2].
- 29 Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, ‘Statement on Casino Tax’ (6 October 2021) [PCRC.0004.0011.0001] 2.
- 30 RCCOL Report vol 2 [PUB.0030.0001.0001] 134.
- 31 RCCOL Report vol 2 [PUB.0030.0001.0001] 135.
- 32 RCCOL Report vol 2 [PUB.0030.0001.0001] 135.
- 33 Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, ‘Statement on Casino Tax’ (6 October 2021) [PCRC.0004.0011.0001] 3.
- 34 RCCOL Report vol 2 [PUB.0030.0001.0001] 136 – 137.
- 35 RCCOL Report vol 2 [PUB.0030.0001.0001] 136 – 156.
- 36 RCCOL Report vol 2 [PUB.0030.0001.0001] 156.
- 37 Letter from Burswood to GWC (14 April 2009) [CRW.708.017.0305_R] 1.
- 38 Crown, ‘Crown Rewards Rules’ (15 November 2016) [CRW.700.041.0402].
- 39 Letter from the Burswood entities to Sargeant (14 April 2009) [CRW.708.017.0305_R] 11; Legal advice from Mallesons Stephen Jaques to the Burswood entities (14 April 2009) [CRW.563.010.2538_R].

40 Legal advice from Mallesons Stephen Jaques to the Burswood entities (14 April 2009) [CRW.563.010.2538_R].

41 Letter from Burswood to GWC (14 April 2009) [CRW.708.017.0305_R] 2 – 5.

42 Legal advice from Mallesons Stephen Jaques to the Burswood entities (14 April 2009) [CRW.563.010.2538_R] 4 – 5.

43 Legal advice from Mallesons Stephen Jaques to the Burswood entities (14 April 2009) [CRW.563.010.2538_R] 4 – 5; McGregor, transcript [TRA.0001.0001.0001] 4982.

44 Crown, 'Crown Rewards Participating Outlets' (27 November 2020) [CRW.700.041.0035].

45 Kessell, transcript [TRA.0001.0001.0001] 4580 – 4582.

46 McGregor, RCCOL transcript [COM.0004.0034.0182] 3520; Walsh, RCCOL transcript [COM.0004.0033.0357] 3363.

47 Letter from Burswood entities to Department (18 June 2021) [CRW.706.005.0227_R]; Email from Kessell to Department (25 June 2021) [CRW.706.005.0210_R] attaching: 'Gaming Patron Complimentary Accommodation' [CRW.706.005.0211_R], 'Gaming Patron Complimentary Meals' [CRW.706.005.0214_R], 'Gaming Patron Complimentary Parking' [CRW.706.005.0218_R]; Kessell, witness statement [CRW.998.002.0857_R] [26], [34]; Kessell, transcript [TRA.0001.0001.0001] 4579, 4583; Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, 'Statement on Casino Tax' (6 October 2021) [PCRC.0004.0011.0001] 2 – 3; McGregor, transcript [TRA.0001.0001.0001] 4979 – 4980.

48 McGregor, transcript [TRA.0001.0001.0001] 4972; Hulme, transcript [TRA.0001.0001.0001] 2770; RGMC, agenda papers (18 August 2016 meeting) [CRW.704.001.2818] 143.

49 McGregor, transcript [TRA.0001.0001.0001] 4973.

50 Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, 'Statement on Casino Tax' (6 October 2021) [PCRC.0004.0011.0001] 1; McGregor, transcript [TRA.0001.0001.0001] 4972.

51 McGregor, witness statement [CRW.998.002.0219_R] [7] – [10].

52 McGregor, transcript [TRA.0001.0001.0001] 2442, 4970.

53 RCCOL Report vol 2 [PUB.0030.0001.0001] 157 – 158.

54 McGregor, transcript [TRA.0001.0001.0001] 4982.

55 RCCOL Report vol 2 [PUB.0030.0001.0001] 157 – 158.

56 Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, 'Statement on Casino Tax' (6 October 2021) [PCRC.0004.0011.0001] 5.

57 Kessell, witness statement [CRW.998.002.0857_R] [25]; Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, 'Statement on Casino Tax' (6 October 2021) [PCRC.0004.0011.0001] 4 – 5; McGregor, transcript [TRA.0001.0001.0001] 4981 – 4982.

58 Legal advice from Mallesons Stephen Jaques to the Burswood entities (14 April 2009) [CRW.563.010.2538_R] 4 – 6.

59 RCCOL Report vol 2 [PUB.0030.0001.0001] 159.

60 RCCOL Report vol 2 [PUB.0030.0001.0001] 159.

61 Email from Sullivan to Grist (16 June 2021) [CRW.351.032.8945_R].

62 Letter from Allens to PCRC (6 October 2021) [PCRC.0004.0011.0009_R] attaching: Burswood entities, 'Statement on Casino Tax' (6 October 2021) [PCRC.0004.0011.0001] 4; McGregor, transcript [TRA.0001.0001.0001] 4982.

63 Email from Nichols to Preston, Marais, Hulme, Lomma (29 July 2015) [CRW.709.118.4483] attaching: Crown, 'Complimentary chip awards – discussion of taxation issue' [CRW.709.118.4484].

64 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 533 [46]; Letter from Burswood entities to Department (24 November 2021) [CRW.701.011.4039_R]; Letter from Burswood entities to Department (10 January 2022) [CRW.701.011.8574_R].

65 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (10 November 2021) [PCRC.0024.0001.0001] 3 – 5.

66 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (5 November 2021) [DLG.0020.0001.0001] 3.

67 Burswood, 'Global GST Amount – Procedures' (November 2010) [DLG.0007.0003.0050] 8 – 9.

68 GWC, minutes (28 April 2009 meeting) [GWC.0007.0011.0046] 27 – 28.

69 GWC, agenda papers (28 April 2009 meeting) [GWC.0007.0011.0044_R] 80.

70 GWC, minutes (26 May 2009 meeting) [GWC.0007.0011.0048] 6.

71 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (10 November 2021) [PCRC.0024.0001.0001] 7; Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (5 November 2021) [DLG.0020.0001.0001] 6.

- 72 Letter from the Burswood entities to the Department (4 December 2009) [CRW.707.005.2258_R]; Letter from the Department to the Burswood entities (14 December 2009) [CRW.708.016.8519].
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- 88 Memorandum from Hulme to Preston (13 November 2013) [CRW.708.004.0827] 1.
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- 136 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (5 November 2021) [DLG.0020.0001.0001] 6.
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CHAPTER 11

Conflicts of Interest

CHAPTER ELEVEN

Conflicts of Interest

Purpose of Chapter

- 1 Relevant to **ToR 10**, this chapter examines and assesses the effectiveness of the systems established by the Department of Local Government, Sport and Cultural Industries or its predecessors (depending on context) (**Department**) and the Gaming and Wagering Commission (**GWC**) to identify and manage conflicts of interest. Using case studies, this chapter also examines how effectively conflicts of interests have been identified and managed by the Department and the GWC in practice.
- 2 Other aspects of the regulatory relationship between the GWC and Perth Casino are also considered in this chapter; in particular, the vulnerability of that relationship to regulatory capture and whether the regulator and licensee have conducted themselves in that relationship in a way that has supported the effectiveness of the regulator and casino regulation more generally. These issues are examined, using case studies, with respect to the conduct of officers of both the regulator and Perth Casino and are therefore a relevant subject of inquiry, not only for the purposes of ToR 10, but also ToR 9 and the assessment of suitability of Burswood Nominees Limited (**BNL**) and its associates the subject of Part A of the terms of reference.
- 3 Part One of this chapter provides an explanation of the main concepts that underpin the subsequent analysis. Part Two examines and assesses the systems and processes of the GWC and the Department to identify and manage conflicts of interest. Part Three uses case studies to examine and assess the GWC's identification and management of conflicts of interest in practice and the support provided by the Department to the GWC in that regard. Part Four continues the examination the subject of Part Three, but with respect to the specific issue of the friendships between former Chief Casino Officer (**CCO**), Michael Connolly (**Connolly**) and certain Crown officers. Part Five considers the regulatory relationship between the GWC and Perth Casino, particularly in the context of the concepts of regulatory capture and regulatory posture. Part Six examines a trip to Macau taken by the then GWC chair and Director General (**DG**) of the Department.

Part One: Main concepts

Meaning of 'conflicts of interest'

- 4 The phrase 'conflicts of interest' is not defined in the terms of reference, the *Gaming and Wagering Commission Act 1987* (WA) (**GWC Act**) or the *Casino Control Act 1984* (WA) (**CC Act**). The meaning of the phrase that the PCRC has used is that contained in the *Conflicts of Interests: Guidelines for the Western Australian Public Sector* (**Conflicts Guidelines**), being 'a situation arising from conflict between the performance of public duty and private or personal interests' whether the conflict 'may be actual, or be perceived to exist or potentially exist at some time in the future'.¹
- 5 That meaning is set out in more detail in Chapter One: Subject Matter of Inquiry and Terms of Reference.

Conflicts of Interests Guidelines for the Western Australian Public Sector

- 6 The GWC and the Department each presently has a code of conduct (**GWC Code of Conduct** and **Departmental Code of Conduct**, respectively, and together, **Codes of Conduct**) prepared pursuant to the Public Sector Commissioner's Instruction 8 (**Instruction 8**).² Both codes seek to define a conflict of interest consistently with the definition in the Conflicts Guidelines.
- 7 Consistently with the PCRC's view, the Conflicts Guidelines also provide that 'although CEOs and senior managers have a particularly important role in ensuring conflict of interest situations are managed appropriately within an organisation, identifying a conflict of interest is an individual responsibility.'³
- 8 The Conflicts Guidelines provide the '6 Rs', to manage conflicts of interest. In summary, these are to:
 - a. record the disclosure of the conflict of interest;
 - b. restrict the officer's involvement in the manner;
 - c. recruit an independent third party to oversee or review the integrity of the decision-making process where it is not possible for the officer to restrict their involvement in a matter involving conflict;
 - d. remove the officer from involvement in the matter;
 - e. relinquishment by the officer of the personal or private interests; and
 - f. resignation of the officer if the conflict cannot be resolved any other way.⁴
- 9 These are practical guidelines for public sector agencies and officers in managing conflicts of interest.

Regulatory capture

- 10 Regulatory capture can be broadly understood as a situation in which a government regulatory agency is 'influenced',⁵ or 'becomes dominated by',⁶ the industry or interests it regulates. This includes a circumstance where public sector employees serve the interests of the private entities they are supposed to monitor.⁷ In the context of gambling regulation, it has been said that the terms co-optation and regulatory capture:⁸

refer to the interdependence that can emerge in the relationship between the gaming industry... and the formal oversight mechanisms. That is, regulatory personnel come to share a view that recognizes the importance of sustaining revenues that accrue to casino operators and their government masters ...
- 11 The threat of regulatory capture has been noted in the United States, with one commentator observing:⁹

Once gambling begins, regulators are susceptible to interest alignment for a number of reasons. First, the people who are most knowledgeable about the gambling industry are often those with experience working on the private side of the industry. Years of contact with gambling operators may lead regulators to form impressions of gambling as an entirely benign business. They may view threats to gambling as threats to their own jobs, or may develop an interest in leaving the public sector for a higher-paying job in the industry.
- 12 It might therefore be said that there is an avenue for regulatory capture where the industry is able to persuade the regulator that the industry's interests are in fact the interests of the relevant government body.¹⁰

- 13 The most important consequence of regulatory capture is that the regulator does not robustly and independently perform its role to hold the casino licensee accountable for its conduct, or otherwise ensure that the licensee complies with its regulatory obligations. If this risk were to be realised at Perth Casino, it would have the potential to affect adversely the effectiveness of regulation to mitigate the risks associated with casino operations and the fact and perception of the independence of the regulator from the casino operator.
- 14 The obligation of the regulator to do what is reasonable to mitigate the risk of regulatory capture may therefore be seen as implicit in the objectives of the legislative framework for the regulation of Perth Casino and the pursuit of those objectives in the public interest.
- 15 The standard of conduct expected of a casino licensee when operating pursuant to the licence is informed by the public interest, and includes the expectation that the licensee and its associates will refrain from acting with an intent to 'capture' the regulator and that the licensee will do what is reasonable to support and maintain the fact and perception of the independence of the regulator and the effectiveness of the regulator and casino regulation.
- 16 In this context, the effective identification and management of conflicts of interest contributes significantly to the mitigation of the risk of regulatory capture.

Regulatory posture

- 17 The notion of regulatory posture can be described as the attitude or approach the regulator and licensee should adopt in respect of their interaction with each other.
- 18 An appropriate regulatory posture has the purpose of fostering a functional and productive relationship between the regulator and the licensee which observes both the fact and appearance of the accountability of the licensee to the regulator as the body that oversees the regulation of the operator in the public interest and the independence and objectivity of the regulator in carrying out that role.
- 19 The adoption by the regulator and the licensee of an appropriate regulatory posture serves the purposes of supporting and maintaining the fact and perception of the independence of the regulator, the effectiveness of the regulator and casino regulation and public confidence in those matters.
- 20 To achieve these purposes, an appropriate regulatory posture by both regulator and licensee will be characterised by honesty, openness and mutual respect, as well as professionalism, objectivity and the requisite degree of formality.
- 21 The requirement for the regulator to adopt an appropriate regulatory posture may be viewed as implicit in the objectives of the legislative framework for the regulation of Perth Casino and the pursuit of those objectives in the public interest. The requirement for the licensee to adopt an appropriate regulatory posture may be viewed as an aspect of the expectation that the licensee will be honest, open, competent and accountable in its dealings with the regulator.

Part Two: Systems and processes to identify and manage conflicts of interest

GWC Code of Conduct

Adoption of the GWC Code of Conduct

- 22** A version of the GWC Code of Conduct was first adopted by the GWC in November 2014 and implemented from 1 January 2015.¹¹ There have been two amendments to the GWC Code of Conduct since then.¹²

Amendment to GWC Code of Conduct in January 2018

- 23** The GWC Code of Conduct was 'updated as a result of the Machinery of Government changes (which came into place on 1 July 2017)' so as to reflect the new arrangements such as by 'changing the name of the Chairman and references to the new Department name and associated aspects'.¹³ The new version took effect in January 2018.¹⁴
- 24** Departmental officers considered whether these amendments to the GWC Code of Conduct required the GWC's endorsement but decided not to seek that endorsement because the changes were only 'cosmetic'.¹⁵ The amendments to the code were not referred to in any GWC meeting agenda or minutes.
- 25** The PCRC concludes that the Department amended the GWC Code of Conduct in January 2018, albeit not substantially, without seeking the GWC's ratification of the amendments. The decision not to do so was made after considering whether the amendment should be taken to the GWC and so was not a mere oversight.
- 26** As a matter of proper governance, any changes to the GWC Code of Conduct should be approved by the GWC. Pursuant to Instruction 8, it is the GWC, not the Department, that has the responsibility to develop and implement any code of conduct in respect of the GWC's members.
- 27** The PCRC finds that, in amending the GWC Code of Conduct in January 2018 without seeking the approval of the GWC, the Department failed to act in accordance with its proper role in providing support to the GWC in updating its code of conduct, albeit that the failure was relatively minor.

Amendment to GWC Code of Conduct in March 2021

- 28** There was a second amendment to the GWC Code of Conduct in March 2021.
- 29** At the GWC meeting on 23 March 2021, an agenda paper titled 'Governance matters' was presented to the GWC.¹⁶
- 30** The agenda paper advised GWC members that a new conflict of interest register had been established to replace the practice of only recording conflict declarations in meeting minutes and that a form for declaring conflicts had been created. The form includes a requirement for the person making a declaration to indicate the type of conflict (whether it be an actual, perceived or potential conflict of interest, or pecuniary or non-pecuniary interest) and to give a brief description of the conflict. The remainder of the form leaves space for an assessment, note of the decision or action and signature of the GWC chair.
- 31** The agenda paper also informed the GWC members that the 'Commission's Code of Conduct has been updated'.¹⁷ A marked-up version of the GWC Code of Conduct was attached to the agenda paper.¹⁸

- 32** The substantive changes to the GWC Code of Conduct were all in the section headed 'Conflicts of interest'. There were three changes of substance:
- a. the introduction of a requirement for GWC members to complete a 'Declaration of Conflict of Interest Form' to be signed by the chair at the next GWC meeting or, in the case of the chair, a Declaration of Conflict of Interest form to be signed by the Executive Director Human Resources (an employee of the Department);
 - b. an amendment to the provision providing that a member declaring 'a conflict' on a matter would remove themselves from the discussion and decision making on the matter so that a member would now only remove themselves if they had 'an actual conflict'; and
 - c. the introduction of a requirement for the Executive Officer of the GWC (an employee of the Department) to record the declaration in the GWC's Conflict of Interest register, being an electronic departmental file.
- 33** The agenda paper explained that the GWC Code of Conduct would be reviewed following the conclusion of the PCRC 'to implement any applicable recommendations'.¹⁹

Scope of application of GWC Code of Conduct

- 34** From 1 January 2015 until 31 October 2021, the GWC Code of Conduct was the only policy document adopted by the GWC in respect of conflicts of interest and the receipt of gifts, benefits and hospitality.²⁰
- 35** On its face, the GWC Code of Conduct applies to GWC members but does not apply to departmental officers acting under the authority of the GWC, exercising delegated power on behalf of the GWC or providing assistance to the GWC. The implication from the text of the code is that the conflicts of those departmental officers will be managed under departmental arrangements.
- 36** It is generally understood by GWC members and departmental officers that the GWC Code of Conduct applies only to GWC members and not to departmental officers and that departmental officers are subject only to the Departmental Code of Conduct.²¹
- 37** Instruction 8 appears to require statutory bodies, such as the GWC, to develop, implement and promote, and to ensure compliance with, a code of conduct applicable to the conduct of the statutory body 'and its employees'.²² There is no requirement for the code of conduct to apply to parties acting on behalf of, or exercising the delegated authority of, the body.
- 38** The PCRC concludes that the GWC Code of Conduct does not apply to those the GWC authorises to act on its behalf or those to whom it delegates powers or functions.

Content of GWC Code of Conduct relevant to conflicts of interest

- 39** The GWC Code of Conduct, when adopted in 2014, gave the following general guidance as to conflicts of interest:²³

Conflicts of Interest and Gifts and Benefits

Conflicts of interest arise where there is a conflict between the performance of a public duty and private, or personal, interests. Conflicts may involve personal, financial or political interests and may be actual, perceived or potential.

Commission members have an obligation to perform their official duties in the public interest and not to use their position or authority for personal gain or to cause detriment to others. This includes identifying, declaring and appropriately managing any conflicts of interest in the public interest and the interests of the Commission.

Conflicts of interest can be a key risk area for Commission members. It is almost inevitable members will have a conflict at some point as they are either appointed to represent particular stakeholders, or for their expertise and relationships with local governments, communities and private industry.

It is not wrong to have a conflict of interest. What is important is that the Commission manages a conflict in the public interest and in accordance with any applicable legislation or requirements, acknowledging the fiduciary relationship of Commission members. It is also critical for members to consider the public perception of a conflict of interest, regardless of whether it actually exists. A poorly managed perceived conflict of interest can be just as damaging to the Commission's reputation and operations as a poorly managed actual conflict of interest.

- 40** The code then gave more detailed guidance in respect of three matters. The first concerned gaming at the casino:²⁴

Crown Casino Operations

To remove any perception of a conflict of interest between the Commission and the operation of the only casino in the State, section 23(2) of the Casino Control Act 1984 (CC Act), stipulates that a member of the Commission, Chief Casino Officer, Government Inspector or an authorised officer appointed under section 9(1) of the CC Act, is not permitted to participate in gaming at the casino.

- 41** The second was conflicts of interest more generally:²⁵

Conflicts of Interest

As members of the Commission, we will:

keep our private commercial or political interests separate from our Commission role;

openly declare, in the first instance to the Chairman (or in the case of the Chairman, to the members), matters relating to a private interest that may conflict, or be perceived to conflict, with public duty;

when declaring a conflict of interest on a matter before the Commission, remove ourselves from discussion and decision making on the matter; and

ensure the Commission meeting minutes record any declarations of conflict so they are transparent and capable of review.

- 42** The third was gifts and benefits:²⁶

Gifts and Benefits

As members of the Commission, we will:

not accept offers of gifts, benefits or hospitality that may be perceived as a conflict of interest - any decision to accept a gift, benefit or hospitality will be done openly and placed on the official record;

not accept gifts, benefits or hospitality:

likely to place us under an actual or perceived financial or moral obligation to other organisations or individuals; or

if they could reasonably be seen by the public, knowing the full facts, as intended or likely to cause us to act in a particular way or deviate from our public duty;

maintain a register of all gifts accepted, and ensure these are of token value only;

not demand or accept in connection with our official duties any fee, commission, reward, gratuity or remuneration of any kind which is outside the scope of our entitlements; and

not use our public position for personal profit or gain or to cause detriment to others.

- 43** The substance of the guidance remains unchanged in the latest version of the code but there have been changes to the declaration procedures, as described above.
- 44** The PCRC concludes that, while the general guidance contained in the GWC Code of Conduct is adequate as to the nature of a conflict of interest and how it is to be addressed, the more detailed guidance is inadequate. This is so for several reasons.
- 45** First, while there is detailed guidance in respect of participation in casino gaming, there is not detailed guidance about how conflicts can arise in other ways for a GWC member in respect of casino operations and interactions with the Perth Casino licensee. For example, it may not be advisable for GWC members to stay at a hotel at the Crown Perth Resort because there is a potential for gratuities to be provided, such as a free room upgrade or a free bottle of champagne, which may be perceived as benefits being provided by reason of the person's position as a member of the regulator.
- 46** Second, the detailed guidance does not address a type of conflict of particular relevance in a regulatory context, being a conflict of interest arising from a personal relationship. The independence and objectivity of the regulator in the performance of its function is an important contributor to its effectiveness and the maintenance of the public's trust and confidence in the regulator. Personal relationships between officers of the regulator and officers of the licensee, if not properly managed, have the potential to compromise the regulator's objectivity and independence and the public's perception of the same. The GWC Code of Conduct does not explicitly identify how personal relationships give rise to conflicts of interest and how such conflicts should be managed.
- 47** Third, and related to the second point, the detailed guidance as to the acceptance of gifts and benefits requires value judgments to be made by the intended recipient and may lead the reader to understand that conflicts of interest only arise from the receipt of gifts and benefits 'that may be perceived as a conflict of interest'. No guidance is given as to by whom or in what circumstances. Neither is the point made that gifts and benefits should not be offered or given by GWC members to officers of the Perth Casino. Gifts and benefits, whether received or given give rise to conflicts of interest. This is not to say that every cup of coffee or biscuit at a business meeting should have to be declared. The Code could deal with trivial or low value gifts and benefits in the same manner as the Department's Gifts, Benefits and Hospitality Policy, details of which follow.
- 48** Fourth, the GWC Code of Conduct should provide guidance about when the disclosure of attendance by GWC members at social events at the Crown Perth Resort is required and when it is not. Such disclosure would create and foster a culture of transparency, which should in turn give confidence to the public of the GWC's independence. This particular issue is examined in more detail in Part Five of this chapter.
- 49** The PCRC recommends that the GWC Code of Conduct should be expanded including by providing additional guidance on how conflicts can arise for a GWC member in respect of casino operations and interactions with the Perth Casino licensee.

Removing conflicted members from discussions

- 50** From its introduction and until March 2021 the GWC Code of Conduct required members when declaring a conflict of interest on a matter before the Commission to 'remove' themselves from the discussion and decision making on the matter.²⁷

- 51 As referred to above, the amendments made to the GWC Code of Conduct in March 2021 change the practice for managing conflicts of interest so that a member is only required to remove themselves from discussion and decision making if the member declares an 'actual' conflict. The code does not explain the difference between a declarable conflict of interest and an 'actual conflict of interest on a matter before the Commission.' If it is that the subject matter of the conflict of interest is being discussed or determined by the GWC, the word 'actual' is redundant and likely to mislead.
- 52 The GWC Code of Conduct appears to be inconsistent with s 17(5) of the GWC Act, to the extent that the code addresses the management of conflicts in respect of pecuniary interests. Section 17(5)(a) requires a member who has a direct or indirect pecuniary interest in a matter referred to the GWC to disclose the interest to the person presiding at the next GWC meeting. Section 17(5)(b) provides that the member may participate in the discussion of the GWC in relation to the matter but shall not vote on that matter unless the person presiding at the meeting determines that the interest could not reasonably be regarded as likely to have an influence on the exercise of the vote and indicates that the member may vote. Section 17(6) provides that the decision of the member presiding is final.
- 53 The PCRC recommends that the GWC Code of Conduct should be amended so that the procedure it prescribes for the declaration and management of conflicts of interest in respect of pecuniary interests is consistent with s 17 of the GWC Act.

Process for review of GWC Code of Conduct

- 54 Since it was first adopted in 2014, the GWC Code of Conduct has contained the following statement:²⁸
- REVIEW DATE
- The Code will be reviewed on a biennial basis effective from 1 January 2015.
- 55 The requirement to regularly review the GWC Code of Conduct is an aspect of the good governance of the GWC, such that the code is updated when appropriate to ensure that the contents reflect a standard of conduct that continues to maintain public trust and confidence in the GWC.
- 56 The GWC has only reviewed the GWC Code of Conduct once, in March 2021, which was more than six years after the code first came into effect.²⁹
- 57 The PCRC concludes that, contrary to the requirements of the GWC Code of Conduct, the GWC has not engaged in a regular review of that code on a biennial basis.
- 58 The PCRC recommends that a biennial review of the GWC Code of Conduct should be conducted in accordance with the review provision in the code including by reference to the guidance provided by the Public Sector Commissioner from time to time.

Conflicts of Interest Policy

- 59 The current GWC chair, Lanie Chopping (**Chopping**), gave evidence that the GWC's Strategic Work Program 2021/22 includes the development of a conflicts of interest policy (**GWC Conflicts of Interest Policy**).³⁰ The GWC was presented with a draft conflicts of interest policy at its meeting in October 2021. The policy was considered and endorsed by members out-of-session. It was signed by the Chair on 31 October 2021.³¹
- 60 The GWC Conflicts of Interest Policy was provided to the Public Sector Commission for review.³² The Public Sector Commission suggested improvements to the policy.³³ These are to be considered further during a review of the policy in 2022.³⁴

- 61 The policy was not tendered in evidence to the PCRC. As a consequence, the PCRC is not in a position to assess that document, including whether it addresses the deficiencies in the GWC Code of Conduct identified above.

Register of conflicts

- 62 Since the endorsement of the GWC Conflicts of Interest Policy on 31 October 2021, at the request of the GWC Chair, the GWC's register of conflicts has been tabled at GWC meetings.³⁵

Gifts and benefits received by GWC members

- 63 As referred to in Chapter Five: Regulation of Perth Casino the Public Sector Commission has, since 2009, developed and published guidance manuals for the good governance of statutory authorities. The guidance refers to a gifts and hospitality register in its checklist for good governance.³⁶
- 64 As already noted, the GWC Code of Conduct provides that the GWC will 'maintain a register of all gifts accepted and ensure these are of token value only'.³⁷ The code does not require a register of hospitality to be maintained.
- 65 Until late 2021 or early 2022, the GWC did not maintain a register of gifts.³⁸ That was contrary to the GWC Code of Conduct. The GWC also did not maintain a register of hospitality. The process that has been in place since March 2015 is for GWC members to declare gifts and hospitality in response to a standing agenda item.³⁹
- 66 The fact that the GWC did not maintain a register of gifts and hospitality means that the GWC had not, until very recently, acted in accordance with the guidance for good governance issued by the Public Sector Commission.
- 67 The lack of a central register recording those declarations diminished overall transparency. The process of recording declarations of gifts and hospitality in minutes, rather than in a register, means that identifying previous declarations requires reference back to minutes from previous meetings. An accurately maintained central register increases the likelihood that any concerning pattern of conduct or other circumstance in respect of gifts and hospitality will be identified quickly so it can be responded to appropriately.
- 68 In late 2021, the GWC considered and approved out-of-session a *Gifts, Benefits and Hospitality Policy* proposed by the Department. It was signed by the GWC chair on 31 October 2021. The GWC's Gifts, Benefits and Hospitality Policy was provided to the Public Sector Commission for review.⁴⁰ The Public Sector Commission suggested improvements to the policy.⁴¹ These are to be considered further during a review of the policy in 2022.⁴²
- 69 A register has now been established in which to record declarations made pursuant to the GWC's Gifts, Benefits and Hospitality Policy.⁴³

Departmental Code of Conduct

Scope of application

- 70 The Departmental Code of Conduct applies to all departmental officers.⁴⁴
- 71 The CCO is appointed pursuant to s 9 of the CC Act as an officer of the GWC and has functions and duties conferred or imposed under the CC Act,⁴⁵ as well as by delegation from the GWC.⁴⁶ As explained in Chapter Five: Regulation of Perth Casino since the GWC's inception, the position of CCO has been occupied by a departmental officer. The GWC has

not established or implemented a system for the identification or management of conflicts of interest of the CCO.

- 72** The PCRC consequently concludes that the Departmental Code of Conduct applies to the CCO, as well as departmental officers engaged in casino regulation as delegates or agents of the GWC.

Content of Departmental Code of Conduct relevant to conflicts of interest

- 73** The Departmental Code of Conduct was first implemented on 27 November 2017.⁴⁷ The code was amended in May and September 2020,⁴⁸ although those amendments do not appear to have related to the provisions in the code concerning conflicts of interest.⁴⁹
- 74** The current version of the Departmental Code of Conduct, dated 15 April 2021, gives the following guidance as to conflicts of interest:⁵⁰

Principle 6: Conflicts of interest, gifts and benefits

The community has a right to expect that we will perform our duties in the public interest, not for personal gain or to cause detriment to others. As such, we must not allow our private interests to influence our decisions or actions. This includes appropriately identifying, declaring and managing any personal or private interests that conflict with the broader public interest.

Conflicts of interest arise where there is a conflict between the performance of public duty and private or personal interests. Conflicts may involve personal, financial or political interests and may be actual, perceived or potential. A conflict of interest in itself is not necessarily wrong or unethical.

Conflicts of interest may occur in relation to secondary employment. Secondary employment refers to paid or voluntary work undertaken outside of official duties with the Department. This includes self-employment, partnerships and family businesses. Employees are required to obtain approval before engaging in secondary employment. Employees in unpaid and volunteer roles do not require approval, but actual, perceived and potential conflicts of interest with their paid employment, are to be declared and considered in line with relevant departmental policies.

It is not always possible to avoid a conflict of interest; therefore, it is the management of that conflict, actual, perceived or potential, that is important. You must declare any conflict of interest of which you become aware. Your manager will manage the implications of the conflict.

Conflicts of interest arise when personal interests can influence, or appear to influence, our decision-making responsibilities in our work duties. This includes the receiving or offering of gifts, benefits and hospitality. The Department's credibility rests on our transparency and impartiality so it is important to assess if the acceptance or offering of a gift, benefit or hospitality could be construed as, or constitute, a conflict of interest.

Conduct Expectations

I will:

- identify, declare and appropriately manage any conflict of interest, whether actual (conflict is present now), perceived (conflict is only believed to exist) or potential (conflict is a future possibility), between personal interests and public duty;
- not engage in political or other outside activities that may conflict with official duties and responsibilities;

- politely refuse all offered gifts, unless previously approved by the Director General (or statutory authority equivalent), and register accepted gifts on the Department's gift register;
- seek approval before undertaking secondary paid employment, appointments and representative roles;
- declare any actual, perceived, or potential conflicts of interest that may arise from undertaking unpaid / volunteer roles;
- not use work time, resources, equipment, funding, or information to support secondary employment; and
- not promote the secondary employment's products or services within the Department, its computer networks, websites or its social media.

- 75** The Departmental Code of Conduct has deficiencies relevant to the identification and management of conflicts of interests by departmental officers who perform duties under the CC Act. The Departmental Code of Conduct uses different terminology to describe conflicts of interests. This is apt to confuse officers reading it as to whether they are required to declare all conflicts between their public duty and private interests or only those that they adjudge could influence, or appear to influence, their decision making. The Departmental Code of Conduct makes clear that officers must refuse all gifts unless their receipt has been approved by the DG and therefore does not call for the value judgments required under the GWC Code of Conduct. However, the Departmental Code of Conduct does require value judgments to be made around conflicts arising from volunteer positions. Further, the Departmental Code of Conduct does not address the issue of the attendance at social events at the Crown Perth Resort by officers who perform duties under the CC Act.
- 76** The PCRC recommends that the Departmental Code of Conduct should be expanded to generally require the disclosure of attendance at social events at Crown Perth Resort by departmental officers who perform duties under the CC Act.

Other departmental policies

- 77** The Department has also produced to the PCRC a Gifts, Benefits and Hospitality Policy⁵¹ and a Gifts, Benefits and Hospitality Guide.⁵² Both are dated 11 November 2020. The Department has also more recently adopted a Managing Conflicts of Interest Guideline.⁵³

Gifts, Benefits and Hospitality Policy

- 78** The Gifts, Benefits and Hospitality Policy gives the following guidance on accepting gifts, benefits and hospitality:⁵⁴

At times, public servants may be offered gifts, benefits or hospitality. In certain situations, it may be appropriate to receive from, or offer, to an external stakeholder or visiting delegation, a gift, benefit or hospitality. Receiving or offering gifts, benefits and hospitality can create the perception that the department has a conflict of interest, may be unduly influenced, or is providing preferential treatment to specific individuals or organisations. As a result, this risk must be carefully managed to ensure staff members are informed on how to respond to receiving and or offering gifts, benefits or hospitality.

Staff members:

must not seek or solicit invitations, gifts, benefits or hospitality.

must decline all offers of gifts or benefits that:

are money related or items easily converted to money;

give rise to an actual, potential or perceived conflict of interest;
 may adversely affect their standing as a staff member or which may bring the department or the State Public Sector into disrepute;
 are non-token gifts without a legitimate business purpose;
 are non-token gifts over the value of \$300 (which are not a Ceremonial Gift); or
 are made by a person or organisation with the intention of lobbying Ministers, Members of Parliament or public sector agencies.

Any invitation, gift or benefit accepted is the property of the department and is not the staff members to keep or use without approval of their Executive Director. Staff members may accept invitations, gifts, benefits and hospitality where there is a legitimate business purpose. Examples include:

representing the department, presenting awards, delivering speeches or stakeholder engagement.

maintaining sector knowledge on trends and current practices or issues when it is an essential requirement of the staff member's duties.

dealing with members of international communities or culturally and linguistically diverse Australian communities where it may be customary or protocol to give or receive a gift for business purposes.

professional development when it is a direct requirement of the staff member's duties as defined in their Job Description Form.

Precluded staff members may accept invitations, gifts, benefits and hospitality where there is a legitimate business purpose. This means that it will further the conduct of official business or other legitimate goals of DLGSC, the public sector or State.

In this situation, approval of acceptance must be sought from the Line Manager and Executive Director and declared in the Gifts Register.

All staff members may accept token hospitality:

where it would not be reasonably perceived within or outside the organisation as influencing the staff member or the department in an actual, potential or perceived conflict of interest;

it is received as part of, or ancillary to a meeting; and

if the value of the hospitality does not exceed \$50.

Staff members who are unsure about accepting a gift, benefit or hospitality must seek advice from their Line Manager and Executive Director.

79 Relevantly, the Gifts, Benefits and Hospitality Policy defines the following terms:⁵⁵

Legitimate business purpose is when gifts, benefits and hospitality are accepted or provided for a business purpose, and are considered to further the conduct of official business or other legitimate goals of DLGSC, the public sector or State.

Non-token gift is a gift, benefit or offer of hospitality that is offered to the recipient, with a value of more than \$50.

Precluded staff member means a staff member performing duties that relate to:

- a) monitoring, auditing, inspecting, investigating or prosecuting DLGSC regulated entities;
- b) the preparation, evaluation and awarding contracts for procurement of goods and services; or

- c) all stages of the recruitment process (if the offer is from a person subject to the recruitment process).

DLGSC Gifts, Benefits and Hospitality Register (Gifts Register) is the department's centralised gifts register and is managed by Corporate Governance. It is an electronic record of all gifts, benefits and hospitality received by a staff member.

At a minimum it is suggested the register includes:

- the name and position title of the staff member;
- a description and estimated value of the gift, benefit or hospitality;
- the name and title of the person or organisation offering the gift, benefit or hospitality and their relationship to the officer or authority;
- a reason for the offer;
- any previous offers by the person or organisation over a certain period;
- whether the gift, benefit or hospitality was accepted or declined, and its location;
- how conflicts of interest have or will be managed;
- approval by the staff member's line manager, including the name of the line manager; and date (within 10 working days of receiving a gift or benefit and approval before the attendance of any events);
- any similar gifts, benefits or hospitality provided to other officers of the authority around the same time.

...

Token gift is a gift, benefit or hospitality offer that has a value not greater than \$50 and considered to be of inconsequential or trivial value to both the offeror and offeree. Token gifts should also be infrequent.

Token gifts may include:

- promotional items such as pens, stationery and trade publications;
- modest hospitality which would be considered a basic courtesy, such as refreshments offered during a work-related meeting; or
- flowers or small gifts.

A free invitation or ticket to an event is not a token offer.

- 80** The guidance in the policy is generally inconsistent with the Departmental Code of Conduct, which provides that departmental officers must 'politely refuse all offered gifts, unless previously approved by the Director General'. The inconsistency is unhelpful in terms of ensuring that departmental officers have a clear understanding of how to respond to offers of gifts, benefits and hospitality.
- 81** The policy is generally deficient because although it attempts to give helpful guidance it lacks clarity and would be difficult to apply. Examples include:
 - a. whether an officer may accept a gift, benefit or hospitality that is not for a 'legitimate business purpose' is not clear;
 - b. the effect of the policy appears to be that a departmental officer must potentially make several value-based assessments about the application of the policy. One example is whether a gift, benefit or hospitality has a 'legitimate business purpose', a term which is defined twice in the policy and in slightly different terms. Another is that the policy does not state how an officer bound by the policy is to ascertain whether the offeror of a benefit has an intention to lobby Ministers, Members of Parliament or public sector agencies;

- c. read with the Gifts, Benefits and Hospitality Guide,⁵⁶ it is not clear whether the policy stipulates that a departmental officer can only accept token benefits (including such things as tea or coffee offered in the course of their duties) with verbal approval from their Line Manager;
 - d. the definition of a token gift is ambiguous in that it provides no guidance as to the distinction between a gift, benefit or hospitality of a value less than \$50 and one that is of 'trivial' value; both conditions must be satisfied before a gift, benefit or hospitality may be accepted;
 - e. the policy describes why gifts and benefits should not be offered by departmental staff but does not go on to prohibit them; and
 - f. the policy describes how a staff member's behaviour in respect of gifts, benefits or hospitality may give rise to a 'perception' that the Department has a conflict of interest, but fails to point out that a staff member who acts in such a way creates a conflict of interest for themselves.
- 82** While departmental staff generally are not required to declare token gifts, departmental officers falling within the policy's definition of 'precluded staff member,' must declare in the register all gifts received.⁵⁷ The definition of 'precluded staff member' includes those 'monitoring, auditing, inspecting, investigating or prosecuting DLGSC regulated entities'.⁵⁸ That definition clearly applies to departmental inspectors. However, it may leave room for doubt as to whether it applies to other departmental officers who are involved in casino regulation.
- 83** The policy provides that precluded staff members may accept invitations, gifts, benefits and hospitality where there is a 'legitimate business purpose' as defined. In that case, the departmental inspectors would need approval to accept the gift from their Line Manager and Executive Director. The PCRC concludes that there is a further deficiency in the policy to the extent that it is unclear whether precluded staff members may accept gifts, benefits or invitations (that is, hospitality) for their own use if approval is given.
- 84** The Gifts, Benefits and Hospitality Policy also provides as follows:⁵⁹
- Attending Events in a Personal Capacity**
- Attending events and activities in a personal capacity requires reasonable judgement as to whether it should be declared. If a staff member considers that attending an event in a personal capacity should be declared, their decision should be guided by any relationship between the event and the public officer's role in the department. If in doubt, the staff member should consult with their Line Manager and Executive Director for further advice.
- 85** This might be seen as giving some indication to departmental officers involved in casino regulation that they should consider declaring attendance at events in a personal capacity at the Crown Perth Resort. However, the guidance is given at a very high level and with no specific reference to departmental inspectors or the Crown Perth Resort. The distinction between the acceptance of an invitation for an officer's personal use with approval, referred to earlier in the guidance, and attending an event in a personal capacity is unclear. The PCRC concludes that this policy therefore does not remedy the deficiency in the Departmental Code of Conduct, which deficiency is shared with the GWC Code of Conduct, that there is no specific guidance about when to disclose attendance at social events at Crown Perth Resort.
- 86** The Department has informed the PCRC that a review of the Department's Gifts, Benefits and Hospitality Policy and Guide will include an update of examples relevant to the management of gifts, benefits and hospitality. The review is scheduled to be completed by June 2022.⁶⁰

- 87 Since March 2021, the Department has had an online 'Gifts, Benefits and Hospitality Register'. An online form allows departmental officers to declare offers of gifts, benefits and hospitality and receive a direction about whether the officer is approved to accept the offer or should reject it. The Department has informed the PCRC that the new system supports the maintenance of a central register, as well as reporting and monitoring of gifts, benefits and hospitality.⁶¹

Managing Conflicts of Interest Guideline

- 88 The Department adopted a Managing Conflicts of Interest Guideline on 11 August 2021.

- 89 This guideline addresses conflicts arising from personal relationships. It provides that 'interests' include:⁶²

Indirect interests, such as the personal, family, professional or business interests of individuals or groups with whom the staff member is, or was recently, closely associated.

...

Non-pecuniary interests, which includes any bias to favour or prejudice resulting from personal or family relationships, such as friendships, enemies, sporting, cultural or social activities.

- 90 The guideline states:⁶³

It is important that all staff members understand their obligation to perform their duties in the public interest and act with the highest level of integrity. Private or personal interests must not, or appear to, conflict with their public duty.

- 91 The guideline purports to identify common workplace scenarios that can potentially lead to conflicts of interest situations including 'managing staff/making decisions where a current, or previous, personal relationship exists'. Confusingly, the list mixes risk areas in the workplace where a conflict of interest will have to be managed with areas of life which may give rise to personal interests.⁶⁴

- 92 Appendix A to the guideline is a conflict of interest decision making tool and one of the questions it poses is:⁶⁵

Do you have significant family or other personal relationships or close associations with any applicants, contractors, clients or other people involved in this matter?

- 93 While the guideline states that departmental officers are responsible for identifying, assessing and declaring any conflict of interest, and can use Appendix A to assist, it also provides:⁶⁶

Conflict of interest scenarios are often complex, and individuals may not always be the best judge for oneself. If you are unsure, you are encouraged to seek advice from a manager, Executive Director or Human Resources.

- 94 The Managing Conflicts of Interest Guideline states that as soon as a conflict of interest is identified, the departmental officer must declare the conflict to their manager. It provides that the departmental officer and their manager will then work together to complete a declaration of the conflict, which is referred to as a 'Conflict of Interest eForm'.⁶⁷ It appears that the eForm has been linked to the guideline since 25 August 2021.⁶⁸

- 95 The guideline then addresses the formulation of a management plan. It states:⁶⁹

Once a manager is aware of, or a staff member discloses [a conflict of interest], the manager and staff member will discuss the nature of the situation, assess the risk to the DLGSC and formulate a management plan to either manage or resolve the conflict.

- 96 The guideline then gives guidance on the management strategies that are available to be used in formulating a management plan.⁷⁰ Appendix C to the guideline addresses the management strategies in more detail.⁷¹ The guideline also provides that where a matter is complex and a decision about how to manage it is unable to be reached, it may be referred to an independent consultant for review or legal advice sought.⁷² The guideline refers appropriately to the '6 Rs' of conflict of interest management as management strategies.
- 97 The guideline also addresses the need for ongoing or new declarations. It states:⁷³
- A new declaration must be submitted:
 every 12 months, for ongoing situations
 whenever there is a change in personal circumstances and/or a change in work responsibilities that could pose a heightened risk to the DLGSC and/or give rise to a new conflict of interest.
- 98 The Department has informed the PCRC that it has now established a centralised online register of declared conflicts, which includes approved management plans. The register is tabled at the Department's Corporate Executive meeting each month.⁷⁴
- 99 The PCRC concludes that the Managing Conflicts of Interest Guideline provides sufficient guidance on the conflicts of interest arising from personal relationships. Further, the effective implementation of the Managing Conflicts of Interest Guideline and a centralised registers for recording conflicts of interest, gifts, benefits and hospitality, as envisaged by the Department, would constitute an appropriate system for the declaration and management of conflicts of interest.

Part Three: Identifying and managing conflicts of interest in practice

- 100 An important aspect of good governance by the GWC is that in practice it properly considers declarations of conflicts of interest when they arise, it investigates conflicts when necessary, and determines in a timely way what action should be taken to manage them.
- 101 The PCRC has examined the adequacy and effectiveness of the GWC's practices in this regard, primarily through the use of selected case studies. The PCRC has considered and assessed the GWC's identification and management of conflicts of officers, agents or delegates who are subject to the Departmental Code of Conduct. As an aspect of that examination the PCRC has considered the support provided to the GWC by the Department to identify and manage conflicts of interest.

GWC's oversight of conflicts of interest of departmental officers

- 102 GWC members gave evidence to the effect that they understand the GWC Code of Conduct does not require departmental officers to disclose conflicts of interest to the GWC if they carry out duties or exercise powers of the GWC⁷⁵ and that they have assumed the Departmental Code of Conduct would apply to departmental officers.⁷⁶
- 103 As already noted, Instruction 8 does not require the GWC to develop and enforce a code of conduct with respect to those authorised to act on its behalf. Nevertheless, the GWC is responsible for overseeing that its delegates and agents discharge the duties and exercise the powers of the GWC appropriately. This necessarily includes the responsibility of the GWC to satisfy itself that any conflicts of interest that arise for its delegates and agents are properly identified and managed. That responsibility could be discharged by the GWC satisfying itself of the adequacy of the system established, implemented and overseen by the Department.

- 104** Against this background, the GWC ought to have satisfied itself that there was appropriate oversight and management by the Department of conflicts of interest of, and the receipt of gifts, benefits and hospitality by, the CCO and other departmental officers acting on the GWC's behalf to discharge the GWC's functions and responsibilities.
- 105** There is no evidence that the GWC did so. Prior to May 2021, conflicts of interest declared by departmental officers acting as delegates or agents of the GWC were not notified to the GWC.⁷⁷ It remains the case that there is no process in place to ensure that the GWC is made aware of the receipt of gifts and benefits by its delegates and agents relevant to their role in casino regulation. There is no evidence before the PCRC that, prior to May 2021, the GWC inquired into the effectiveness or otherwise of the Department's practices to identify and manage conflicts of interest or for the declaration and management of the receipt of gifts, benefits or hospitality by departmental officers.
- 106** In February 2021, all departmental officers who occupy positions that support the GWC were asked to declare or re-declare any conflicts of interest.⁷⁸ Several declarations were submitted.⁷⁹ The Department formulated proposed mitigation strategies and, in doing so, sought advice from the Executive Director of the Department's Corporate Services Division.⁸⁰ The declarations and proposed mitigation strategies were put to the GWC at its meeting on 25 May 2021.⁸¹ The GWC endorsed the proposed mitigation strategies.⁸²
- 107** Prior to May 2021 the GWC should have, but did not, satisfy itself that:
- a. the Departmental Code of Conduct contains an adequate process to identify and manage conflicts of interest of departmental officers involved in casino regulation and is properly implemented by the Department;
 - b. the Department's Gifts, Benefits and Hospitality Policy contains an adequate process for the declaration and management of the receipt by departmental officers of gifts, benefits or hospitality relevant to their role in casino regulation and is properly implemented;
 - c. conflicts of interest of the CCO and other departmental officers when acting as delegates or agents of the GWC are otherwise identified and managed appropriately by the Department; and
 - d. the receipt of gifts, benefits or hospitality by departmental officers relevant to their role in casino regulation is otherwise appropriately declared and managed by the Department.

Relationships between departmental inspectors and Perth Casino employees

- 108** The PCRC received evidence about personal relationships between departmental inspectors who carried out duties at Perth Casino on behalf of the GWC and Perth Casino employees.
- 109** Relationships between officers or employees acting on behalf of, respectively, the GWC and the Perth casino licensee should remain appropriately formal, objective and distanced. This is important in order to maintain the independence of the regulator and to avoid any actual or perceived conflict between the interest the GWC has as a regulator to safeguard the public interest in respect of the operation of the casino, on the one hand, and the commercial interests of the licensee or the personal interests of departmental or Perth Casino officers or staff, on the other. It is also important in order to maintain public trust and confidence in the regulator and casino regulation more generally.
- 110** There is only one casino in Western Australia. Casino operations are complex and involve the management of significant risks that have the potential to adversely impact the public

interest. This calls for continuous, intensive departmental and GWC oversight of and interaction with a single licensee. In that context, the actual and perceived independence of those officers directly responsible for such oversight and interaction and the avoidance of conflicts of interest is particularly important.

- 111 Personal relationships that develop or exist between departmental officers involved in casino regulation and Perth Casino staff must be identified and managed so as to preserve the fact and appearance of the regulator's independence and to identify and manage conflicts of interest. The GWC or the Department, or both, should adopt and maintain practices to achieve that objective.

Case study one – Officer A

- 112 Officer A is a former employee of the Department who was a departmental inspector. They carried out duties at Perth Casino for 20 years until about 2005.
- 113 Officer A testified that the Department's approach to conflicts of interest changed over the years. They recalled that when they first started work it was clear that inspectors could not have any relationship with casino employees outside of work but that policy relaxed over time to the point that relationships were not prohibited.⁸³ They said there was no formal policy change, rather an observed change in attitude, concluded by how the Department reacted to those relationships.⁸⁴
- 114 In the early to mid-2000s, Officer A commenced a relationship with a Perth Casino employee who was a table games inspector. They married whilst Officer A was still a departmental inspector.⁸⁵ At that time Officer A was aware of at least three inspectors who were married to Perth Casino employees who were dealers and at least two inspectors who had an immediate family member employed at Perth Casino. Those dealers and inspectors continued to work in those respective roles after they were married,⁸⁶ as did Officer A.
- 115 Prior to the marriage,⁸⁷ Officer A declared their relationship to a Senior Inspector and also to the Director of the Department who held the role of CCO.⁸⁸
- 116 At that time, Officer A's conflict of interest was managed by them not conducting audits of the group of tables, or pit, in which their spouse worked, and by not having involvement in any investigation which might include their spouse.⁸⁹
- 117 In the last year of their career, Officer A was promoted to senior inspector. During that time Officer A's duties did not require them to have work related dealings with their spouse. Officer A accepted, in hindsight, it would have been better for them to have not been involved in casino regulation at all.⁹⁰

Case study two – Officer B

- 118 Officer B has been an employee of the Department since 1990. They initially worked as Casino Inspector/Inspector. In the mid-2000s, they were promoted to Senior Inspector Compliance.⁹¹
- 119 Officer B's family member worked as a croupier at Perth Casino from 2001 to 2007 while they were an Inspector and Senior Inspector Compliance.⁹² Officer B's colleagues at the Department, including the DG at the time, Barry Sargeant (**Sargeant**), their supervisor and other casino inspectors, were aware of their employment at Perth Casino but it was not formally recorded in any way.⁹³
- 120 Officer B said that there were a number of inspectors who had family relationships with Perth Casino staff at the time.⁹⁴ There was no direction given to inspectors about how inspectors should manage having a family member who was a Perth Casino employee or requiring the formal recording of conflicts.⁹⁵

- 121 Officer B did not conduct audits or inspections that would have involved their family member or the gaming tables at which they worked but that was their personal decision and not the result of a direction.⁹⁶ The inspectors that Officer B supervised were not directed to not conduct audits or inspections that would have involved Officer B's family member.⁹⁷

Case study three – Officer C

- 122 As noted above, in February 2021, all departmental officers who occupy positions that support the GWC were asked to declare or re-declare any conflicts of interest.⁹⁸ As a result of that process, Officer C, a departmental inspector, declared that they were a 'personal friend' of a table inspector at Perth Casino,⁹⁹ whose table they may audit and(or) review.¹⁰⁰ It appears that this departmental inspector is no longer performing inspection duties at Perth Casino.¹⁰¹

Oversight within the Department

- 123 Leigh Radis (**Radis**) is Manager of Industry Regulation and Education for Liquor and Gambling.¹⁰² He is a former casino inspector. In his current role, he is the direct report for all of the departmental inspectors and is responsible for preparing their roster. Radis reports to a Director of the Department.¹⁰³
- 124 Radis gave evidence to the PCRC that inspectors within his team have had conflicts of interest and that the declaration and management of those conflicts has, over the years, been handled at a level above him in the Department, being the Director level.¹⁰⁴
- 125 When giving evidence in May 2021, Radis said that a decision had recently been made at Directorate level to ask all departmental officers to declare or re-declare any possible conflicts of interest for review and management. Radis stated that prior to this, he was not aware of any specific process in place to manage conflicts of interest in relation to individual officers.¹⁰⁵
- 126 Radis gave evidence about an inspector who had recently re-declared that their close family member is a licensed employee of Perth Casino.¹⁰⁶ Subsequent to that re-declaration, Radis stated that he had recently received an instruction from his Director that the inspector not be directed to perform any casino-based compliance activities.¹⁰⁷
- 127 Radis' evidence was to the effect that the inspector had declared the relationship when he first joined the Department.¹⁰⁸ Radis told the PCRC that at the time that the declaration was made, there was 'no mitigation strategy in place' to manage conflicts of interest that were declared.¹⁰⁹
- 128 Radis also gave evidence of a process for managing declarations of interest that had been put in place 'fairly recently' and in the order of 'months' before he gave evidence to the PCRC in May 2021. That process was for Radis to report declarations to his Director, who would then discuss the declaration with the Deputy Director General (**DDG**) and the director of Human Resources to decide on the strategies to put in place to manage the conflict.¹¹⁰
- 129 Radis also gave evidence that the Department had not had a process for declarations of relationships between inspectors and casino employees to be communicated to the GWC but that a process for notifying the GWC of such declarations had now been established.¹¹¹
- 130 Sargeant was the DG of the Department from 1992 until 30 June 2017 and, *ex officio*, the GWC chair for the same period.
- 131 Sargeant was asked in the course of giving evidence to the PCRC about whether he was advised during his time as GWC chair of any possible conflicts of interest between an officer of the Department and the casino, other than those involving Connolly.

132 Sargeant relevantly said:¹¹²

I was aware that one of the inspectors was married to a croupier. That was the one person. But I think he was married before I arrived anyway.

133 Sargeant was then asked whether, during his time as DG, the issue of conflicts was 'a significant one or did it hardly ever arise.'¹¹³ Sargeant answered:¹¹⁴

Hardly ever, ever arose.

Conclusions

134 From at least 2001 until early 2021, there were close personal relationships between a number of departmental inspectors involved in casino regulation and Perth Casino employees involved in casino gaming operations.¹¹⁵

135 Sargeant and at least some of the other officers of the Department at director level or higher involved in casino regulation were aware of one or more of those personal relationships.

136 Prior to May 2021, the Department did not have an effective process or system to identify and manage personal relationships between departmental officers involved in casino regulation and Perth Casino staff. From 2011, after they were published, there was no system in place to ensure adherence to the '6 Rs' of conflict of interest management.

137 Between 2001 and May 2021, the Department failed to adequately and appropriately identify and manage personal relationships that developed or existed between departmental staff involved in casino regulation and Perth Casino employees involved in casino gaming operations.

138 In failing to adequately and appropriately identify and manage personal relationships that developed or existed between departmental staff involved in casino regulation and Perth Casino employees involved in casino gaming operations, the Department:

- a. permitted actual or perceived conflicts of interest of departmental staff involved in casino regulation to manifest; and
- b. as a consequence, risked compromising the actual or perceived independence of the GWC as the regulator of Perth Casino.

139 The Department did not adequately support the GWC in the discharge of its regulatory functions and responsibilities by reason of the above failures.

Part Four: Connolly's friendships with Crown officers

140 Connolly's role as CCO involved him having carriage on behalf of the GWC of a significant number of submissions made by Perth Casino to the GWC. He would advise the GWC in relation to those submissions and make recommendations.¹¹⁶ Connolly also exercised powers in respect of casino regulation that were delegated to him by the GWC and Connolly was in a position to influence or decide regulatory requirements for Perth Casino.¹¹⁷

141 Connolly is friends with Paul Hulme (**Hulme**), Jon Nichols (**Nichols**) and Claude Marais (**Marais**).¹¹⁸ They are all current or former officers of Crown. Connolly gave evidence that he considers Marais and Hulme to be good friends.¹¹⁹ He did not describe them as 'close friends' on the basis that he would see them regularly but infrequently. Connolly described Hulme as a long-standing friend.¹²⁰

Paul Hulme

- 142** Connolly has been friends with Hulme since they both worked at the Department in the 1990s.¹²¹ Hulme left the Department in the early to mid-2000s and returned in about 2007 or 2008, when Connolly became his direct report.¹²² Hulme left the Department in about 2009 to take up a role in the Crown's Legal and Compliance team and remained employed there until he retired in 2019.¹²³
- 143** Connolly and Hulme have regularly kept in touch since first meeting at the Department, including during the period when he left the Department in about the mid-2000s.¹²⁴ As detailed further below, Connolly took Hulme out on his boat for fishing trips from time to time since 2013.
- 144** Connolly and Hulme both attended monthly Operations Division meetings between Perth Casino staff and departmental staff where matters of regulation were discussed and sometimes decided.¹²⁵

Jon Nichols

- 145** Connolly has been friends with Nichols since around the time Connolly commenced employment with the Department. At that time, Nichols was also an employee of the Department.¹²⁶ Later, he commenced employment at Perth Casino. Nichols is now retired.
- 146** Connolly could not recall when Nichols commenced employment at Crown nor what his job was while he was employed at Crown, however, he understood his role at Crown had nothing to do with gaming operations and believed he was employed in relation to the construction of Crown Towers.¹²⁷
- 147** Connolly would catch up with Nichols on an infrequent but regular basis. Connolly would catch up less frequently with Nichols than with Hulme.¹²⁸

Claude Marais

- 148** Connolly first met Marais in about 2012.¹²⁹
- 149** Connolly was introduced to Marais by Hulme while Connolly was attending an Operations Division meeting, which Marais was attending in his capacity as Perth Casino's Manager of Legal and Compliance.¹³⁰
- 150** Connolly understood the role of Manager of Legal and Compliance was to be responsible for all of Crown's compliance obligations.¹³¹
- 151** Connolly became aware that Marais had an interest in fishing, which was and continues to be Connolly's keen interest.¹³² As detailed further below, Connolly has taken Marais out on his boat for fishing trips from time to time since 2013.

Joshua Preston

- 152** Connolly knew Joshua Preston (**Preston**) to be the Chief Legal Officer of Perth Casino.¹³³ Preston also attended Operations Division meetings.¹³⁴
- 153** Connolly said he was 'friendly with Mr Preston' but did not consider Preston to be a personal friend and that he did not socialise with him generally.¹³⁵ Connolly did not consider there to be a standing invitation for Preston to come on fishing trips.¹³⁶ He agreed that if Preston was invited, it was because he was a work colleague of Marais and Hulme.¹³⁷ Connolly understood that Marais and Hulme were friends with Preston from work.¹³⁸

Perth Casino's Legal and Compliance team

- 154** Hulme and Preston were, and Marais remains, part of Perth Casino's Legal and Compliance team.
- 155** The Legal and Compliance team is involved in facilitating modifications to the regulatory requirements imposed by the regulator. In the majority of cases, if there is to be a relaxation of a requirement Perth Casino initiates it.¹³⁹
- 156** Hulme and Marais were both directly involved on behalf of Perth Casino in liaising with Connolly and the Department regarding the regulatory requirements of Perth Casino.¹⁴⁰

Fishing trips

- 157** Connolly took Hulme, Nichols and Marais out on his boat from about 2013.¹⁴¹ Since 2013, except for 2019, Marais and Connolly have annually gone fishing for crayfish at least a couple of days of the week, for a four-to-five-week period in the year.¹⁴² On rare occasions, Hulme also joined them.¹⁴³
- 158** In 2014, Connolly, Marais and another friend of Connolly's went on Connolly's boat in the Marmion Angling and Aquatic Club annual Bluewater Classic fishing competition.¹⁴⁴
- 159** In or about August 2016, Connolly, Marais and two of Connolly's friends went on a fishing trip to the Mackerel Islands.¹⁴⁵
- 160** Connolly gave evidence that he, Hulme, Nichols and Marais went on weekend fishing trips:
- a. in about 2015, to Hulme's holiday home in Mandurah;
 - b. in about 2017, to Jurien Bay;
 - c. in about 2019, to Jurien Bay again; and
 - d. in about 2019, to Rottnest Island.¹⁴⁶
- 161** Associated with these trips and the personal relationships more generally, there were many personal emails between Connolly on the departmental side and Marais, Hulme, Preston (either together or separately) on the casino side, using Connolly's departmental email address about fishing, boats and general chit chat. These emails were in informal language not suited to the maintenance of a professional relationship and the respect which the officers of the casino ought to have for the CCO. Further details of these communications are provided later in this chapter.

Other social interactions

- 162** Since 2012, Connolly has been out to dinner with Marais and Hulme and their partners a handful of times.¹⁴⁷
- 163** In March 2017, Connolly was planning a fishing trip in Jurien Bay with Hulme, Marais, Preston and Nicolls, where he was also planning on going skydiving with Hulme.¹⁴⁸ On 10 April 2017, Hulme invited Connolly to a pizza and movie night that week.¹⁴⁹ These arrangements broadly coincided with communications between Hulme and Connolly that led to Connolly exercising delegated authority of the GWC on 11 April 2017 to amend the CM(Ops) to remove the requirements that the GWC authorise junket operators and that Perth Casino provide to the GWC the names and passport numbers of junket participants.

Connolly's evidence as to his understanding of conflicts of interest

- 164** Connolly gave evidence to the PCRC that he understood that a conflict of interest:
- may involve personal interests;
 - could be actual, perceived, or potential; and
 - includes, but was not limited to, the receiving or offering of gifts, benefits and hospitality.¹⁵⁰
- 165** He also understood that a conflict of interest may arise when personal interests can influence, or appear to influence, decision-making responsibilities in work duties.¹⁵¹ He acknowledged that an example of what might constitute a conflict of interest outside the provision or receipt of gifts, benefits and hospitality was friendships.¹⁵²
- 166** Connolly understood that the Perth Casino's Legal and Compliance team has responsibilities for broad compliance functions, and that that they also help the gaming operational areas in the preparation of submissions and other material that will be submitted to the department and ultimately the GWC.¹⁵³
- 167** Connolly testified that his friendships with Hulme and Marais could create a 'perception of a conflict of interest', but he considered that it could be managed 'as long as the [GWC] is aware of those friendships and they take those into consideration'.¹⁵⁴
- 168** Connolly gave evidence that he thought there could be a perception of a conflict of interest arising from his friendships, but he believed he had declared those friendships to Sargeant in 2012 or 2013 so that his DG was aware of those friendships. He testified that he did not have a perception of a conflict of interest but could see that others may have such a perception.¹⁵⁵
- 169** Connolly characterised the conflict of interest arising from his friendships as a perceived conflict of interest rather than an actual conflict of interest because, in his view, the friendships had not influenced any decision that he has made.¹⁵⁶
- 170** When it was put to Connolly that he might be subconsciously influenced by his friendships because he would want to 'do right' by his friends, Connolly said he did not believe so.¹⁵⁷
- 171** As regards the fact that any invitation for Preston to join the fishing trips was because he was a work colleague of Marais and Hulme, Connolly conceded it was not appropriate for the CCO to be going out on fishing trips with someone whose association with the social trip was that he was a work colleague of casino employees.¹⁵⁸

Conclusions as to conflicts of interest created by Connolly's friendships with Crown employees

- 172** For the reasons already explained, personal relationships between those employed by the casino regulator and those employed by Perth Casino need to be declared and managed for the purpose of preserving the fact and appearance of the regulator's independence and to avoid any actual, potential or perceived conflicts of interest.
- 173** The friendship between Connolly and Nichols accordingly needed to be declared to the Department and that declaration communicated to the GWC. There is no evidence to indicate that it was. However, it appears that Nichols was not involved in the operations of the Perth Casino while employed by Crown. Accordingly, it is unlikely that there would need to have been any steps taken by the GWC or the Department to manage the relationship once declared.
- 174** Connolly's friendships with Hulme and Marais stand in a different position. As already noted, Connolly was in a position to influence or decide regulatory requirements for Perth

Casino. As part of Perth Casino's Legal and Compliance team, Hulme and Marais were both directly involved in liaising with Connolly and the Department regarding the regulatory requirements of Perth Casino. There was an obvious conflict of interest which should have been declared and managed in accordance with the Conflicts Guidelines and the six 'Rs' of conflict management.

- 175** In this context, the friendships and regular social interactions between Connolly, Hulme and Marais likely:
- a. compromised Connolly's objectivity in carrying out his responsibilities in respect of the regulation of Perth Casino;
 - b. placed him in a position of conflict between his obligation to discharge his public duties in the interests of the public, the Department and the GWC to regulate the Perth Casino and his personal interests as a friend of Hulme and Marais to foster and maintain those friendships; and
 - c. created the perception in the minds of members of the public who became aware of the facts, that the Department and the GWC had a conflict of interest that may have resulted in them being unduly influenced by or providing preferential treatment to Perth Casino.
- 176** The PCRC reaches this conclusion, notwithstanding Connolly's evidence that his friendships with Crown employees had not influenced any decision he had made. A person may believe that they are acting in the best interests of a party to whom they owe a public duty (here, the regulator, GWC) but their objectivity and judgement may nevertheless be affected by a conflict of interest.
- 177** In this regard, the PCRC has:
- a. in Chapter Six: Junkets concluded that Connolly had no reasonable basis to exercise the delegated authority of the GWC to amend the CM(Ops) in April 2017 to remove the provisions in respect of authorisation of junkets by the GWC and the provision of names and passport numbers of junket participants; and
 - b. in Chapter Five: Regulation of Perth Casino concluded that Connolly made recommendations to the GWC in respect of Electronic Gaming Machines (**EGM**) in 2014 and 2019 that lacked critical evaluation in the public interest.
- 178** While, as noted in those chapters, Connolly denies that his approach to those matters was influenced by his personal friendships with Hulme and Marais, it nevertheless remains likely that, irrespective of Connolly's perspective, his approach to those matters was influenced in some way by his friendships.
- 179** Preston engaged in personal email exchanges with Connolly, as examined later in this chapter, and was invited from time to time by Connolly to attend fishing trips along with Hulme and Marais. Whilst the relationship between Connolly and Preston was different to that between Connolly and Marais or Connolly and Hulme, it required Connolly to make a declaration because it was a personal relationship with a senior manager at Perth Casino with whom Connolly liaised so as to ensure the regulation of Perth Casino.

Connolly's disclosure of friendships with Crown officers to the Department and GWC

- 180** Connolly gave evidence to the PCRC that he recalled sending Sargeant an email in relation to a particular fishing trip with Marais in around 2012 or 2013, but he did not send an email about his friendships with Marais and Hulme generally, or about any of the other fishing trips.¹⁵⁹

- 181** Connolly said he otherwise declared the fishing trips informally in conversations with Sargeant.¹⁶⁰ He said he did not declare every trip, but would have told Sargeant on regular occasions. Connolly said an example of the type of conversation would have been along the lines, for weekend fishing trips, of ‘just so you are aware, this is what I am doing’.¹⁶¹
- 182** As has already been examined in this chapter, at the time when Hulme left the Department in 2009 to work for Crown and when Connolly’s friendship with Marais commenced in about 2012, the Department did not have any system for formally disclosing conflicts arising from personal relationships. In addition, the Department operated in an environment where close personal relationships, such as close family relationships between departmental officers and Perth Casino employees who worked on the casino floor, were tolerated.
- 183** The PCRC concludes that Connolly did not hide the fact that he was going on fishing trips with Crown officers. As explained below, Sargeant was aware of that fact and held an incorrect view that there was no need for Connolly’s friendship with Marais to be managed as a conflict of interest.
- 184** The PCRC infers that the circumstances referred to above explain why Connolly did not make a formal declaration of his friendships with Hulme in 2009 or Marais in about 2013 and concludes that these circumstances are the primary reason Connolly’s friendships with Hulme and Marais were not formally declared to the Department (and the declaration then communicated to the GWC) and managed.
- 185** As examined below, Connolly informed the GWC of his friendship with Marais at the October 2020 GWC meeting. There were no disclosures to GWC of Connolly’s friendships with Perth Casino employees prior to October 2020.¹⁶² Connolly said he made the disclosure at that meeting because Marais was coming to that GWC meeting and had not previously come to a GWC meeting.¹⁶³
- 186** The PCRC concludes that Connolly’s explanation as to the reason for the disclosure to the GWC was based on an incorrect premise. The fact that Marais would in the future attend GWC meetings (when previously he had not) was but one manifestation of the conflict of interest created more generally by the friendship he had with Marais and with Hulme before his retirement.
- 187** After Connolly’s disclosure to the GWC, Connolly made a written disclosure to the Department dated 17 November 2020 of the conflict arising from his friendship with Marais.¹⁶⁴ Connolly filled out the relevant form at Ord’s suggestion¹⁶⁵ and identified the conflict of interest as:¹⁶⁶
- Personal relationship with Claude Marais from Crown Perth. We are friends and regularly fish together. Matters that may be perceived as [a] conflict [of interest] relate to issues relating to Crown that Mr Marais is involved in preparing.
- 188** In respect of the ‘Expected role/duties to be performed by the employee in dealing with this matter’, Connolly listed ‘Deputy Chair GWC, Deputy Director General and Chief Casino Officer’.¹⁶⁷ In this section of the form setting out the proposed action to be taken to resolve or manage the conflict, there appears ‘Declaration as [required] at GWC meetings.’
- 189** The PCRC concludes that Connolly’s subsequent disclosure to the Department reflects better insight into the import of the friendship with Marais in terms of a conflict of interest and Connolly’s independence. His assertion of the disclosed friendship as something ‘that may be perceived’ as conflict of interest indicates that he did not have full comprehension of the conflict between his public duty and his personal interests due to his personal relationships with Marais.

Sargeant's failure to disclose to the GWC Connolly's friendships with Crown officers

- 190** Sargeant said Connolly raised with him that he had a friendship with Marais in about 2014 or 2015. He said that the nature of the friendship was that he had an interest in fishing and that he and Marais had been out in a 'fishing scenario'.¹⁶⁸ He said Connolly asked him his view on it. He said that he did not consider Marais to be an individual with decision-making power involved in the oversight of Perth Casino and that Connolly had no 'obligation' to Marais.¹⁶⁹ Therefore, Sargeant did not consider there to be a conflict of interest and he was happy to endorse their friendship.¹⁷⁰
- 191** Sargeant said that a fellow director of the Department, although he could not recall which one, raised a concern with him as to whether he made the right decision in forming the view that Connolly did not have a conflict of interest. Sargeant said he reflected on that concern and decided that, because Marais was not a person of influence and that he had absolute faith in Connolly and his integrity, he had made the right decision.¹⁷¹
- 192** Sargeant did not recall whether he brought Connolly's friendship with Marais to the GWC's attention.¹⁷² Sargeant said at the time he did not see it as an issue and so did not think it would have been of interest to the GWC. He admitted that, with the benefit of hindsight, he may have erred in that regard.¹⁷³
- 193** Sargeant gave evidence that he was not aware of how regularly Connolly and Marais went fishing together.¹⁷⁴ More generally, Sargeant did not consider the relationship to be an issue based on Marais' position within Crown. He conceded that had he known Marais was more senior or influential at Perth Casino, he may have taken a different view.¹⁷⁵
- 194** Sargeant could not recall Connolly raising his friendship with Hulme with him as an issue in a conflict of interest context.¹⁷⁶ He said he was not aware that Connolly and Hulme maintained a friendship, nor that Connolly and Preston maintained a friendly relationship.¹⁷⁷
- 195** A former Director of the Department gave evidence that in September 2014 they became aware that Connolly was going on fishing trips with Crown staff and that they believed this to be an actual conflict of interest.¹⁷⁸ They reported this to Sargeant. They said they observed Sargeant to appear to be already familiar and very comfortable with the situation. The Director said Sargeant said to them 'I cannot see a problem with it'.¹⁷⁹ Sargeant never discussed the matter with the Director again.¹⁸⁰
- 196** The PCRC concludes that:
- a. Sargeant's view that there was no need for Connolly's friendship with Marais to be managed as a conflict of interest was an incorrect view, for the reasons already explained above;
 - b. at least by 2014 when the Director raised the matter of the fishing trips with him, the existence of Connolly's conflict of interest due to his friendships with Hulme and Marais should have been apparent to Sargeant;
 - c. by not later than 2014 Sargeant should have communicated the fact of those friendships to the GWC and guided the Department and the GWC in the management of the friendships to prevent the conflict of interest affecting casino regulation generally, and the objectivity of Connolly's advice to and actions on behalf of the GWC; and
 - d. Sargeant's failure to do that was likely to have contributed to Connolly's failure to understand that he was in a position of conflict.
- 197** In light of these conclusions, the Department failed to adequately support the GWC to effectively identify and address the conflict of interest created by Connolly's friendships with Hulme and Marais.

Ord's knowledge of Connolly's friendships with Crown officers

- 198** Ord gave evidence that the first time that he had any knowledge of Connolly's friendship with Marais was when Connolly made the disclosure of the friendship to the GWC in October 2020.¹⁸¹ Ord said that was the first time he understood Connolly to be informing him that he had a friendship with a person at Crown.¹⁸² Ord also said that Connolly had told him about going fishing and skydiving as his release out of work but that it did not occur to Ord that this was with Perth Casino employees.¹⁸³
- 199** Ord's evidence was, in effect, that Connolly did not make any formal declaration of a conflict of interest to him regarding his relationship or friendship with Preston or Hulme while he was DG.¹⁸⁴ Ord referred in his evidence to the approval Connolly sought for departmental staff to attend Hulme's retirement function at Crown. Ord stated that he was aware that Hulme was a former departmental officer and therefore a former colleague of the departmental staff attending the function, but Ord was unaware of any friendship between Connolly and Hulme.¹⁸⁵
- 200** Ord also gave evidence that he did not know about the personal relationships Connolly had with Preston or Hulme prior to evidence being given to the PCRC.¹⁸⁶ Ord gave evidence that, other than the fishing trips and friendship involving Connolly and Marais, he only became aware of the familiarity and the degree of familiarity between Connolly and Hulme, Marais and Preston through questioning in the PCRC.¹⁸⁷
- 201** Connolly sent an email to Ord at 5.59 am on the morning of the GWC meeting on 27 October 2020 advising Ord that as Marais was going to attend the meeting he would disclose his friendship with him and that they fished together 'regularly over summer'.¹⁸⁸ Connolly and Ord discussed how to manage the conflict arising from Connolly's friendship with Marais shortly before the meeting. It therefore appears that Ord was aware of the friendship shortly before it was disclosed to the GWC.
- 202** Connolly gave evidence in his witness statement that he told Ord, while he was DG of the Department, about the friendships he had and continued to have with Hulme, Nichols and Marais.¹⁸⁹ Connolly accepted that he could have disclosed his friendships in a more formal and regular way.¹⁹⁰ However, he stated that when he told Ord about his friendships, he was not told that they were inappropriate and that he did not believe that they had raised any real concern.¹⁹¹
- 203** Connolly did not give evidence that he had made a written disclosure to Ord about any of his friendships with Crown officers prior to the email he sent to Ord on the morning of the meeting on 27 October 2020. The PCRC accepts that Connolly did not seek to hide his friendships from Ord, however, in light of Ord's evidence, the PCRC infers that Connolly did not give adequate disclosure of the friendships prior to 27 October 2020 to put Ord on notice of the potential significance of those friendships as a conflict of interest.
- 204** The PCRC therefore concludes that Ord was not made aware of the potential conflict of interest arising from Connolly's friendship with Marais until the day of the GWC meeting in October 2020 and that Ord did not know about Connolly's friendship with Hulme or his familiarity with Preston until those matters were the subject of examination in the PCRC.

GWC's management of Connolly's friendship with Marais when disclosed in 2020

- 205** At the October 2020 GWC meeting, which Connolly attended as CCO or DDG, Connolly, who had been the CCO since 2012, informed the GWC that he had a friendship with Marais, the then General Manager, Legal and Compliance, of the Perth Casino licensee.¹⁹² The minutes for that meeting simply record:¹⁹³

The Deputy Director General disclosed that he has a friendship with Claude Marais, General Manager Legal and Compliance from Crown Perth.

- 206** The evidence of one GWC member was that Connolly declared he and Marais 'were fishing buddies and that they regularly went fishing together',¹⁹⁴ but that 'Connolly assured us that they never discussed ... anything to do with work.'¹⁹⁵
- 207** Connolly attended the GWC meetings on 24 November 2020 and 15 December 2020. There is no reference in the minutes for those meetings to any consideration of Connolly's disclosure about his friendship with Marais at the October 2020 GWC meeting nor any reference to the identification of the precise nature of the conflict that arose or how to manage it, or any limitation upon Connolly's participation in the meetings.¹⁹⁶ The next GWC meeting was on 16 February 2021. By that date, Connolly was no longer CCO.
- 208** One GWC member gave evidence that there was not usually a GWC meeting in January but that there had been some discussions about having a meeting in January 2021 to consider the Bergin Report.¹⁹⁷ The GWC member said that they had thought quite a lot about Connolly's relationship with Marais over the Christmas break and had intended to have a discussion about it at the January meeting but that, in the event, there was no meeting in January 2021.¹⁹⁸ The GWC member said that by the time the February 2021 meeting took place, there was 'no longer an issue' about how to manage Connolly's conflict.¹⁹⁹ The PCRC infers that the GWC member means it was 'no longer an issue' because Connolly had stepped aside as CCO by then.
- 209** The minutes for the GWC meeting on 16 February 2021 include two references to the appointment of a new CCO. The first reference, at the very start of the minutes, is that the GWC chair, then Ord, 'provided an overview of recent events that led to Mr Mark Beecroft being appointed as Chief Casino Officer'.²⁰⁰ The second reference is to members noting that 'Connolly had stepped aside from the CCO role, due to the perceived conflict of interest that has been reported in the media.'²⁰¹
- 210** Ord gave evidence that the decision for Connolly to step aside as CCO followed 'intense media scrutiny' after the media ran a story that Connolly had been fishing with at least one member of Perth Casino's staff and that, in doing so, there was a potential conflict of interest with his role.²⁰² Connolly's fishing trips with Marais and Hulme were first reported in the media in the WAtoday and Australian Financial Review newspapers on 15 February 2021.²⁰³
- 211** Ord referred to consulting with the Public Sector Commissioner. Ord's evidence was, in effect, that he informed the Commissioner that it would be appropriate for Connolly to step aside as CCO because the media coverage made it untenable for Connolly to provide any advice to the GWC about calling an inquiry in response to the Bergin Report.²⁰⁴
- 212** Ord's evidence was that he considered that Connolly needed to step down immediately and that he did not consult with other GWC members about the matter.²⁰⁵ Ord gave evidence that he and Connolly had a discussion about what was in the best interests of the GWC, without consulting the other members of the GWC, and that he and Connolly agreed Connolly should step aside as CCO.²⁰⁶
- 213** Ord said he made the GWC members 'aware as soon as we could of the situation that [Connolly] had asked to stand aside and that I had supported that decision.'²⁰⁷
- 214** One member of the GWC gave evidence that on 23 March 2021, Ord informed GWC members that he had commenced an inquiry into Connolly's activities, and that the matter had been resolved and did not require further action. They said that Ord did not inform the GWC of the outcome of the investigation or its nature.²⁰⁸ Another member gave evidence that they understood that Ord had launched an investigation into Connolly in respect of the conflict.²⁰⁹ A further member gave evidence that the GWC was advised by Ord that 'he had subsequently done some follow-up in terms of propriety regarding the relationship'.²¹⁰

215 In a response to a notice from the PCRC, the GWC provided a table of disclosures made to the GWC.²¹¹ That table records that Connolly's declaration was addressed as follows:²¹²

The Chair of the GWC arranged for an internal investigation to be undertaken to provide confidence that the operations of the GWC had not been impacted by the existence of the conflict. The investigation did not uncover any evidence of wrong doing. The Chair and Mr Connolly jointly agreed that he would step aside as the Chief Casino Officer and Deputy Chair of the GWC from 11 February 2021.

The GWC was advised accordingly and no further action was taken.

216 There is no reference to the GWC giving an instruction, or approving any such instruction, to conduct the 'internal investigation' referred to above. The PCRC infers that Ord arranged the investigation, without the prior knowledge or approval of the other members of the GWC.

217 The statement that Connolly agreed to step aside on 11 February 2021 suggests that Connolly stepped down before the media articles were published on 15 February 2021.

218 One of those articles reported that Connolly had stood aside as CCO on Friday, 12 February 2021, after 6PR and WAtoday asked questions on Thursday, 11 February, about the nature of Connolly's relationships with members of Perth Casino's Legal and Compliance team. The article reported that Mark Beecroft had assumed the role of CCO.²¹³

219 The PCRC therefore infers that Connolly stepped aside as CCO on 11 or 12 February 2021, prior to the publication of the media articles on 15 February 2021, but in response to media inquiries. The PCRC infers that, in any event, it was media interest in mid-February 2021 in Connolly's personal relationships with members of Perth Casino's Legal and Compliance team that led to Connolly stepping aside as CCO.

220 Ord, both in his capacity as chair of the GWC and DG of the Department should have appreciated when Connolly disclosed to him the friendship with Marais in October 2020 the possibility of a conflict of interest that might extend beyond Marais attending GWC meetings to provide briefings on behalf of Perth Casino. The possibility of such a conflict needed to be investigated and then, if a conflict was apparent, appropriately managed. Ord, as DG of the Department, should have caused the Department to immediately take those steps in October 2020 or, alternatively, as GWC chair, should have advised the GWC to do so.

221 Ord did not provide adequate and timely support to the GWC with respect to the management of any conflict of interest arising from the friendship between Connolly and Marais.

222 Separately and in any event, once the fact of the friendship between Connolly and Marais had been disclosed to the GWC in October 2020, the GWC should have itself appreciated the possibility of a conflict of interest that might extend beyond Marais attending GWC meetings to provide briefings on behalf of Perth Casino. In those circumstances, the GWC should have taken immediate steps to cause an investigation to be undertaken and any conflict of interest that was consequently identified appropriately managed.

223 Between late October 2020 and mid-February 2021, by which time Connolly had agreed to step aside as CCO, the GWC should have but did not take any, or any sufficient, steps to investigate or manage the conflict of interest arising from Connolly's friendship with Marais. Consequently, the GWC did not appropriately exercise and discharge its functions and responsibilities in relation to identifying and addressing a conflict of interest arising from the friendship between Connolly and Marais.

Connolly's sale of a boat to Marais

- 224** In about 2015, Connolly purchased an 18 foot Stejcraft runabout boat for \$8,000.²¹⁴ Connolly gave evidence that the purpose of purchasing the boat was to give himself a project to renovate and fix it up and then to 'on sell' it.²¹⁵
- 225** About seven or eight months after Connolly had purchased the boat, he decided that he wanted to sell it.²¹⁶ By that time, from a review of his records, Connolly understood that he had incurred \$4,883.79 worth of costs in renovating and fixing it.²¹⁷
- 226** Connolly told Marais that he was going to sell it and Marais expressed an interest in purchasing it.²¹⁸ Marais purchased the boat from Connolly for \$13,000 with the consequence that Connolly made a \$116.21 profit from this sale.²¹⁹

Perth Casino advocates disclosure to Department

- 227** When Marais was considering purchasing the boat, he asked Preston whether he had any issue with him doing so and whether Sargeant would need to approve the purchase. Preston himself checked with Barry Felstead (**Felstead**), the then Chief Executive Officer (**CEO**), Australian Resorts for Crown Resorts Limited (**CRL**), and recommended that Connolly check with Sargeant 'to satisfy ourselves that all relevant parties have been informed'. There were apparently no issues raised by either Felstead or Sargeant when they were consulted.²²⁰

Connolly's disclosure of boat sale

- 228** By an email to Sargeant dated 13 October 2015, Connolly declared the sale of the boat to Marais. In the email, Connolly expressed his view to Sargeant that the sale 'should not constitute a conflict of interest, real or perceived.'²²¹ Connolly wrote in the email that in his view the transaction was 'a private transaction that is being made on the basis of a fair and reasonable sale price for the boat'. The email did not provide any substantiation for the assertion that the sale was for a fair and reasonable price. Sargeant noted the email and directed Connolly to place it on his personnel file.
- 229** Connolly gave evidence that he only disclosed the sale of the boat to Marais out of an abundance of caution.²²² At the time he did not consider the sale to be a real, potential or perceived conflict of interest. Connolly did not consider that there was a conflict between his private interest and his public duty because he had previously declared the friendship with Marais to Sargeant.²²³
- 230** Connolly did not inform the GWC of the sale of the boat. Connolly said it did not occur to him to declare the sale to the GWC. When asked if it now occurred to him that he should have declared it to the GWC, Connolly said that he had declared it to Sargeant, who was DG and GWC chair, and that if Sargeant as chair thought it needed to be declared to the GWC, then he would have declared it.²²⁴

Conclusions about boat sale

- 231** The sale of the boat was a private business dealing between two friends, Connolly and Marais. However, as a consequence of their employment, on the one hand, in a role with regulatory responsibilities for Perth Casino and, on the other, at Perth Casino, it had broader implications.
- 232** A private business dealing between an officer of the regulator and a Perth Casino employee will have the potential to create a conflict of interest or compromise to the regulator's independence (or both). In general, it will be prudent for such private business dealings to be disclosed so the potential for conflict or any other issue can be managed.

- 233** Connolly acted appropriately in disclosing the sale of the boat to Sargeant.
- 234** On the evidence available to the PCRC there was no actual conflict of interest arising from the sale because there was only a nominal profit from the sale and there is no evidence that Connolly could not have sold it for the same price or more on the open market. However, Connolly's sale of a boat to Marais created the perception of a conflict of interest and compromise of the professional nature of the relationship between the CCO and DDG of the Department with an officer of Perth Casino because it was a private business transaction between the two involving a substantial sum of money to be paid to the departmental officer.
- 235** Sargeant's response to advice of the transaction, which was to simply to require the transaction to be recorded on Connolly's personnel file, was inadequate. Sargeant ought to have asked Connolly to substantiate his assertion that the sale was for fair and reasonable value and that the transaction was otherwise on usual commercial terms. Had Sargeant done so, it may have been likely that no further or specific management of the transaction would have been needed, it was nevertheless necessary to obtain sufficient disclosure to properly make that assessment.

Part Five: The regulatory relationship

- 236** The concepts of regulatory capture and regulatory posture have been explained in Part One of this chapter.
- 237** There is no evidence to suggest that Crown has acted with an intent to 'capture' the regulator or any departmental officers involved in casino regulation.
- 238** Part One of this chapter notes that the effective identification and management of conflicts of interest contributes significantly to the mitigation of the risk of regulatory capture. The mitigation of that risk and the adoption of an appropriate regulatory posture both serve the purposes of supporting and maintaining the fact and perception of the independence of the regulator, the effectiveness of the regulator and casino regulation and public confidence in those matters. The management of conflicts and the regulatory posture of both the GWC and Perth Casino are considered in this part in that context.

Conflicts of interest

- 239** In Parts Three and Four of this chapter, certain conclusions have been reached and findings made to the effect, relevantly:
- a. that there are deficiencies in the systems and processes of both the Department and the GWC to identify and manage conflicts of interest of GWC members and departmental officers engaged in casino regulation; and
 - b. that there have been deficiencies in the identification and management by the GWC and the Department of such conflicts of interest in practice.
- 240** Consequently, and in that regard, the GWC and the Department have not done what is reasonable to mitigate the risk of regulatory capture of the GWC, its members and departmental officers engaged in casino regulation. In failing to do what is reasonable to mitigate the risk of regulatory capture:
- a. the GWC has acted inappropriately;
 - b. the Department has not adequately supported the GWC; and
 - c. in that they have compromised the perceived independence of the regulator and have compromised the effectiveness of the regulator and the effectiveness of casino regulation more generally.

- 241** In Part Four of this chapter, the PCRC examined the circumstance of Connolly's sale of a boat to Marais in 2015. There it was noted that Preston disclosed the sale of the boat to Felstead and directed Marais to request Connolly to disclose the sale to Sargeant.
- 242** Preston's actions would appear to reflect an appreciation on his part of the way in which a conflict of interest of the regulator can create or elevate a risk of regulatory capture. The PCRC concludes Preston acted appropriately in disclosing the sale of the boat to Felstead and in directing Marais to request Connolly to disclose the sale to Sargeant.

Regulatory posture

- 243** The regulatory posture of the GWC and Perth Casino is examined below by reference to two case studies.

Case study one – Christmas meals at Crown Perth Resort

- 244** In each year from 2010 to 2013, the Department's Corporate Executive went to a venue at the Crown Perth Resort for a Christmas meal. Those Christmas meals were paid for by Sargeant.²²⁵
- 245** A former Director of the Department gave evidence to the PCRC to the effect that when they attended the Christmas functions, Felstead or his executive assistant would attend the 'private alcove where we were seated' to 'check in on us'.²²⁶
- 246** Sargeant gave evidence that at the lunch at the Atrium in December 2013, Crown provided a complimentary bottle of sparkling wine.²²⁷
- 247** Members of the GWC and departmental officers involved in casino regulation should not, in that capacity, hold social functions at venues associated with the casino licensee, such as the Crown Perth Resort. To do so is not consistent with maintaining a regulatory posture towards the licensee that is appropriately professional, objective and formal. It compromises the perceived independence of the regulator and, potentially, its actual independence. The risk to actual independence is heightened where there is a possibility of inducements being provided or offered. Such conduct elevates the risk of regulatory capture and of the effectiveness of the regulator and casino regulation being compromised.
- 248** For similar reasons, members of the GWC and departmental officers should not use their position within the regulator for the purpose of arranging attendance at a venue associated with the casino licensee for a personal social event. For example, a departmental officer should only seek to arrange a table at a restaurant or the purchase of theatre tickets in the same way as any other member of the public, rather than through an officer of Crown if that officer is someone involved in casino regulation.
- 249** In holding departmental events at the Crown Perth Resort, the Department:
- a. has not maintained an appropriate regulatory posture towards the licensee;
 - b. has not done what is reasonable to mitigate the risk of regulatory capture of departmental officers engaged in casino regulation;
 - c. has compromised the perceived independence of the regulator;
 - d. has potentially compromised the actual independence of the regulator; and
 - e. has potentially compromised the effectiveness of the GWC as a regulator and the effectiveness of casino regulation more generally.
- 250** Consequently, and in that regard, the Department has not adequately supported the GWC.

- 251** Likewise, by encouraging or permitting departmental social functions to be held at the Crown Perth Resort, the Perth casino licensee has also not adopted an appropriate regulatory posture. Perth Casino not only permitted the functions hosted by Sargeant to be held, but can be seen to have encouraged them by Felstead’s checking on the progress of functions and Crown’s gift of wine in 2013.
- 252** The PCRC concludes that, in permitting and encouraging departmental events at the Crown Perth Resort, Perth Casino:
- a. has not maintained an appropriate regulatory posture towards the regulator;
 - b. has not done what is reasonable to mitigate the risk of regulatory capture of departmental officers engaged in casino regulation;
 - c. has compromised the perceived independence of the regulator;
 - d. has potentially comprised the actual independence of the regulator;
 - e. has potentially compromised the effectiveness of the GWC as a regulator and the effectiveness of casino regulation more general; and
 - f. has therefore not met the standard of conduct expected of a casino licensee to act in a socially responsible manner.

Case study two – Connolly’s email communications with Crown officers

- 253** Between at least 2012 and 2017, Connolly, Hulme, Preston and Marais sent many personal emails to one another using their work emails accounts. Typically, the emails were for the purpose of organising fishing trips or other social get-togethers, adopted a familiar, jocular tone and expressed ‘blokeish’ sentiments or themes.²²⁸
- 254** The PCRC infers from the content of the emails and Preston’s inclusion as a recipient of the majority of the emails that he was aware of the friendship between Connolly, Marais and Hulme.
- 255** Marais accepted the tone of the emails was very familiar.²²⁹
- 256** Marais accepted that it is important in the public interest for the CCO or a senior officer of the regulator to act in his role objectively and without fear or favour. He agreed that if an officer of the licensee socialises privately with the CCO, there is a risk that private relationships might affect the CCO’s ability to act in his role objectively and without fear or favour. He further agreed that there is at least a perception, in the mind of the public, that he might not act without fear or favour if there is such a social relationship.²³⁰
- 257** The email exchanges continued even when Connolly was communicating with Preston, Hulme and Marais about matters concerning the regulation of Perth Casino. For example, in 2014, the GWC instructed Connolly to liaise with Perth Casino with a view to changing the minimum speed of an EGM game from five seconds to six seconds (that is, to slow the game down). At the same time, Connolly was emailing Preston, Hulme and Marais about boating and fishing.²³¹ Connolly accepted that he should not have been emailing Preston, Hulme and Marais about boats and fishing while he was actively engaged in discussing with them a proposal from the GWC regarding the speed of play of an EGM.²³²
- 258** The PCRC concludes that Connolly’s conduct in sending emails about boating and fishing to Hulme, Preston and Marais while he was meant to be liaising with Perth Casino about a potential change in an EGM game’s speed of play was inappropriate in that it was not consistent with the appropriate regulatory posture that should be displayed by an agent of a regulator when engaging with employees of a regulated entity.

- 259 More generally, the PCRC concludes that the emails passing between Connolly, Preston, Hulme and Marais lacked the professionalism, objectivity and requisite degree of formality of an appropriate regulatory posture.
- 260 The emails were numerous and their contents were exclusively concerned with personal matters. While it may be accepted that in a professional relationship, communications will from time to time refer to personal matters, this is usually only appropriate where it occurs infrequently and incidentally to the performance of a person's professional role.
- 261 The tone of the emails was invariably overly familiar, suggesting that the participants in the email exchanges were friends rather than occupying the roles of, respectively, regulator and licensee.
- 262 Connolly sent an email dated Monday, 3 September 2012, to Hulme and Preston (also addressed, but incorrectly, to Marais). The email is an invitation to come on a fishing trip on Connolly's boat, which he refers to as the 'good ship "Compliance"'.²³³
- 263 The PCRC infers that the reference to 'compliance' was intended to be a humorous allusion to Connolly's role in compliance work for the regulator and perhaps also to the fact those joining him on the fishing trips were part of the Perth Casino's Legal and Compliance team. The use of the term 'compliance' in this way reveals that the social and work relationships between Connolly and the Crown officers were blurred in their emails.
- 264 Neither the GWC nor the Department presently provide specific guidance in their respective codes of conduct or in any policy as to how GWC members and departmental officers should conduct themselves in their dealings with the licensee; in particular, no guidance is given as to what is an appropriate regulatory posture. There is no evidence that either the Department or the GWC takes steps to ensure that members and officers adopt an appropriate regulatory posture in practice.
- 265 The Department agrees that formal written guidance regarding the GWC's regulatory posture and how the GWC will address the risk of regulatory capture will assist departmental officers performing functions on behalf of the GWC. The Department has said that it will work with the GWC to develop formal guidance on regulatory posture.²³⁴
- 266 There is no evidence to suggest that Perth Casino provides any formal written guidance to its officers about how they should conduct their dealings with the regulator.
- 267 Preston held a senior position at Perth Casino and was himself a party to the emails that lacked an appropriate regulatory posture. Preston gave evidence to the PCRC to the effect that, while he did not overtly encourage friendships between Perth Casino officers and departmental officers, he encouraged 'strong relationships' and, if those relationships developed into friendships, he was not averse to that.²³⁵
- 268 Evidence given to the PCRC by new members of the Burswood Limited (**BL**) board, Ziggy Switkowski (**Chair**),²³⁶ and Bruce Carter (**Carter**)²³⁷ suggests that the board as it is now constituted has insight into the need for appropriately formal, objective and professional communications between the regulator and Perth Casino. Stephen McCann (**McCann**), the current CEO of CRL, gave evidence that Crown should have 'a very transparent, open relationship with all of our regulators' that 'should be very much at arm's length' and should not be a social relationship.²³⁸
- 269 The PCRC concludes that:
- a. between about 2012 and 2017, in his email communications with Preston, Hulme and Marais about personal matters, Connolly did not, as the CCO and DDG involved in casino regulation, adopt an appropriate regulatory posture towards the licensee;
 - b. between about 2012 and 2017, in their email communications with Connolly about personal matters, Preston, Hulme and Marais did not, as officers of Perth Casino, adopt an appropriate regulatory posture towards the regulator; and

- c. in failing to provide formal written guidance to departmental officers as to how they should conduct themselves in their dealings with the licensee, the Department and the GWC:
 - i. have not done what is reasonable to mitigate the risk of regulatory capture of departmental officers engaged in casino regulation;
 - ii. have compromised the perceived independence of the regulator;
 - iii. have potentially comprised the actual independence of the regulator; and
 - iv. have potentially compromised the effectiveness of the GWC as a regulator and the effectiveness of casino regulation more generally.

270 The PCRC finds, consequently and in that regard, that the Department has not adequately supported the GWC.

271 The PCRC concludes that staff of Perth Casino in failing to conduct themselves in their dealings with the Department and the GWC in an appropriately professional manner:

- a. have not done what is reasonable to mitigate the risk of regulatory capture of departmental officers engaged in casino regulation;
- b. have compromised the perceived independence of the regulator;
- c. have potentially comprised the actual independence of the regulator; and
- d. have potentially compromised the effectiveness of the GWC as a regulator and the effectiveness of casino regulation more generally.

272 The Burswood entities, on behalf of whom those staff members acted, must bear the responsibility for not having systems in place (for example, written guidelines) to prevent these failures by Perth Casino staff members.

273 The PCRC **recommends** that there should be formal, written guidance agreed to by the GWC members regarding the regulatory posture that the GWC will adopt and how the GWC will address the risk of regulatory capture.

Part Six: Director General’s Macau trip

Travel to Macau

274 On 4 April 2013, Felstead, the then CEO of BL, wrote to Sargeant in his capacity as DG of the Department to invite Sargeant to accompany him and Preston, the then Executive General Manager – Legal Services, on a trip to Macau and Singapore to take place in July or August 2013.²³⁹ The body of the letter was as follows:²⁴⁰

As you would be aware, part of my role as Chief Executive Officer of Crown Perth involves travel to other casinos, both in the eastern states as well as properties overseas. The primary reason for travel is to view what our competitors are doing in the high roller space as well as look at things such as restaurant design, floor layouts, new electronic games, table games and the like.

I am planning on making a trip to Macau and Singapore in late July/early August (date to be confirmed). In my experience both locations are now key for international VIP business. Obviously the information gleaned from these trips provides a direct learning on what we are doing here at Crown Perth.

I am of the view that as our regulator, it would be highly beneficial for you to view first hand some of the challenges that face Crown Perth when it comes to getting international VIP[s] to visit this property; as such, I would like to formally

Invite you to accompany myself and Mr Joshua Preston EGM Legal & Corporate Services on our next trip to the region.

- 275** In the event, Felstead, Preston and Sargeant only travelled to Macau.²⁴¹ Sargeant, Felstead and Preston gave evidence to the effect that the purpose of the trip was for Sargeant to observe the standard of gambling facilities available for high rollers and VIP customers so as to better understand Perth Casino's competition in Asia.²⁴²
- 276** When asked by Counsel Assisting what relevance the competition to Perth Casino had to the functions of the Department at the time, Sargeant said:²⁴³
- Well, Crown, ... under the State Agreement has a responsibility to maintain the site to an international standard. They had, ... at that stage, ... committed to the hotel, to build it. I took the view and when I discussed it with the minister that I didn't know what the standard of facility was like in Macau, and we agreed there could be some advantage in me having that first-hand knowledge of it. ... This was one that wasn't necessarily as the Chairman of the [GWC], but more as a support for the minister.
- 277** Ultimately, Sargeant's travel and accommodation costs were paid for by Crown.²⁴⁴ Sargeant stated that he did not think that the Department's travel budget was available for such 'fact-finding' trips, and accordingly, Crown proposed to cover the costs.²⁴⁵ Sargeant sought and received approval for the trip from the Minister for Racing and Gaming on the condition that the costs incurred by the Department would be recouped from Crown.²⁴⁶

Meals and show in Macau

- 278** Sargeant gave evidence that, once in Macau, his meals during the trip to Macau were paid for directly by Crown.²⁴⁷ Sargeant said that he saw the food 'as being part of the cost of going and if I had paid for it, I would have charged Crown for those meals.'²⁴⁸ Sargeant had dinner with Felstead, Preston and other senior executives of various Macau casinos on Monday, 22 July 2013 and Tuesday, 23 July 2013.²⁴⁹ As can be seen from Felstead's itinerary for the trip, these dinners were at Jade Dragon restaurant on Monday, 22 July 2013 and at Ying restaurant on Tuesday, 23 July 2013.²⁵⁰ Those restaurants were located at the Crown/Melco resorts City of Dreams and Altira.²⁵¹
- 279** On his first evening in Macau, Sargeant attended with Felstead and Preston the 'House of Dancing Water Theatre Show' at the City of Dreams resort.²⁵²
- 280** Felstead's executive assistant booked and paid for 'VIP' seats in Row A of the show at a cost of \$1480 HKD/MOP per seat,²⁵³ which today would be about A\$250 per seat.
- 281** Sargeant gave the following evidence regarding that show:²⁵⁴

At the City of Dreams resort, I attended the House of Dancing Water Show with Mr Preston, Mr Felstead and, to the best of my knowledge, other Macau casino senior executives. This was not discussed with me before dinner. I believe that Mr Felstead saw this as an extension of showing me the offering available in Macau; he would not think, and it is certainly not the case, that a gratuitous stage show would carry any favour with me. I did however feel some discomfort at attending this stage show, which I believed was compl[i]ments of the City of Dreams resort, and I therefore left an amount of my own money (I believe it was HKD 1000) with one of the resort staff to donate to a local charity in lieu of payment for my ticket.

282 The Department's Gifts and Hospitality Policy that was in effect in 2013 stated under the heading 'Inducements':²⁵⁵

You must exercise judgment in determining whether the acceptance of any gift or hospitality could reasonably be interpreted by others as an inducement which might place you or the Department under an obligation to the donor.

283 When asked in the course of his evidence to the PCRC to express a view as to whether accepting the ticket to the theatre show might fall within the description in that paragraph, Sargeant responded:²⁵⁶

No, because I believe I paid for the ticket, and the other aspect of the trip was to experience first-hand knowledge of what other offerings were available in Macau. I didn't see that as an inducement at all. It was a business trip. I left to go there and to come back ... Had I been given some tickets to go to a show at Burswood theatre and those things, definitely an inducement. But in the circumstances of the one in Macau, no, I didn't see it as an inducement.

284 However, Sargeant agreed that his ticket to the theatre show could have been seen as a gift to him as DG of the Department.²⁵⁷ Further, having regard to Sargeant's expressed discomfort about attending a show at the expense of the City of Dreams (an entity which he knew to be associated with the Perth casino licensee), the PCRC concludes that Sargeant appreciated the potential for his acceptance of that hospitality to be seen as an inducement by or on behalf of the Perth casino licensee.

285 The Department's Gifts and Hospitality Policy as at 2013 (signed by Sargeant) also contained the following:²⁵⁸

Gifts That Cannot Be Accepted

You cannot accept:

gifts of money/legal tender.

a gift or hospitality from an individual or representative of a company, who the Department regulates, licences or is undertaking, or is likely to undertake, business with. This includes circumstances where:

The individual or company wants to obtain any authorisation from the Department.

There is a contract between the individual or company and the Department.

The individual or company is providing any service to the Department.

286 In relation to that aspect of the policy, Sargeant gave evidence that he was not in breach of the policy:²⁵⁹

SARGEANT: ... I don't see that as a gift of hospitality. It was a business trip I was undertaking. I repeat, if it had been something to do with going to Crown and I lived in Perth, fine. But I didn't see it as gift or hospitality. I did not see it as a gift or hospitality. It was part of the trip cost.

287 The Department's Gifts and Hospitality Policy stated that:²⁶⁰

Gifts and hospitality are defined as the giving of property or the transfer of any other financial benefit or entertainment made by one person in favour of another.

288 The Department's policy did not qualify or restrict that definition to whether the gift or hospitality was received in Perth or in another place nor by reference to whether the gift or hospitality was offered in the context of a business trip. The PCRC therefore infers that the policy applied to the receipt of a gift or hospitality anywhere in the world regardless of whether the gift or hospitality was offered in the context of a business trip.

- 289** The PCRC has considered whether Sargeant’s attendance at the dinners and the show could be viewed as consistent with the purpose of his trip to Macau, which included to inspect casinos and hotels in Macau and experience the hospitality.²⁶¹ That would nevertheless render the dinners and show ‘hospitality’ within the meaning of the Department’s policy. The policy does not qualify the meaning of ‘hospitality’ by reference to the circumstances in which it is offered or accepted.
- 290** In any event, it was not necessary for Sargeant to accept dinners and a theatre ticket in order to inspect casinos and hotels in Macau. In Felstead’s letter of invitation to Sargeant, Felstead explained to Sargeant that the activities he conducts on inspections trips of this kind as being ‘to view what our competitors are doing in the high roller space as well as look at things such as restaurant design, floor layouts, new electronic games, table games and the like’.²⁶² Sargeant was still able to join Felstead in conducting those activities as part of his inspection of casinos and hotels without attending dinners and the show. The PCRC therefore does not accept that the purpose of the trip included to experience the hospitality.
- 291** The PCRC infers that attendance at the dinners and the show was the acceptance of gifts or hospitality for the purposes of the Department’s policy.
- 292** Sargeant’s itinerary for the Macau trip was prepared by the Perth casino licensee.²⁶³ Felstead’s itinerary²⁶⁴ and Sargeant’s itinerary²⁶⁵ are identical and the events listed are substantially the same except in three respects:
- Felstead’s itinerary for 22 July for 6:30pm – 8:00pm shows ‘Dinner at Jade Dragon’; Sargeant’s itinerary for 22 July for 6:30pm – 8:00pm just shows ‘Dinner’;
 - Felstead’s itinerary for 22 July shows from 8pm ‘House of Dancing Water Theatre Show’ at the ‘Dancing Water Theatre’; Sargeant’s itinerary for 22 July from 8 pm shows ‘Free time’; and
 - Felstead’s itinerary for 23 July shows ‘Dinner at Ying’, Sargeant’s itinerary for 23 July just shows ‘Dinner’.
- 293** On 9 July 2013, Sargeant’s executive assistant wrote an email to Felstead’s executive assistant in the following terms:²⁶⁶
- Would you mind making two small changes for Barry’s itinerary for Monday 22 July please.
- 6-30 – 8.00pm –please delete the venue and just show as Dinner
- 8.00 pm – Free time – Barry is happy to go but only wants free time shown on the itinerary.
- 294** When examined, Sargeant said that he did not recall giving an instruction to his executive assistant to make the alterations to his itinerary referred to in that email.²⁶⁷ Sargeant gave evidence that he did not receive notice before the dinner on 22 July 2013 of the proposal that he attend the theatre show.²⁶⁸
- 295** The PCRC infers that it is unlikely that Sargeant’s executive assistant requested that a change be made to Sargeant’s itinerary for Macau without being instructed by Sargeant to do so. Moreover, in the email, Sargeant’s executive assistant states ‘Barry is happy to go’ which is a statement that would likely only be made if Sargeant had been informed about his invitation to attend the theatre show and he had communicated his intention to accept that invitation to his executive assistant.
- 296** The PCRC infers that the likely course of events was that Sargeant communicated to his executive assistant that he was ‘happy to go’ to the show but that he only wanted ‘free time’ shown on his itinerary and requested that his executive assistant see to it that his itinerary was adjusted accordingly. Given that the ‘two small changes’ to the itinerary were requested by Sargeant’s executive assistant at the same time, the PCRC infers that Sargeant requested

both of those changes be made to his itinerary at the same time that he communicated to his executive assistant that he intended to attend the show. Consequently, and contrary to the evidence that he gave to the PCRC, the PCRC concludes that it is likely that Sargeant's invitation to attend the theatre show was conveyed to him, and he agreed to attend the show, before he travelled to Macau.

- 297** In light of the contents of the Department's Gifts and Hospitality Policy and Sargeant's expressed discomfort in attending the theatre show, the PCRC infers that Sargeant instructed his executive assistant to request the changes to his itinerary referred to in the previous paragraph so that it did not record that he was to receive gifts or hospitality from or on behalf of the Perth casino licensee in that Sargeant had agreed to:
- a. dine at Crown's expense at restaurants in Macau associated with the Perth casino licensee; and
 - b. attend a show at Crown's expense at a venue in Macau associated with the Perth casino licensee.
- 298** The 'two small changes' to Sargeant's itinerary had the result that the receipt of those gifts of hospitality were concealed. The PCRC concludes that Sargeant knowingly acted contrary to the Department's Gifts and Hospitality Policy by accepting those gifts or hospitality.
- 299** The stated objectives of the Department's Gifts and Hospitality Policy included:²⁶⁹
- provide guidance to Department employees on ethical and responsible decision making in circumstances where gifts and hospitality are offered to them;
 - ...
 - provide a transparent and accountable process for accepting gifts that promotes public confidence in the Department.
- 300** The PCRC finds that by accepting those gifts or hospitality in knowing breach of the Department's policy and by not disclosing his receipt of them, Sargeant:
- a. risked compromising public confidence in the Department; and
 - b. given that Sargeant also occupied the role of GWC chair, compromised or risked compromising the actual or perceived independence of the GWC as the regulator of Perth Casino.

Endnotes

- 1 Integrity Coordinating Group, *Conflicts of Interests: Guidelines for the Western Australia Public Sector* (June 2011) [PUB.0007.0011.0001].
- 2 GWC, *Code of Conduct* (23 March 2021) [GWC.0001.0011.0002]; Department, *Code of Conduct* (November 2019) [GWC.0001.0011.0001]; Public Sector Commission, *Commissioner's Instruction 8* [PUB.0029.0003.0001].
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- 5 D Nikomboria, 'The Political Economy of Competition Law: The Case of Thailand' (2006) 26(3) *Northwestern Journal of International Law & Business* 597 [PUB.0007.0008.2301].
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- 11 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (15 April 2021) [QNE.0001.0001.0024] 10.
- 12 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (15 April 2021) [QNE.0001.0001.0024] 10 – 11.
- 13 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (15 April 2021) [QNE.0001.0001.0024] 12 – 13.
- 14 GWC, *Code of Conduct* (January 2018) [GWC.0001.0007.0188].
- 15 Email between Department officers (29 January 2018) [DLG.0022.0001.0012].
- 16 GWC, agenda papers (23 March 2021 meeting) [GWC.0002.0016.0367_R] 214.
- 17 GWC, agenda papers (23 March 2021 meeting) [GWC.0002.0016.0367_R] 215.
- 18 GWC, agenda paper (23 March 2021) [GWC.0002.0016.0367_R] 220.
- 19 GWC, agenda paper (23 March 2021) [GWC.0002.0016.0367_R] 215.
- 20 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (15 April 2021) [QNE.0001.0001.0024] 22 – 23; GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (2 September 2021) [PCRC.0002.0025.0001] 3.
- 21 Ord, transcript [TRA.0001.0001.0001] 98; Beecroft, witness statement [DLG.0001.0001.0001_R] [42]; Fiorentino, witness statement [GWC.0003.0003.0006_R] [58].
- 22 Public Sector Commission, *Commissioner's Instruction 8* [PUB.0029.0003.0001] 2.
- 23 GWC, *Code of Conduct* (November 2014) [DLG.0004.0002.0018] 9.
- 24 GWC, *Code of Conduct* (November 2014) [DLG.0004.0002.0018] 9.
- 25 GWC, *Code of Conduct* (November 2014) [DLG.0004.0002.0018] 9.
- 26 GWC, *Code of Conduct* (November 2014) [DLG.0004.0002.0018] 9 – 10.
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- 31 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] [31].
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- 36 Public Sector Commission, Governance Manual for Western Australian Boards and Committees (2021) [PUB.0032.0008.0191] 48; Public Sector Commission, Board Essentials – Good Governance for Public Sector Boards and Committees (2018) [PUB.0032.0008.0139] 49; Public Sector Commission, Board Essentials – Good Governance for Public Sector Boards and Committees (2016) [DLG.0004.0002.0006] 49.
- 37 GWC, Code of Conduct (November 2014) [DLG.0004.0002.0018] 10.
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- 41 Letter from Public Sector Commission to Gaming and Wagering Commission (3 December 2021) [DLG.0001.0014.0017].
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- 43 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] [38].
- 44 Department, Code of Conduct (September 2020) [GWC.0001.0011.0001] 2.
- 45 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 9(3).
- 46 GWC, Gaming and Wagering Commission Act 1987 Delegation of Powers [GWC.0004.0003.0006].
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Volume III

Contents

VOLUME I

Contents.....	3
Foreword.....	8
Answers to Questions in the Terms of Reference	12
Term of Reference 1.....	12
Term of Reference 2.....	12
Term of Reference 3.....	12
Term of Reference 4.....	12
Term of Reference 5.....	13
Recommendations	14
About this Final Report.....	24
References to documents, people and organisations.....	25
Defined Terms	26
CHAPTER ONE.....	42
Subject Matter of Inquiry and Terms of Reference	42
Purpose of Chapter.....	42
Terms of reference 1 to 4	43
Term of reference 5.....	52
Term of reference 6.....	53
Communications with the Gaming and Wagering Commission.....	54
Meaning of 'adequacy of communications'.....	54
Legislative framework.....	55
Term of Reference 8.....	59
Terms of Reference 9 and 10.....	62
Conflicts of interest.....	63
Term of Reference 11	64
Governance.....	65
CHAPTER TWO.....	72
History of Perth Casino	72
Purpose of Chapter	72
Background to Casino Establishment, Corporate History and Historical Structure	72
Implementation of the casino licence	77
Developments before 1990.....	80
Developments from 1990.....	80
Changes to the structure.....	81
Inquiries into the casino licences.....	82
Perth Casino and Crown Perth Resort.....	83
CHAPTER THREE	90
Overview of Regulatory Framework for Casino Gaming.....	90
Purpose of Chapter.....	90
Reports published prior to the introduction of the Casino Control Act.....	90
The Statutory Regime.....	90
Modification of the statutory regime	96
Industry and legislative reviews	97
Aspects of casino regulation in Western Australia	97

CHAPTER FOUR	110
Corporate Governance	110
Purpose of Chapter	110
Introductory comments.....	111
Perth Casino structure.....	111
The boards.....	120
Activity of the boards	123
Centralisation	129
Risk Management.....	133
BL governance issues	144
The complexity of the Burswood entities structure: analysis	152
BL central management and control.....	158
CRL governance issues	164
Remediation of governance, risk management and culture	169
Issues for future consideration.....	190
CHAPTER FIVE	232
Regulation of Perth Casino	232
Purpose of Chapter	232
Part One: Context for examination of the Gaming and Wagering Commission.....	232
Part Two: Gaming and Wagering Commission members	235
Part Three: Gaming and Wagering Commission governance	238
Part Four: Operational relationship between the Gaming and Wagering Commission and the Department.....	250
Part Five: Financial arrangements	273
Part Six: Regulation of specific risks to the attainment of the regulatory objectives.....	292
Part Seven: Statutory enforcement mechanisms.....	298
VOLUME II	
Contents.....	323
CHAPTER SIX	330
Junkets	330
Purpose of Chapter	330
Part One: Context for examination of junkets	331
Part Two: Regulatory framework and implementation by the Gaming and Wagering Commission.....	332
Part Three: Crown’s governance and risk management of Perth Casino’s junket operations.....	360
Part Four: Crown’s communications with the Gaming and Wagering Commission about junket operations	376
CHAPTER SEVEN	400
The China Arrests.....	400
Purpose of Chapter	400
Part One: Context for examination of China Arrests.....	400
Part Two: Background to the China Arrests.....	402
Part Three: Crown’s governance and risk management of Perth Casino.....	409
Part Four: Communications with the Gaming and Wagering Commission and its response to the China Arrests.....	412
CHAPTER EIGHT	432
Money laundering	432
Part One: Context for the examination of money laundering.....	432
Part Two: Regulatory frameworks relevant to money laundering	439
Part Three: The GWC’s regulation of money laundering at Perth Casino	445

Part Four: Management of money laundering risk at Perth Casino between 2010 and 2019.....	450
Part Five: Communications with the Gaming and Wagering Commission	476
Part Six: Management of money laundering risk from 2019 to present date.....	479
Part Seven: The path ahead in respect of ML/TF risk management	505
CHAPTER NINE.....	532
Other Criminal Activity	532
Purpose of Chapter	532
Part One: Context for examination of other criminal activity.....	533
Part Two: Regulation of criminal infiltration and activity by the Gaming and Wagering Commission	533
Part Three: Perth Casino’s systems, policies and procedures	542
CHAPTER TEN	554
Tax	554
Purpose of Chapter.....	554
Part One: Regulatory framework relevant to casino tax.....	556
Part Two: Non-cashable credits and casino tax.....	557
Part Three: Tournament fees.....	567
Part Four: Regulation of the payment of casino tax.....	572
CHAPTER ELEVEN	584
Conflicts of Interest.....	584
Purpose of Chapter.....	584
Part One: Main concepts.....	584
Part Two: Systems and processes to identify and manage conflicts of interest.....	587
Part Three: Identifying and managing conflicts of interest in practice.....	599
Part Four: Connolly’s friendships with Crown officers.....	603
Part Five: The regulatory relationship.....	614
Part Six: Director General’s Macau trip.....	618
VOLUME III	
Contents.....	633
CHAPTER TWELVE	640
Harm Minimisation	640
Purpose of Chapter.....	640
PCRC’s approach.....	640
Part One: Context for discussion	641
Part Two: Current regulation of harm minimisation	650
Part Three: Crown’s management of the risk of gambling-related harm at Perth Casino.....	666
Part Four: Adequacy of communications	699
Part Five: Recommendations for reform to Perth Casino’s gaming operations.....	702
CHAPTER THIRTEEN	732
Electronic Gaming Machines	732
Purpose of Chapter.....	732
Part One: Electronic Gaming Machines and Poker Machines.....	732
Part Two: The EGMs at Perth Casino	744
Conclusion.....	755
Recommendations	756

CHAPTER FOURTEEN	766
Evaluation of Regulation of Perth Casino	766
Purpose of Chapter	766
Part One: Overview	766
Part Two: Particular deficiencies in the regulatory framework	768
Part Three: Deficiencies in the Gaming and Wagering Commission’s manner of operating	773
Part Four: Department’s support of the Gaming and Wagering Commission.....	777
CHAPTER FIFTEEN	786
Enhancements to the Regulatory Framework	786
Purpose of Chapter	786
Part One: Structural regulatory reform.....	786
Part Two: Legislative reforms.....	792
Part Three: Operational reforms	814
CHAPTER SIXTEEN.....	822
Financial Capacity	822
Purpose of Chapter	822
Financial Capacity	822
CHAPTER SEVENTEEN.....	826
Assessment of Crown Suitability and Path Forward	826
Purpose of Chapter	826
Part One: Assessment of present suitability.....	827
Part Two: Pathway to suitability.....	839
External Monitor.....	843
 VOLUME IV	
Contents.....	851
APPENDIX A	858
Commission dated 12 March 2021	858
APPENDIX B.....	861
Executive Council Minutes	861
APPENDIX C.....	862
Commission dated 23 July 2021	862
APPENDIX D	868
Methodology	868
Establishment	868
Scope of the inquiry and background.....	868
Other Inquiries into casino gaming and regulation in Australia.....	868
Process of evidence gathering	870
Use of Evidence	875
Procedural fairness.....	876
Record Keeping	879
APPENDIX E.....	882
Corporate Governance Theory	882
Purpose of Appendix	882
Nature and conduct of a corporation.....	882
Private Sector Governance	883
Public Sector Governance	904

APPENDIX F	923
Regulatory Theory	923
Purpose of Appendix.....	923
Part One: theories of regulation.....	923
Part Two: legislating regulatory objectives	925
Part Three: approaches to attaining regulatory compliance	929
APPENDIX G	940
List of Parties granted leave to appear	940
APPENDIX H	942
List of public hearings	942
APPENDIX I	945
List of Key People	945
APPENDIX J	950
Crowns Resorts Limited Corporate Structure	950
APPENDIX K	951
Significant provisions in the Trust Deed for the Burswood Property Trust	951
APPENDIX L	953
Directors of Crown Entities: September 2004 – 2022.....	953
APPENDIX M	956
Chronology of Gaming and Wagering Commission delegations.....	956
APPENDIX N:	960
Comparative regulatory framework analysis – Australian jurisdictions	960
APPENDIX O	961
Summary of themes discussed in AML expert focus groups with Perth casino employees	961
Summary of themes arising from PCRC AML expert survey completed by Perth Casino employees.....	965
APPENDIX P	981
Public Call for Information	981
APPENDIX Q	982
List of Public Submissions	982
APPENDIX R	986
List of Discussion Papers and Responses.....	986
APPENDIX S	987
Summary of Responses to Regulatory Models.....	987
Responsive submissions: Model One.....	987
Responsive submissions: Model Two.....	988
Responsive submissions: Model Three.....	988
Responsive submissions: Model Four.....	989
APPENDIX T	991
Practice Directions.....	991
APPENDIX U	992
Acknowledgements	992

CHAPTER 12

Harm Minimisation

Harm Minimisation

Purpose of Chapter

- 1 This chapter examines:
 - a. the regulatory framework;
 - b. regulation and oversight by the GWC; and
 - c. the governance and risk management by Crown and the Burswood entities, relevant to the mitigation of the risk of gambling-related harm related to the organisation and conduct of gaming operations at Crown Casino Perth (**Perth Casino**).
- 2 The risk of gambling-related harm and the measures adopted to address both that risk and the harm caused by casino gaming traverse a number of the PCRC's terms of reference (**ToR**). These issues are relevant to:
 - a. ToR 1 to 5, assessing the suitability of Crown Resorts Limited (**CRL**) and the Burswood entities to be concerned in or associated with the organisation and conduct of gaming operations with respect to the way they have sought and presently seek to minimise gambling-related harm at Perth Casino.
 - b. ToR 6, assessing the adequacy of communications by BNL and its associates with the GWC with respect to the issue of gambling-related harm. The circumstances in which certain communications were made are set out as case studies in Chapter Five: Regulation of Perth Casino.
 - c. ToR 8 and 9, assessing the adequacy of the existing regulatory framework in relation to gambling-related harm associated with casinos and casino gaming in Western Australia; and considering the appropriateness of the manner in which the GWC exercised its powers and discharged its regulatory functions and responsibilities with respect to the issue of gambling-related harm;
 - d. ToR 10, assessing the capability and effectiveness of the GWC having regard to its formulation and implementation of policies taking into account the need to minimise harm caused by gambling; and
 - e. ToR 11, providing the context for recommendations to enhance the regulatory framework and the GWC's future capability and effectiveness in addressing the minimisation of gambling-related harm.

PCRC's approach

- 3 Part One of this chapter provides some general context for the discussion which follows. It introduces technical terms that are referred to throughout the balance of the chapter. Part Two outlines the current regulatory framework and identifies its deficiencies. Part Three outlines and assesses the responsible gaming framework that Perth Casino has implemented (**Perth Casino's RG framework**). Part Four considers the adequacy of relevant communications between the Burswood entities and the GWC. Part Five sets out recommendations to minimise the risk of gambling-related harm at Perth Casino.

Part One: Context for discussion

Gambling-related harm

- 4 There is considerable debate as to what constitutes gambling-related harm.
- 5 The PCRC received an expert report dealing with gambling-related harm, co-authored by Professor Matthew Rockloff (**Rockloff**) and others (**Rockloff Report**).¹ The authors consider gambling-related harm to be any negative consequences that result from spending too much time and (or) money on gambling and cite the following definition:²

Any initial or exacerbated adverse consequence due to an engagement with gambling that leads to a decrement in the health or wellbeing of an individual, family unit, community or population.
- 6 This explanation is generally consistent with Crown's preferred definition.³
- 7 People who struggle to regulate the amount of time and (or) money that they spend on gambling may suffer from a mental health condition known as disordered gambling (also referred to as gambling disorder). Disordered gambling is defined in the Diagnostic and Statistical Manual of Mental Health Disorders, fifth edition.⁴ Disordered gambling is said to be 'characterised by persistent and recurring gambling behaviour that leads to substantial impairment and disruption to personal, family, or vocational pursuits'.⁵
- 8 People who experience these difficulties, but who have not been formally diagnosed as suffering from disordered gambling, are commonly referred to as problem gamblers (further discussed below).⁶
- 9 In Rockloff's view, people who are not disordered gamblers can nonetheless still suffer gambling-related harm. Rockloff provides the analogy of people who drink-drive. Even though they may not be alcoholics, they can still suffer harm, including arrest or accident.⁷ There is evidence to suggest that the majority of gambling-related harm is suffered by people who are not disordered gamblers.⁸
- 10 In response to the Rockloff Report, Crown tendered a report from Assistant Professor Kahlil Philander (**Philander**), who has both academic and industry experience in the field of gambling-related harm. In Philander's opinion, gambling-related harm can only be suffered by individuals who would be characterised as having an addiction.⁹ Philander considers there is substantial measurement error in research that has attempted to quantify harms suffered by persons who are not problem gamblers.¹⁰ Philander also considers that individuals without a mental health condition make rational and informed decisions when they choose to gamble and that regret is not an indicator of harm.¹¹
- 11 Whether all negative impacts of gambling should be classed as harm is a live debate. Those with views similar to Philander argue that when a person who does not suffer from disordered gambling makes a rational and informed decision to gamble, with a view to obtaining compensatory pleasure, any consequences of that decision should not be regarded as gambling-related harm. Those with views similar to Rockloff argue that there is an ascending scale of minor to severe harm that can be suffered by anyone who participates in gambling.
- 12 The Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) considers that gambling-related harm occurs across a broad spectrum of gamblers.¹² The Victorian Responsible Gambling Foundation (**VRGF**) likewise considers that gambling-related harm is not confined to people with severe gambling issues.¹³
- 13 The PCRC concludes that gambling-related harms occur across a continuum and can be suffered by anyone, including those who are not disordered gamblers.¹⁴ The PCRC does

not accept that a definition of harm must provide an indicia of readily observable 'harm thresholds'. As is discussed in Part Five of this chapter, the steps a licensee, or the GWC, might take to address the risk of a given harm are influenced by where on the continuum the harm lies. It may not be reasonable to seek to mitigate the risk of harms if, for example, the effort of doing so is disproportionate to the severity of the harm. Conversely, the risk of even minor harm should be mitigated if reasonable steps permit that.

- 14 In addition to 'problem gambler' (and problem gambling), other terms frequently used in connection with gambling-related harm include 'responsible gambling' (or gaming) (**RG**) and 'responsible service of gambling' (or gaming) (**RSG**).

Problem gambling

- 15 There is no scientific or legislative definition of problem gambling.
- 16 The 1999 Inquiry of the Productivity Commission into Australia's Gambling Industries (**1999 Inquiry**) noted that there is no clear point at which a recreational gambler becomes a problem gambler.¹⁵ The subsequent 2010 Inquiry of the Productivity Commission into Gambling (**2010 Inquiry**) similarly reported that there are differences in the conceptual underpinnings of problem gambling and in the resulting measures of prevalence and severity.¹⁶
- 17 The 1999 Inquiry noted that, while there are a variety of definitions, most of the definitions emphasise a lack of control.¹⁷ In 2004, Gambling Research Australia (**GRA**) recommended that the following be adopted as the Australian national definition:
- Problem gambling is characterised by difficulties in limiting money and/or time spent on gambling which leads to adverse consequences for the gambler, others, or for the community.¹⁸
- 18 That definition is widely used in Australia and New Zealand.¹⁹ It has been accepted by Crown and the Department of Local Government, Sport and Cultural Industries (**Department**).²⁰ The PCRC adopts it.
- 19 In an attempt to standardise the measurement of at-risk behaviour which constitutes problem gambling, various tests or scales have been developed. One test is the Problem Gambling Severity Index (**PGSI**).
- 20 The PGSI is a behavioural screening instrument used to measure the severity of gambling problems,²¹ and is one of the most widely used screens in the world.²² It is a nine-item scale, ranging from zero to 27. It classifies gamblers as being:
- a. non-problem gamblers (zero);
 - b. low-risk gamblers (one to two);
 - c. moderate-risk gamblers (three to seven); and
 - d. problem gamblers (eight to 27).²³
- 21 PGSI screenings are not clinical diagnoses. However, the PGSI is constructed from similar criteria to those used in clinical interviews. It is intended to measure the same underlying construct, being a mental health condition. Research suggests there is significant overlap, but not perfect congruence, between screening and clinical assessments.²⁴

Responsible gambling

- 22 There is confusion surrounding the term RG.²⁵ While literature has distinguished between responsible provision of gambling and its responsible consumption,²⁶ industry messaging has sometimes emphasised the behaviour and responsibility of consumers over the

practices of gambling operators.²⁷ The discourse of consumer responsibility has been criticised for diverting attention from the gambling operator and regulatory bodies,²⁸ and entrenching gambling-related harm through stigma.²⁹

- 23 RG (as consumption rather than provision) is said to be the current dominant paradigm driving industry, government and public health measures that aim to prevent or minimise gambling-related harm. The key principles underpinning the responsible consumption of gambling, being affordability, balance, informed choice, control, enjoyment and an absence of gambling-related harm, can be combined to formulate the following definition of RG:³⁰

Exercising control and informed choice to ensure that gambling is kept within affordable limits of money and time, is enjoyable, in balance with other activities and responsibilities, and avoids gambling-related harm.

- 24 Melanie Strelein Faulks (**Strelein Faulks**) (General Manager Responsible Gaming (**GMRG**) at Perth Casino) gave evidence that Perth Casino adopted the term responsible gaming in place of responsible gambling in 2019.³¹
- 25 Most casinos implement some form of RG policy. These commonly consist of self-exclusion programs, monitoring systems, staff-training and counselling services.³²

Responsible service of gambling

- 26 RSG is a set of operator policies and practices that are designed to prevent and reduce gambling-related harm. RSG incorporates interventions aimed at promoting consumer protection, awareness and education, and access to treatment.³³
- 27 The concept of RSG is derived from public health policy for the responsible service of alcohol which recognises that providers of alcohol bear responsibility for some of the harms arising from its consumption.³⁴ The introduction of the concept of responsible service of gambling in the late 1990s increased the social responsibility of operators to provide an environment that promotes safe gambling.³⁵

Preferred terminology

- 28 Perth Casino currently uses the terminology of RG and, occasionally, RSG.³⁶ The PCRC prefers the term RSG over RG because it helps to emphasise the responsibility of the gambling operator to minimise the risk of gambling-related harm.
- 29 When referring to problem gamblers, the PCRC intends to refer to people who have either been screened as problem gamblers, or exhibit behaviour that suggests they would likely be screened as problem gamblers. These are people who might be diagnosed as suffering from disordered gambling. The PCRC would prefer to use a term that does not carry with it the suggestion that the gambler themselves is a problem such as, for example, 'vulnerable gambler'. Such a term would recognise that these gamblers are particularly at risk of gambling-related harm from the products that gambling operators supply. However, the PCRC is not aware of any such term being in regular use.

Framework for the minimisation of gambling-related harm

- 30 Amongst academics and gambling industry participants, there are at least four models that have been developed to underpin frameworks to minimise gambling-related harm. These are the informed choice, harm minimisation, consumer protection and hybrid models. There is potential overlap between the models.

Informed choice model

- 31** The informed choice model of RG is a framework built on principles of personal responsibility.³⁷ The informed choice model also places an obligation on the gambling industry, in collaboration with government and the community, to ensure individuals receive sufficient information to enable them to ‘gamble responsibly’. To this end, the informed choice model requires socially responsible policies to protect consumers. Academics recognise that the nature and form of guidelines for informed choice vary according to the regulation of gambling across jurisdictions.³⁸
- 32** In 2004, the Reno model was developed to provide a framework to guide industry operators, health services, consumers and governments in the implementation of RG. The Reno model is underpinned by informed choice. It posits that the ultimate decision to gamble resides with the individual and that to properly make this decision individuals must be informed.³⁹
- 33** According to the Rockloff Report, the informed choice and Reno models rely ‘almost entirely on interventions that attempt to educate people on gambling, focusing mainly on people who have already developed a gambling problem’.⁴⁰ Philander disagrees and argues that the Reno model recognises that a duty of care may extend beyond the provision of information and that different stakeholders have varying responsibilities to mitigate gambling-related harm.⁴¹
- 34** Perth Casino describes RG as gaming that:⁴²
- ...occurs in a regulated environment where the potential for harm associated with gaming is minimised and customers can make informed decisions when they participate in gaming, based on their individual circumstances.
- 35** Harm prevention measures associated with the informed choice model are used in most jurisdictions around the world and are features of Perth Casino’s RG framework.⁴³

Effectiveness of the informed choice model

- 36** It is unclear whether the informed choice model is effective in reducing gambling-related harm. Informed choice is the dominant model used by the industry in Australia, yet the prevalence of problem gambling has increased in the last 10 years.⁴⁴
- 37** Rockloff opines that a predominant focus on informed choice is no longer appropriate given rising problem gambling rates.⁴⁵ Rockloff suggests that, even when fully informed, some gamblers suffer gambling-related harm.⁴⁶ The informed choice model has been criticised for focussing only on problem gambling and for paying insufficient attention to the role of gambling products and marketing in gambling-related harm. One academic suggests that ‘harm minimisation’ measures (discussed below) include more proactive operator interventions to protect the wellbeing of gamblers in order to prevent gambling harm or recognise it at an early stage before a severe problem develops.⁴⁷
- 38** Philander suggests the best model to minimise gambling-related harm is one that fuses aspects of informed choice with public health considerations. This hybrid model identifies different stakeholder roles that contribute to a collective goal.⁴⁸

Harm minimisation model

- 39** A harm minimisation model removes the emphasis on individuals ‘gambling responsibly’ and aims to prevent harm at a population level.⁴⁹ It recognises that governments and gambling operators have a responsibility to implement public health harm minimisation measures to limit excessive gambling behaviour across the population.⁵⁰ Academics have noted that, when implementing policy that will have the effect of limiting gambling

behaviour, a balance is required to ensure that gambling-related harm is minimised without overt disruption to recreational gamblers or gambling-related businesses.⁵¹

Consumer protection model

- 40** The consumer protection model assumes that consumers can benefit from regulatory and industry restrictions to prevent them from making irresponsible gambling decisions. Consumer protection measures generally require a way of tracking an individual's gambling activity,⁵² such as through the 'carded play' monitoring tools already implemented at Perth Casino and which are further discussed in Part Three of this chapter. The consumer protection model offers stronger protective measures to consumers compared to the informed choice and harm minimisation models.⁵³

Hybrid model

- 41** A hybrid model is one that combines features of the informed choice, harm minimisation and (or) consumer protection models. Philander considers that some policymakers may recognise that emphasising informed choice practices is important for active gamblers, but that a more public health-oriented strategy is appropriate to support prevention programs for people with gambling problems.⁵⁴ Crown suggests that the different models can be thought of as points on a continuum, with each model adopting the measures that are promoted by previous models along that continuum.

Preferred model

- 42** The PCRC concludes that a framework solely or primarily reliant on the informed choice model may not offer the most effective means to minimise gambling-related harm and should be supplemented by the insights of the harm minimisation and consumer protection models.

Prevalence of gambling-related harm in Western Australia

- 43** Research into the levels of gambling-related harm in Western Australia is scarce. This is partly due to an absence of a dedicated body devoted to addressing gambling-related harm in Western Australia.
- 44** The GWC, the Problem Gambling Support Services Committee (**PGSSC**) and other industry participants have not previously commissioned research in this area. This has historically necessitated reliance on data and research from other jurisdictions to approximate the likely extent of gambling-related harm in Western Australia.
- 45** The Second National Study of Interactive Gambling in Australia (2019 – 2020) Report (**Second Australian Gambling Study**) states that Western Australia has the highest estimated prevalence of gambling (62.9%) amongst the States and Territories.⁵⁵ Western Australians are significantly more likely than other Australians to take part in lotteries (52.8% versus 40.3%), scratch tickets (17.8% versus 15.5%) and casino games (10.2% versus 5.6%), as well as fantasy sports betting (1.0% versus 0.5%).⁵⁶
- 46** In Western Australia, 0.9% of people who gamble are classified as problem gamblers in accordance with the PGSI. By contrast, 85.9% of Western Australians who gamble are classified as non-problem gamblers. In the other States and Territories, 2.3% of gamblers are classified as problem gamblers, with 80.1% non-problem gamblers.⁵⁷
- 47** Section 85 of the *Gaming and Wagering Commission Act 1987* (WA) (**GWC Act**) effectively prohibits the possession and use of electronic gaming machines (**EGMs**) outside Perth

Casino and it prohibits the authorisation of games played on poker machines anywhere in Western Australia. This places Western Australia in a unique position as other States and Territories permit EGMs (including poker machines)⁵⁸ in licensed hotels and clubs.

- 48** In the 1999 Inquiry the Productivity Commission hypothesised that the relatively low rate of problem gambling in Western Australia likely reflects the limited availability of EGMs. It estimated that there would be an additional 10,500 problem gamblers in Western Australia if gaming machines were to be liberalised to the same extent, and under the same conditions, as in the other Australian States and Territories.⁵⁹
- 49** Today, Western Australians are still significantly less likely to take part in gambling on EGMs than other Australians (8.7% versus 17.3%).⁶⁰ The PCRC infers that EGM participation rates would be higher if EGMs were accessible outside Perth Casino.
- 50** The PCRC accepts the Rockloff Report's conclusion that increased EGM participation rates would ultimately increase the prevalence of gambling-related harm in Western Australia.⁶¹ Consequently, the PCRC acknowledges that there is a causal connection between increased accessibility to gambling opportunities and increased gambling-related harm.⁶² The following section discusses other causes of gambling-related harm.

Causes of gambling-related harm

- 51** The Rockloff Report opines that the source of gambling-related harm is simple: some individuals spend too much time and (or) money on gambling, and this damages their social relationships, mental health, and ability to contribute to society.⁶³ However, the Rockloff Report also notes that the reasons some people overspend are varied.
- 52** One reason is that in rapid play forms of gambling, such as EGMs, people can have difficulty keeping track of how much money they have lost. Large wins are more memorable than small but frequent losses. This can lead players to perceive that they are in a more favourable position than is the case. This is further compounded by some structural and design aspects of EGMs, such as 'losses disguised as wins'. These are celebratory audio or video sequences presented when a player has 'won' an amount of money that is less than the amount that they bet, so that they are worse off overall. This is more common where players are using multi-line bets and paying for each betting line. Although a player might have a 'win' along one pay line, that does not compensate for the total cost of selecting and paying for numerous different pay lines. Losses disguised as wins can operate to encourage persistence and facilitate dependency in playing, and result in players having inflated estimates of their win frequencies.⁶⁴
- 53** Another reason is 'loss chasing', which refers to the compulsion that gamblers may feel to try and win back their losses. It is a common indicator of problem gambling.⁶⁵
- 54** The behaviourally addictive properties of gambling can trigger the dopaminergic reward system.⁶⁶ Dopamine is a neurotransmitter the brain releases during enjoyable activities. It is associated with both disordered gambling and drug addiction. Its release is connected with a change in subjective experience and reinforcement of behaviour.⁶⁷ This can result in gamblers finding the activity to be pleasant and difficult to quit.
- 55** Philander gave evidence that the pre-eminent model to explain gambling addiction, and the factors essential to understand the 'causal pathways' of gambling-related harm, is the biopsychosocial model.⁶⁸ While the PCRC accepts the causal influence of genetic predispositions to gambling addiction, it does not accept that the biopsychosocial model is the pre-eminent model for understanding gambling-related harm.⁶⁹ The PCRC concludes that, while genetic predispositions may influence whether a gambler suffers harm, they are not a determinative factor in the cause of all gambling-related harm.

Types of gambling-related harm

- 56 Rockloff has explained that researchers have, based on self-reporting, identified 72 forms of gambling-related harms.⁷⁰ These harms can be divided into categories which include financial, relationship, emotional/psychological, health, cultural, work/study and criminal activity.⁷¹ Crown argues that this list of harms is not well established. There is scope to debate whether some of the harms identified by the study (such as the inability to purchase luxury items)⁷² would be considered to be harms by the community as a whole. Nonetheless, the PCRC concludes that this list of potential harms is helpful to contextualise the far reaching consequences of spending too much time and (or) money on gambling and that the GWC ought to stay abreast of ongoing research in this area.
- 57 One of the reasons it is important to recognise the wide variety of gambling-related harms is that Rockloff gave evidence that gambling-related harm is a unitary construct: those who suffer one type of harm are likely to suffer another type of harm.⁷³ The PCRC is satisfied that minor harms can be indicative of a risk of major harms.⁷⁴
- 58 Systematic reviews of research have repeatedly revealed high rates of comorbidity between gambling and mental health disorders.⁷⁵ Problem gambling comorbid with mental health disorders is associated with a range of harmful consequences, including impulsivity, interpersonal, physical, financial and social difficulties, increased psychiatric symptoms, severity of substance use problems and suicidality.⁷⁶

EGMs: a leading cause of harm

EGMs are more harmful than other forms of gambling

- 59 Dr Charles Livingstone (**Livingstone**) provided a submission to the PCRC arguing that high impact Australian-style EGMs are 'undoubtedly amongst the most harmful forms of gambling'.⁷⁷
- 60 EGMs have been referred to as the 'crack-cocaine' of gambling in media, and there is an 'overwhelming consensus' that EGMs are associated with the highest levels of problem gambling.⁷⁸ EGMs are said to be the most harmful form of gaming because they possess all of the highest risk characteristics, including rapid event frequencies, continuous play, micro features to maintain player interest (such as jackpots, near misses, lights and sounds), are highly accessible, and provide a self-contained electronic environment that acts to mesmerise players into losing track of time and money invested (often described as 'going into the zone').⁷⁹

Structural characteristics of EGMs that increase the risk of gambling-related harm

- 61 Studies show that problem and moderate-risk gamblers may be more stimulated by EGM play than non-at-risk gamblers. Further, problem gamblers: are more affected by certain EGM design characteristics; set pre-commitment limits closer to the time of play; are pre-disposed to risk-taking and tend to pursue rewards; are more likely to experience impulse control disorders; and are more likely to continue gambling following wins.⁸⁰
- 62 Livingstone suggests that the capacity of a gambling form to inflict harm is related to its structural characteristics which, in the context of EGMs, facilitate time on device and maximise revenue per available patron. Livingstone states that, for EGMs:⁸¹

The combination of a high speed of operation, relatively high stake size, carefully signalled random reward events, and multiple visual and auditory stimuli, produce apparent high engagement and apparently high rates of addictive behaviour. The consequence of this, of course, is significant harm.

- 63** A 2020 academic article observed that current data supports the above conclusion, with evidence from Australia overwhelmingly suggesting that gamblers seeking treatment for their gambling problems are more likely to report EGMs than other forms of gambling as the cause. The authors concluded that:⁸²
- a. participation rates in EGM gambling are approximately one in five adults overall, which is higher than for casino table games and (albeit only slightly) horse racing;
 - b. problem gambling rates have remained consistent at approximately 0.6 to 0.7%;
 - c. problem gamblers were disproportionately more likely to participate in EGM gambling compared to horse racing and casino table games (82% compared with 53% and 26% respectively); and
 - d. on average, 34.3% of problem gamblers reported weekly gambling on EGMs, compared to 16.8% for horse racing and less than 1% for casino table games.
- 64** The authors concluded that EGMs are more strongly associated with problem gambling than horse racing and casino table games, and proposed a number of explanations by reference to the structural characteristics of EGMs.⁸³
- 65** The structural characteristics that mean EGMs cause more harm than other forms of gambling encourage persistence and facilitate dependency.⁸⁴ These characteristics include:
- a. sound effects and visual cues;⁸⁵
 - b. jackpots, which are likely to exert behavioural influence on players through the possibility of winnings,⁸⁶ positively influencing play intensity and persistence;⁸⁷
 - c. speed of play (being the minimum time that must elapse between sequential EGM games). In Australia, the time is generally between three to five seconds;
 - d. features known as free games or free spins, which appear to be recognised as particularly desirable among regular EGM users;
 - e. multiline betting, where gamblers bet on multiple rows of symbols appearing in the display, offering a greater chance of winning on at least one line per spin;
 - f. near misses, being the display of a series of symbols which are perceived to come close to providing a reward, but do not in fact deliver one; and
 - g. losses disguised as wins, which, as already explained, refers to the possibility of 'winning' an amount less than the amount gambled.⁸⁸
- 66** Rockloff explained that the characteristics most germane to the potential of an EGM to cause harm are those related to its 'extractive capacity', being the rate at which it is able to obtain money from a player.⁸⁹ An example of an EGM characteristic that is relevant to its extractive capacity is speed of play.
- 67** The Rockloff Report opines that interventions which have been demonstrated to reduce the risk of harm from EGMs include:⁹⁰
- a. the removal of jackpots and bonus games;
 - b. removing sounds accompanying losses disguised as wins;
 - c. reducing the maximum bet to \$1;
 - d. the removal of note-acceptors;
 - e. reducing the number of lines able to be played;
 - f. provision of accurate game and price information to players; and
 - g. adjustments to the distribution of symbols across EGM reels.

- 68 Philander disagrees that all of these characteristics have been demonstrated to reduce gambling-related harm and counters that: there is only limited evidence that the changes identified by Rockloff would be useful in reducing harm; and there is little understanding of potential unintended consequences. Philander suggests that the interventions warrant further consideration and experimentation before they are implemented.⁹¹
- 69 The PCRC acknowledges that there has been little academic consideration of some of the interventions nominated by Rockloff. However, the PCRC concludes that all of them have at least some experimental support or are otherwise consistent with well-recognised psychological principles.⁹²

EGMs in Western Australia

- 70 The studies which have considered the harm caused by EGMs have been conducted in Australian States and Territories where EGMs are available at hotels and clubs, as well as at casinos. Further, the GWC has imposed restrictions on the features of EGMs which differentiate those machines from EGMs in other Australian States and Territories.
- 71 Given these differences, there is a question whether the results of the studies which have considered the harms caused by EGMs are necessarily applicable to Western Australia.
- 72 Despite these differences, the Rockloff Report states that there is no evidence to suggest the EGMs located in Western Australia are any safer than those in the other States and Territories. It suggests that Western Australians who use EGMs suffer from gambling problems at the same rate as people who use EGMs in other jurisdictions.⁹³ The PCRC infers that this is because of similarities between EGMs at Perth Casino and elsewhere. The Rockloff Report suggests that the more limited availability of EGMs is significant in contributing to lower overall rates of gambling-related harm in Western Australia.⁹⁴
- 73 Rockloff's empirical analysis generally corresponds with Livingstone's assessment that:⁹⁵
- a. a number of EGM games at Perth Casino are essentially indistinguishable from EGM games in other jurisdictions, possess the same features and characteristics and are equally as harmful;
 - b. changes in 2019 to the Western Australian appendix to the Australian/New Zealand Gaming Machine National Standard (**WA Appendix**), and the GWC's EGM policy (**EGM Policy**), (both discussed in Chapter Thirteen: Electronic Gaming Machines) have made games more similar to the games on EGMs in other jurisdictions; and
 - c. there is no real basis to distinguish between EGMs operated in Western Australia and those operated in the rest of Australia, having regard to their underlying operation, their fundamental characteristics, or their capacity to cause harm.
- 74 Rockloff gave evidence that any structural feature that reduces the rate of extraction is likely to contribute to lower amounts of harm.⁹⁶ Rockloff provided examples of a lengthier speed of play and high minimum return to player (**RTP**) as being features that could be expected to reduce gambling-related harm. While Rockloff agreed that the study they conducted found no proof that EGMs are safer in Western Australia than in other States and Territories, the PCRC acknowledges that Rockloff's first-principles reasoning suggested that this is likely. The PCRC also notes there were certain limitations to the study, including that the speed of play for some EGMs at Perth Casino changed in the course of the reporting period. In these circumstances, the PCRC considers that the Rockloff Report provides an initial basis to consider that the effect of speed of play may not be as pronounced as previously assumed. It is not possible to conclude this with certainty, and further study is warranted.

Part Two: Current regulation of harm minimisation

Regulatory framework in Western Australia

- 75** Gambling-related harm is a strategic risk to the attainment of the first two of the three broad regulatory objectives of casino regulation in Western Australia, namely:
- ensuring the socially responsible, lawful and efficient operation of Perth Casino and casino gaming undertaken there; and
 - maintaining the confidence and trust of the public of Western Australia in the credibility, integrity and stability of gaming operations at Perth Casino.
- 76** The GWC is responsible for addressing and regulating that risk. This part evaluates how it does so.

Casino Operations Manual

- 77** The Casino Control Act 1984 (WA) (**CC Act**) empowers the GWC to give the Perth Casino licensee directions regarding the system of internal controls, administration and accounting procedures that apply to its gaming operations.⁹⁷ The GWC's directions are consolidated as the Burswood Casino Directions (**Directions**).⁹⁸ The Directions require, amongst other things, that Perth Casino maintain the Casino Manual (Operations) (**CM(Ops)**). The CM(Ops) contains various provisions intended to support harm minimisation at Perth Casino including:
- section 8, pt 5.8 provides that Perth Casino will prepare a report on the RTP rate for all EGMs every six months;⁹⁹
 - section 8, pt 8 provides that Perth Casino will give loyalty program members the option of setting play safe limits (**PSL**) based on time or dollars over a 24-hour period;¹⁰⁰
 - section 3 refers to the GWC ATM policy which prohibits ATMs from being in the area covered by the casino gaming licence or within 40 metres of an entrance to the gaming floor unless they have a \$400 withdrawal limit per patron per day;¹⁰¹ and
 - section 13, pt 1.1 provides that employees of the casino 'must take reasonable steps to ensure' that persons who are or appear 'drunk' are not permitted entry to the casino.¹⁰² The PCRC notes that there is no equivalent requirement that employees must remove from the casino persons who become or appear 'drunk' after they enter.
- 78** It is an offence for the Perth Casino licensee not to comply with any provision of the CM(Ops) which is a subject of the Directions.¹⁰³ Notwithstanding the language of sections of the CM(Ops), including those sections outlined above which appear to impose requirements on Perth Casino, none of those sections are the subject of the Directions. Accordingly, compliance with those provisions is not mandatory.

Approval of casino games

- 79** Before declaring a game to be authorised the GWC must approve its rules.¹⁰⁴ The GWC may, at any time, give the Perth Casino licensee directions to alter the approved rules.¹⁰⁵
- 80** The criteria the GWC should apply when considering whether to approve rules or declare a game to be authorised are not stated in the CC Act. However, given the GWC's duty to take into account the need to minimise gambling-related harm when formulating or implementing policies for the regulation of gaming, the PCRC concludes that it is likely that

when the GWC approves game rules or declares a game to be authorised, it is required to take into account the need to minimise gambling-related harm.

- 81** Chapter Thirteen: Electronic Gaming Machines examines the WA Appendix and the EGM Policy which together indicate the standards that the GWC will apply when determining whether to approve a game to be played on an EGM.

Prohibition on poker machines

- 82** Section 22(1) of the CC Act prohibits the GWC from declaring as an authorised game, any game played with poker machines.¹⁰⁶ More broadly, s 85 of the GWC Act prohibits the possession or use of EGMs outside of Perth Casino, and poker machines anywhere.¹⁰⁷

Advertising

- 83** Perth Casino's advertising is regulated under the *Gaming and Wagering Commission Regulations 1988* (WA) (**GWC Regs**).
- 84** Regulation 43 of the GWC Regs prohibits gambling operators from publishing gambling advertisements that, among other things, 'offer a benefit, consideration or reward' in return for a person participating in gambling or continuing to gamble.¹⁰⁸ That general prohibition is subject to an exception. The gambling operator may publish such an advertisement 'only by sending it to persons who are existing patrons of the gambling operator'.¹⁰⁹ Those existing patrons must also have consented to the receipt of advertisements, and the advertisement must contain instructions on how the patron can withdraw their consent.
- 85** The subject matter of reg 43, and correspondence between the Department and Perth Casino prior to its introduction, confirm that the regulation is informed by consumer protection principles and intended to minimise the risk of gambling-related harm.¹¹⁰
- 86** In 2019, the GWC issued guidelines on gambling advertising and inducements to clarify the regulatory requirements. The guidelines state that a gambling advertisement must not include aspects that are not considered to be in the public interest, such as inducements to participate in, and continue, gambling. The guidelines also state that direct communications with existing patrons are not considered to be published gambling advertisements for the purpose of the regulations.¹¹¹

Exclusion of juveniles

- 87** Section 27 of the CC Act makes it an offence for a casino licensee or person involved in the management of gaming operations at a licensed casino to allow a person under the age of 18 to enter or remain in the casino, or to participate in gaming in the casino.¹¹²

Adequacy of the current regulatory framework

Regulatory requirements not expressed in framework

- 88** The GWC Act provides that one of the GWC's statutory duties is:¹¹³
- to formulate and implement policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling.
- 89** Further, the GWC has the express statutory power to:¹¹⁴
- take steps to minimise harm to the community, or any part of the community, caused by gambling.

- 90 Neither the GWC Act nor the CC Act expressly stipulates that the GWC has the object, duty, responsibility or function to mitigate the risk and reduce the prevalence of gambling-related harm in Western Australia.
- 91 The lack of a general and (or) specific objects clause in either the GWC Act or the CC Act is discussed in Chapter Five: Regulation of Perth Casino. The regulatory frameworks for casino operation in other Australian States and Territories contain objects clauses which include the object of minimising or controlling gambling-related harm.¹¹⁵
- 92 As the GWC Act is presently drafted, it is unclear whether the regulator is required to regulate gaming and wagering activities, including casino gaming, to mitigate the risk of gambling-related harm or whether its regulatory obligations only extend to the formulation and implementation of policies in that regard. There appears to be little difference between the two approaches but the narrower language used in the GWC Act of ‘formulation and implementation of policies’ is unhelpful.
- 93 The PCRC concludes that making harm minimisation generally an express duty, function or objective of the GWC in respect of casino gaming would give both the GWC and the casino licensee clarity and certainty about the role of the regulator. This is dealt with in Chapter Fifteen: Enhancements to the Regulatory Framework.

RSG Code of conduct not mandated

- 94 Unlike the regulatory frameworks in some other Australian States and Territories,¹¹⁶ neither the CC Act nor the GWC Act require Perth Casino to develop and maintain an RSG code of conduct.
- 95 Under the current regulatory framework, the GWC may give a casino licensee directions as to the system of internal controls that apply to its gaming operations.¹¹⁷ This could likely include a direction for the licensee to comply with an approved RSG code of conduct. The GWC has not given any such direction.
- 96 However, Perth Casino has developed the Perth Casino Responsible Gaming Code of Conduct (**RG Code**) which has not been approved by the GWC.
- 97 Assuming the GWC’s power to issue a direction extends to requiring Perth Casino to formulate and implement an RSG code of conduct, then enforcement action for breach of such a direction would attract a maximum penalty of \$5,000.¹¹⁸ Comparatively, the penalties available to a regulator in other jurisdictions where the operator has breached an RSG code are much greater.¹¹⁹
- 98 Mandatory RSG codes of conduct have potential benefits over voluntary codes.
- 99 One benefit is that a mandatory code provides objective, specific and measurable targets for both the casino operator and the regulator.¹²⁰
- 100 Another benefit relates to implementation. Operators have a financial incentive to ensure patrons continue to gamble.¹²¹ Diligent implementation of RSG measures may result in patrons gambling less. One academic has criticised voluntary codes on the basis that they are ‘expected to be conducive to good business rather than harm-minimisation’. This is claimed to result in voluntary RSG codes being less effective at reducing harm than mandatory alternatives.¹²² This reasoning is generally consistent with the experience in analogous areas of regulation, such as alcohol control, in which self-regulatory codes are ‘under-interpreted and under-enforced’.¹²³
- 101 A further benefit relates to enforcement. Mandatory codes may be enforceable against an operator by a regulator seeking penalties for non-compliance.¹²⁴ This provides operators with a clear incentive to comply.¹²⁵

- 102** The PCRC concludes that an RSG code of conduct to apply to Perth Casino's operations should be legislatively mandated rather than left to the discretion of the regulator to require pursuant to direction. Further, the penalties for breach of such a code should be stipulated so as to operate as a genuine deterrent to non-compliance. The current penalties for breach of a direction by the licensee do not achieve that purpose. Recommendations for appropriate amendments are set out in Chapter Fifteen: Enhancements to the Regulatory Framework.
- 103** The PCRC finds that that the regulatory framework in Western Australia does not adequately address the risk of gambling-related harm because it does not provide for a mandatory RSG code of conduct or deterrent penalties for breaching such a code.

Issues with advertising prohibitions

- 104** Gambling advertisements can contribute to gambling-related harm if, amongst other things, they encourage or induce gamblers to gamble more than they would otherwise choose to. Advertisements can act as reminders about gambling, trigger urges and undermine attempts to moderate gambling.¹²⁶
- 105** As already explained, the general prohibition on advertising in reg 43 is subject to an exception for existing patrons of a gambling operator who have consented to receiving advertisements. As examined in Part Three of this chapter, Perth Casino regularly sends advertising to its loyalty program members in apparent reliance upon this exception. This includes promotions offering additional points or credits for gaming that are intended to induce members to gamble more than they otherwise would.
- 106** There are approximately 161,000 active members of Perth Casino's loyalty program (**Crown Rewards**), 70% of whom have consented to Perth Casino sending them advertisements (115,000 members).¹²⁷
- 107** Having regard to the clear consumer protection and harm minimisation intent behind reg 43, the PCRC concludes that the exception in reg 43 undermines that intent in circumstances where Perth Casino's customer base is so large, and such a high proportion of that customer base has consented to the receipt of advertising. Recommendations for appropriate amendments are set out in Chapter Fifteen: Enhancements to the Regulatory Framework.

Poker machine prohibition

- 108** The lack of a legislative definition of poker machine or other legislative guidance as to the prohibition in s 22(1) of the CC Act is an inadequacy in the regulatory framework to minimise gambling-related harm in Western Australia.

Appropriateness, capability and effectiveness of the current regulator and adequacy of support by the Department

- 109** This section considers four case studies for the purpose of evaluating the GWC's decision making process that involves, or should involve, harm minimisation considerations.
- 110** The case studies concern decisions in respect of:
- a. the approval of additional EGMs at Perth Casino;
 - b. changes to EGM speed of play;
 - c. the approval of EGM games; and
 - d. the approval of cashless payments and restrictions in respect of ATMs at Perth Casino.

Case study one: Approval of additional EGMs at Perth Casino in 2010 and 2012

- 111** There were 200 EGMs approved for use at Perth Casino in 1985. There are now 2,500.¹²⁸ The population of Western Australia has approximately doubled in the same period of time.
- 112** In June 2010, Barry Felstead (**Felstead**) (former CEO of Perth Casino) wrote to Barry Sargeant (**Sargeant**) (former Director General of the Department and GWC chair) requesting approvals from the GWC for 250 new EGMs (from 1,750 to 2,000) as part of a redevelopment at the casino complex (**First EGM Proposal**).
- 113** The letter set out the steps Perth Casino had taken to improve RSG in light of the 2010 Inquiry, including implementing player activity statements (**PAS**) and PSL and improvements in patron exclusion. The letter also set out a number of the claimed benefits of the First EGM Proposal and argued that Perth Casino needed to be able to compete with Singapore's casinos which had approximately 5,000 'spinning reel' games.¹²⁹
- 114** The First EGM Proposal formed part of the agenda papers for a GWC meeting on 30 July 2010. Also included in the agenda papers was a letter from the President of the Public Health Association of Australia, Mike Daube (Emeritus Professor at Curtin University) (**Daube**). In his letter, Daube raised concerns about the impact of EGMs on individuals, families and the community, and requested that the GWC provide him with information about its process for considering applications for expanding gambling opportunities at Perth Casino.¹³⁰
- 115** The letter was tabled, but there is no record of discussion of the letter at the meeting.¹³¹
- 116** One former GWC member gave evidence to the effect that those present did not take Daube's letter seriously and recalled a 'general feeling that [Daube] was just almost making a motherhood statement in respect to gambling', in the sense that Daube was '[developing a] concept of the danger of gambling'.¹³² That member could not recall if the GWC responded to Daube's letter and conceded that in hindsight the GWC ought to have taken that letter more seriously.¹³³
- 117** The minutes for the 30 July 2010 meeting otherwise record that a presentation was made by Perth Casino highlighting the features of the First EGM Proposal and redevelopment generally, in which Perth Casino argued that:¹³⁴
- a. the proposal's benefits outweighed any potential adverse social consequences;
 - b. there were considerable economic benefits to the proposal;
 - c. the additional EGMs and table games would not result in a material increase in gambling-related harm because the increase was aimed at meeting existing and expected future demand in peak periods; and
 - d. Perth Casino's 'robust' RG framework would ameliorate any problem gambling issues.
- 118** Members noted the presentation made on the First EGM Proposal. The minutes do not record the GWC requesting any further information.
- 119** In August 2010, a departmental policy officer referred to the First EGM Proposal in an agenda paper for a GWC meeting and recommended that the GWC approve an increase in the number of EGMs to 2,000.¹³⁵
- 120** The agenda paper attached an impact assessment, prepared by the Department to assist the GWC with its deliberations. In relation to harm minimisation, the impact assessment highlighted that:¹³⁶
- a. the 1999 Inquiry and 2010 Inquiry set out that Western Australia had the lowest prevalence of problem gambling amongst adults, compared to other states;
 - b. EGMs not being accessible to the wider community was a significant factor in the low prevalence of problem gambling;

- c. over a 12-month period beginning 1 July 2009, EGM gaming resulted in 7.9% of calls to the problem gambling helpline, being 53 out of 674 calls; and
 - d. if the GWC approved an increase in EGMs to 2,000, Western Australia would continue to retain a ratio of approximately one EGM per 1,000 adults.
- 121** The PCRC observes the following in respect of the 1999 Inquiry and the 2010 Inquiry:
- a. The 1999 Inquiry considered the social impacts of gambling industries, the incidence of gambling abuse, the cost and nature of welfare support services and the adequacy of statistics procured by the Australian Bureau of Statistics in respect of gambling.¹³⁷ The prevalence statistics did not consider casino gaming specifically.
 - b. The 2010 Inquiry updated the 1999 Inquiry and provided additional research on the effect of harm minimisation measures on gambling across a number of settings.¹³⁸
 - c. Unlike the 1999 Inquiry, the 2010 Inquiry did not contain the results of a national survey, rather it reported on prevalence studies conducted by States and Territories which had undertaken them. No such studies had occurred in Western Australia so, in effect, the statistics in respect of Western Australia in the 2010 Inquiry were those previously reported in the 1999 Inquiry.¹³⁹
- 122** One GWC member recalled, in effect, that while the GWC relied on the prevalence statistics from the 1999 Inquiry, they were satisfied that they were still current and relevant as they had been extrapolated by the Productivity Commission in the 2010 Inquiry.¹⁴⁰ That same member could not recall reading the 1999 Inquiry,¹⁴¹ but recalled that in considering the First EGM Proposal the GWC's focus, more than anything else, was on the expansion of Crown Perth Resort, as opposed to harm minimisation.¹⁴²
- 123** Two former GWC members from that time gave evidence that during their tenure (one of nine years and the other of 14), the GWC did not initiate any of its own research into the prevalence of gambling-related harm in Western Australia.¹⁴³ The PCRC infers that the GWC also did not initiate any research into harm caused by either EGMs generally or by increasing the number of EGMs at Perth Casino.
- 124** There is no evidence to suggest that the GWC sought to interrogate Perth Casino's RG framework to ascertain whether it was 'robust' in respect of minimising the risk of harm from the playing of EGMs.
- 125** On 24 August 2010, the GWC approved the First EGM Proposal.¹⁴⁴
- 126** The PCRC infers that, in relying on data from the 1999 Inquiry and 2010 Inquiry, the GWC assumed that there had been no significant increase in the level of gambling-related harm in Western Australia since 1999. The PCRC further infers that the GWC considered that existing level of harm to be acceptable.
- 127** On 2 August 2012, Felstead wrote to Sargeant seeking approval for an additional 500 EGMs at Perth Casino to accompany the development of a new hotel at the casino complex (**Second EGM Proposal**). Felstead said that the number of EGMs per head of the adult population would still remain below that of other Australian States and Territories and that, to the extent that gaming at Perth Casino gave rise to harm, Perth Casino's RG framework was 'robust'. Felstead said that Perth Casino was also increasing the presence of its **RG team** (further explained at [251] below) to 24 hours a day, seven days per week.¹⁴⁵
- 128** In September 2012, Felstead provided a supplementary submission to Sargeant that repeated the characteristics of the RG framework at Perth Casino.¹⁴⁶ The PCRC infers that Felstead did so because he:
- a. considered that the increase in EGMs and table games at Perth Casino may have implications for harm minimisation; and

- b. wanted to provide assurance to the GWC that any risk would be sufficiently mitigated.
- 129** On 22 November 2012, a departmental policy officer prepared an agenda paper for the GWC to consider in respect of the Second EGM Proposal. The paper recommended that the increase be approved. It noted that the GWC had a duty under the GWC Act to take into account the interests of the community and the need to minimise gambling-related harm when formulating and implementing policies. It suggested that the GWC might, after having regard to harm minimisation and security and surveillance considerations, approve an increase in the number of EGMs.¹⁴⁷
- 130** An impact assessment was prepared by the Department to assist the GWC with its deliberations. In relation to harm minimisation, the impact assessment highlighted that:¹⁴⁸
- Western Australia had the lowest ratio of EGMs per head of population;
 - if the GWC approved an increase in EGMs to 2,500, Western Australia would continue to retain a ratio of approximately one EGM per 1,000 adults;
 - gambling expenditure as a percentage of household disposable income was at the lowest rate since 2003/04 and was the lowest of any Australian jurisdiction except the Australian Capital Territory. It was approximately half that of New South Wales and Victoria;
 - EGM gaming resulted in 9.7% of calls made to the problem gambling helpline in the 12-month period from 1 July 2011, being 175 out of 1,799 calls; and
 - EGMs not being accessible to the wider community was a significant factor in the low prevalence of problem gambling in Western Australia.
- 131** It also reiterated that the 1999 Inquiry and 2010 Inquiry set out that Western Australia had the lowest prevalence of problem gambling amongst adults, compared to other States.¹⁴⁹
- 132** The impact assessment concluded that the increase in the number of EGMs would have no material impact on the then prevalence of gambling-related harm.¹⁵⁰
- 133** On 27 November 2012, the GWC considered the Second EGM Proposal. The minutes record that the GWC:
- weighed the tourism potential and employment opportunities against the likelihood of any material impact on problem gambling prevalence rates;
 - relied on the 1999 Inquiry and 2010 Inquiry reports in identifying a low rate of problem gambling in Western Australia; and
 - resolved to approve the increase.¹⁵¹
- 134** The PCRC again infers that, in relying on data from the 1999 Inquiry and 2010 Inquiry reports, the GWC assumed that it continued to be the case that there had been no increase in the level of gambling-related harm in Western Australia since 1999. The PCRC infers that the GWC considered that existing level of harm to be acceptable.
- 135** There is no evidence to suggest that the GWC asked for any further information or made any further enquiries about Perth Casino's RG framework or about harm minimisation more generally. The PCRC infers that the GWC relied only on the information voluntarily provided to it by Perth Casino.
- 136** When the GWC approved the First EGM Proposal and the Second EGM Proposal, it gave some consideration to harm minimisation generally in reviewing the impact assessments prepared by the Department. However, those assessments rested largely on data about the prevalence of problem gambling in Western Australia that was not specific to gambling on EGMs and was some 10 or more years old. The GWC assumed that the stated prevalence of problem gambling in Western Australia was acceptable and did not independently interrogate the validity of that assumption.

- 137** The PCRC concludes that it was inappropriate for the GWC to:
- approve the EGM proposals without interrogating the information provided as to existing levels of gambling-related harm and the impact of increasing the numbers of EGMs at Perth Casino on those levels;
 - fail to independently consider what is an acceptable prevalence rate in respect of problem gambling and gambling-related harm in Western Australia; and
 - fail to consider Perth Casino's RG framework and whether it was sufficiently 'robust' to minimise the risk of gambling-related harm that might flow from the approval of the EGM proposals.
- 138** The PCRC finds that the GWC acted inappropriately and was not effective in regulating the risk of gambling-related harm when it approved the First EGM Proposal and the Second EGM Proposal.
- 139** The PCRC also finds that the Department did not adequately support the GWC when it approved the First EGM Proposal and the Second EGM Proposal because the Department did not advise the GWC that, before approving those proposals, it should:
- first attempt to obtain more up to date information about the risk of harm from playing EGMs and the consequent effect in that regard of increasing the number of EGMs at Perth Casino;
 - consider what is an acceptable prevalence figure for problem gambling in Western Australia; and
 - consider the adequacy of Perth Casino's RG framework.

Case study two: EGM speed of play

- 140** Whether and to what extent the speed of EGM play contributes to the risk of gambling-related harm is examined in Part One of this chapter.
- 141** Duncan Ord (**Ord**) (former Director General of the Department and chair of the GWC), Sargeant and Michael Connolly (**Connolly**) (former Chief Casino Officer (**CCO**)) gave evidence that they generally understood that:¹⁵²
- increasing the minimum speed of play would likely minimise gambling-related harm arising from EGM use;
 - reducing the minimum speed of play would likely result in increased revenue for Perth Casino; and
 - it was the GWC's role to weigh these benefits when making a decision.
- 142** The PCRC has examined the GWC's consideration of the issue of EGM speed of play on two occasions: in 2014 and 2019.
- 143** At a GWC meeting in March 2014, the GWC asked the CCO to examine the speed of play requirement in the WA Appendix and to liaise with Perth Casino 'with a view to decreasing the game speed by 20%' (that is, increasing the minimum time required to elapse between each game played).¹⁵³ The PCRC infers that the intended purpose of the direction was to minimise harm from EGMs.
- 144** The CCO considered that the then current EGM speed of play effectively balanced harm minimisation and the commercial interests of Perth Casino. The CCO acknowledged in evidence that 'there are obvious benefits to increasing the minimum speed of play and they are harm minimisation benefits'.¹⁵⁴ The CCO did not know the relative benefit of reduced speed in terms of harm minimisation absent a prevalence study and they did not undertake any investigations or research to find out.¹⁵⁵

- 145 The appropriateness of the CCO's response to the GWC's direction is examined in Part Four of Chapter Five: Regulation of Perth Casino. The adequacy of the Burswood entities' communications with the GWC about this issue is examined in Part Four of this chapter.
- 146 The minutes of a subsequent GWC meeting record, in part, as follows:¹⁵⁶
- [The CCO] outlined a number of adverse consequences that would need to be considered as part of any decision to amend the existing requirements.
- In order to reduce inconsistencies in the requirements between game types and considering the potential economic and other unwanted outcomes resulting from increasing the time taken to play an EGM, [the CCO] recommended no further action.
- 147 The agenda papers for that meeting note only that a verbal update would be provided on the issue.¹⁵⁷ There is no evidence that the GWC was provided or required a briefing paper to support the CCO's recommendation.
- 148 The PCRC infers that the GWC accepted the CCO's recommendation as no changes to the speed of play were made at that time.
- 149 If the GWC had afforded the minimisation of gambling-related harm its due attention and importance as a regulatory objective, it might be expected that it would require the CCO to respond to the GWC's direction with a briefing paper that:
- a. reflected the substance of their engagement with Perth Casino about the issue; and
 - b. set out a detailed and substantiated rationale for the CCO's recommendation.
- 150 Instead, it appears that the GWC was content to rely on a verbal briefing which, the PCRC infers, the GWC members had no opportunity to consider in advance of the meeting.
- 151 The question of speed of play arose again in 2019 when Perth Casino proposed to the GWC amendments to the EGM policy and WA Appendix to, amongst other things, decrease the minimum speed of play on EGMs from five seconds to three seconds.
- 152 In its proposal, Perth Casino expressed a view that the changes to the EGM Policy and WA Appendix would generally not have any impact on gambling-related harm.¹⁵⁸ The CCO recommended by way of an agenda paper that the GWC approve the changes and provided to the GWC a copy of Perth Casino's proposal and a report from Gaming Laboratories Australia trading as GLI Australia (**GLI Australia**), an accredited EGM testing facility.¹⁵⁹
- 153 Perth Casino urged the GWC to take into account, amongst other things, the low prevalence of problem gambling in Western Australia by virtue of maintaining a single destination for casino gaming.¹⁶⁰ The PCRC infers that that submission was based on the 1999 Inquiry and 2010 Inquiry reports. As far as the PCRC is aware, at the time, those were the only prevalence studies that had been conducted for Western Australia.
- 154 In summary, Perth Casino's submission argued that the changes would:
- a. cause an increase in revenue and therefore casino tax;
 - b. reduce costs for Perth Casino in respect of EGM development;
 - c. satisfy Perth Casino's desire to align EGM variety and quality with those elsewhere in Australia; and
 - d. maintain employment opportunities within the State.
- 155 The report from GLI Australia did not provide any information about harm minimisation. It only considered whether the proposed changes would impact whether EGMs would be considered to be poker machines pursuant to the regulatory framework.
- 156 The minutes of the GWC meeting on 23 July 2019 record that the CCO briefed the GWC on

proposed changes to the WA Appendix and 'relevant policies'. Ultimately, the GWC resolved to approve certain changes, including increasing the speed of play.¹⁶¹ The extent of the changes approved and the CCO's implementation of the GWC's resolution is examined in Chapter Five: Regulation of Perth Casino.

- 157** In giving evidence, Ord agreed that the GWC would need to know the implications of changing the speed of play for harm minimisation before approving the amendment.¹⁶² Ord agreed that the GWC did not critically analyse the proposal from the perspective of the public interest in minimising the risk of gambling-related harm caused by EGMs, and that in this circumstance there was no balancing of interests.¹⁶³
- 158** There is no evidence to suggest that the GWC asked for further information about the impact of the proposal on the risk of gambling-related harm.¹⁶⁴
- 159** For the reasons already explained in respect of case study one in this chapter, it was inappropriate for the GWC to rely on old information about the prevalence of problem gambling in Western Australia without at least checking to see if more up to date information was available. In any event, that information was not directly relevant to the question of whether EGMs would be rendered more harmful to casino patrons, including problem gamblers, if the speed of play were increased. The GLI Australia report, as already noted, was irrelevant to that question.
- 160** If the GWC afforded minimisation of gambling-related harm its due attention and importance as a regulatory objective, it might be expected that the GWC would have engaged more directly and thoughtfully with the issue of the risk of harm that was posed by Perth Casino's proposal. The PCRC concludes that, instead, the GWC gave that issue only superficial consideration and on the basis of inadequate information.
- 161** The PCRC finds that the GWC was not appropriate or effective in regulating the risk of gambling-related harm when considering a reduction in the speed of play of EGMs in 2014 and when approving an increase in the speed of play of EGMs in 2019 because it did not give sufficient attention to and place sufficient importance upon the minimisation of gambling-related harm as a regulatory objective.

Case study three: Decisions to approve EGM games

- 162** From about May 2016, the process for GWC approval of EGM games has been as follows:¹⁶⁵
- a. first, Perth Casino presents the game, usually via a video.¹⁶⁶ The GWC assesses whether the game meets the appearance and game play standards of the WA Appendix and EGM Policy and determines whether to grant in-principle approval. If the GWC rejects the game, Perth Casino must re-submit an amended proposal;
 - b. secondly, once the game is approved in principle by the GWC, Perth Casino makes a full submission to the Department. This includes independent testing facility certifications, proposed amendments to rules or procedures, deeds of indemnity and certificates from Perth Casino's solicitors as to the suitability of proposed rule amendments. The independent testing facility will assess whether the game meets the requirements of the WA Appendix. If the Department determines that the submission is inadequate, Perth Casino must re-submit an amended submission; and
 - c. thirdly, if the full submission is deemed adequate, approval by the CCO acting under delegated power from the GWC is sought. If the CCO requires Perth Casino to make amendments, then it must re-submit an amended submission to the Department.
- 163** Sargeant explained that there were two reasons for adopting this process:¹⁶⁷
- a. EGM games are expensive to develop and Perth Casino would not develop one without first having obtained in-principle approval from the GWC; and

- b. there is no point bringing the game back to the GWC after it has given in-principle approval because Perth Casino cannot thereafter change the game.
- 164** The result of this approach is that the GWC gives in-principle approval based on limited information about the game. Only the Department and CCO receive the full submission.
- 165** In December 2017, a departmental officer prepared a compliance review of EGMs at Perth Casino. The review noted that the approval process was the one adopted in 2016. The review stated that when considering a new EGM, the GWC will consider the potential for negative impact on the community or gaming integrity.¹⁶⁸
- 166** The officer's review does not accord with the GWC's actions. The PCRC has reviewed the GWC's files and minutes relating to new EGM games between 2019 and 2021. None contain information as to the risk of gambling-related harm posed by the EGM game or suggest that potential harm from EGM games was considered beyond whether they appeared to be similar to a game played with a poker machine.¹⁶⁹ This is consistent with the GWC's view that it has only limited capacity, if any, to take into account harm minimisation considerations when considering whether to approve games.¹⁷⁰
- 167** An example of the GWC's approach to the approval of EGM games is provided by a game called Cats, Hats and Bats. When Perth Casino demonstrated the game, GWC members expressed concern that it appeared to be similar in operation to a poker machine. The GWC resolved not to approve the new game.¹⁷¹ Three months later, Perth Casino presented the game again. This time, the symbols appeared in circles, as opposed to the rectangles of the earlier presentation. Perth Casino did not provide the GWC with information as to the game's likely impact on gambling-related harm. The GWC did not ask Perth Casino for such information. The GWC approved the game in principle.¹⁷²
- 168** The GWC requires that EGM games comply with the National Standard (further discussed in Chapter Thirteen: Electronic Gaming Machines). The Department submits that one of the goals of the standard is harm minimisation and, therefore, the GWC's consideration of whether EGM games comply with the National Standard and WA Appendix is sufficient to satisfy its duty to take into account gambling-related harm.¹⁷³
- 169** The PCRC acknowledges that the National Standard and WA Appendix contain measures to guard against some potentially harmful EGM features. However, they do not purport to do so comprehensively by addressing issues such as maximum bet size. Further, there is no basis to assume that the National Standard is effective at reducing harms in that, as explained in Part One, EGMs remain a leading cause of gambling-related harm in Australia notwithstanding their adherence to the National Standard. The PCRC concludes that the GWC's responsibility to take into account the need to minimise gambling-related harm when approving EGMs cannot be satisfied solely by considering compliance with the National Standard and WA Appendix.
- 170** The PCRC concludes that the GWC does not consider the potential harm that might result from EGM games when approving those games in principle, beyond considering compliance with the National Standard and WA Appendix.
- 171** The PCRC finds that the GWC's approach in this regard is not as effective as it could be in regulating the risk of gambling-related harm from the playing of EGMs.

Case study four: ATM policy and the introduction of cashless payments

- 172** In February 2019, the CCO recommended that the GWC approve Perth Casino's proposal to allow patrons to purchase, within the casino premises, gaming chips or tickets by cashless debit card payments.¹⁷⁴
- 173** Included in the relevant agenda item was a letter from Felstead.¹⁷⁵ Felstead contended

that the proposal would significantly improve Crown’s business and allow it to meet changing patron preferences. Felstead also asserted that, as with all gaming initiatives, Perth Casino was: mindful of RG implications; had a robust RG framework; and was committed to ensuring that gaming products were offered in a responsible manner. Finally, Felstead claimed that the potential risks of the proposal were adequately controlled by the withdrawal limits imposed by banks or self-imposed by the card holders.

- 174** On 26 February 2019, the GWC resolved in principle to approve the proposal, subject to the development and approval of an amended CM(Ops).¹⁷⁶ Notably, the GWC did not request that Perth Casino provide information on how the new cashless debit card procedures would interact with the GWC’s existing ATM policy. That policy was implemented as a harm minimisation measure and provides that ATMs cannot be placed on the gaming floor, or within 40 metres of the casino gaming floor unless they have a withdrawal limit of \$400.¹⁷⁷ The policy intends to limit impulse withdrawal of cash and give patrons time to consider their spending limits while walking to an ATM.¹⁷⁸
- 175** On 28 May 2019, the GWC resolved to approve cashless debit card payments for patrons to purchase gaming chips, subject to Perth Casino providing a report relating to the use, take up and any issues for the first three months of operation. The minutes record that the GWC discussed that the current ATM policy only applied to ATMs on or within 40 metres of the gaming footprint and that it did not stop patrons from withdrawing larger cash amounts outside this zone.¹⁷⁹ Ultimately, Perth Casino provided the requested reports.¹⁸⁰ In June 2021, amendments to the ATM policy were approved by the GWC so that it became the ‘EFTPOS/ Contactless Payments and ATMs at Crown Perth Policy’ (**ATM/EFTPOS Policy**).¹⁸¹
- 176** The ATM/EFTPOS Policy allows patrons to purchase, within Perth Casino, gaming chips, or tickets for use in EGMs, by cashless debit card payments. It also permits cashless debit card payments at restaurants and bars located on the casino footprint and cash withdrawals via debit card transactions at restaurants and bars up to maximum cash withdrawal of \$400 per transaction and maximum cash withdrawal of \$500 per person per day.¹⁸²
- 177** The ATM/EFTPOS Policy otherwise continues to prohibit ATMs on the gaming floor and requires ATMs located within 40 metres of the gaming floor to have a withdrawal limit of \$400 per customer per 24 hours.
- 178** The PCRC concludes that in respect of the ATM/EFTPOS Policy:
- a. it has an inconsistent approach to daily limits as a patron has a daily \$500 limit if withdrawing cash using EFTPOS facilities at restaurants and bars, whereas a \$400 limit if using an ATM within 40 metres of the casino footprint;¹⁸³ and
 - b. while there are daily limits imposed on patrons, the policy is silent on the ability of patrons to utilise multiple bank cards and how that is to be policed by Perth Casino.¹⁸⁴
- 179** There is also evidence before the PCRC that the daily withdrawal limits for EFTPOS terminals of \$500 per day resets at midnight,¹⁸⁵ allowing for patrons who attend Perth Casino at night to withdraw their \$500 limit before midnight and their second \$500 limit after midnight.¹⁸⁶
- 180** The GWC and Crown submit that there is a key distinction between withdrawal of cash from an ATM and the withdrawal from an EFTPOS terminal. Withdrawal from the latter is supervised by Perth Casino employees who have the opportunity to observe whether the relevant patron is displaying signs of harm.¹⁸⁷ This may be so, but as is examined in Part Three of this chapter, the identification of observable signs is not necessarily reliable and may not have been successful at Perth Casino in the past.
- 181** The PCRC also observes that employees do not supervise all cashless transactions which are permitted under the ATM/EFTPOS policy. For example, patrons are not supervised when they get tickets from a Ticket Redemption Terminal.

- 182** In effect, Lanie Chopping (**Chopping**) (the current chair of the GWC and Director-General of the Department) concedes that there are some difficulties with, and inconsistencies within, the ATM/EFTPOS Policy that require further consideration.¹⁸⁸
- 183** The PCRC concludes that the GWC's approval and implementation of the ATM/EFTPOS Policy undermines the protective intent of the ATM policy that it had previously approved and implemented.
- 184** The PCRC finds that, by the GWC's approval and implementation of the ATM/EFTPOS Policy, it has not effectively discharged its regulatory duty to minimise the risk of gambling-related harm.

Consideration of research on harm minimisation

- 185** It is self-evident that, in order to effectively regulate the risk of gambling-related harm at Perth Casino, the GWC must have an understanding of the causes of gambling-related harm and the measures available to mitigate that harm, including their effectiveness.
- 186** Additionally, Chopping gave evidence that a regulator needs to have a clear and deep understanding of the harms that may eventuate in the environment in which it is operating, including the prevalence of those harms and how the regulator might address them. Chopping agreed that for the GWC to be in a position to devise appropriate policies to minimise the gambling-related harm it would first need to know the level of gambling-related harm in Western Australia. To know that it would need access to comprehensive and up-to-date research.¹⁸⁹
- 187** Chopping also concedes that the GWC has not been well informed in relation to 'foundational information about the nature of harm [from casino gaming]' and nor does it 'appear to be well-informed in terms of exactly what its choice is in terms of the regulatory approach'.¹⁹⁰
- 188** There is a plethora of academic research that considers the extent to which various initiatives minimise gambling-related harm. For the most part, that research is easily accessible and publicly available.
- 189** As has been examined in the case studies above, the GWC has, until as recently as 2017,¹⁹¹ continued to rely on the data in the 1999 Inquiry and 2010 Inquiry reports as to the prevalence of problem gambling in Western Australia.
- 190** There is no evidence to suggest that the GWC has considered any other academic literature or studies related to the minimisation of gambling-related harm, notwithstanding that it provides funding to the PGSSC, which in turn makes financial contributions to Gambling Research Australia (**GRA**).¹⁹² There is no evidence that the GWC has ever directly sought or commissioned any specific research from the PGSSC, Perth Casino or an independent body.

Gambling Research Australia

- 191** GRA is a partnership between the Commonwealth, State and Territory Governments to initiate and manage a national gambling research program.¹⁹³ It was created in 2004 by the now disbanded Ministerial Council on Gambling. The partnership is governed by successive memoranda of understanding between the parties (**GRA MOU**).¹⁹⁴
- 192** The Department has not been able to locate copies of the GRA MOUs prior to 2017,¹⁹⁵ but, on the basis of the Department's record of a Director General briefing note which sets out the background to GRA's arrangements,¹⁹⁶ the PCRC concludes that Western Australia has been a party to the GRA MOU since inception.
- 193** The PGSSC provides Western Australia's only financial contribution to GRA.¹⁹⁷ In the

- 2018, 2019 and 2020 financial years, those contributions were \$24,290, \$31,927 and \$28,522 respectively.¹⁹⁸
- 194** Under the GRA MOU, the Commonwealth and each jurisdiction nominate member organisations as representatives.¹⁹⁹ The former Department of Racing Gaming and Liquor was Western Australia's nominated representative, followed by the current Department after the machinery of government changes in 2017.²⁰⁰
- 195** The GRA MOU establishes a governance committee comprised of departmental officers representing each party (**GRA Governance Committee**).²⁰¹ The GWC endorses the Department's nomination of a departmental representative.²⁰²
- 196** The GRA Governance Committee usually meets quarterly and, amongst other things:
- a. identifies research priorities for its program (research projects can be proposed by any member of the committee); and
 - b. approves the allocation of funds for its research projects.²⁰³
- 197** Sargeant gave evidence that, from 1992 to 2017, the Department and GWC were generally aware of research undertaken by GRA and gambling facts, figures and statistics compiled from time-to-time by the Australian Gambling Research Centre, Queensland Government and the Australian Gaming Council.²⁰⁴
- 198** A current GWC member gave evidence that they are aware of GRA funding through a memorandum of understanding, but they have not been provided with GRA's research on casino gaming.²⁰⁵
- 199** The PCRC has identified only two references to GRA in GWC minutes. Both dealt only with administrative and financial arrangements concerning GRA.²⁰⁶
- 200** There are currently 30 research publications on GRA's website across numerous topics from as early as 2007 and as recently as 2022.²⁰⁷ Topics include early intervention and prevention of problem gambling, EGMs, gambling advertising and social media.
- 201** There is no evidence suggesting that members of the GWC have read or actively considered such research.
- 202** Further, there is no evidence that the Department provided GRA's research publications to GWC members as a matter of course or at all, or that the Department, routinely or at all, updated the GWC with respect to the work of GRA.
- 203** The lack of interest displayed by the GWC and the Department in the work and research of GRA is a further illustration of the limited focus they each had on the minimisation of gambling-related harm or the risk of such harm as a regulatory objective.
- 204** The PCRC concludes that both the Department and the GWC should have appreciated that the work of GRA was potentially an important source of information to guide the GWC in its regulation of Perth Casino. That is particularly so given that the GWC does not appear to have had regard to any other sources of research or information concerning gambling-related harm.
- 205** The PCRC concludes that the GWC currently and historically has had an insufficient knowledge base in respect of gambling-related harm, including the appropriateness and effectiveness of potential mitigation strategies which could be achieved through regulation.
- 206** The PCRC concludes that the GWC has not had regard to available information and research, in particular that of GRA to which it has access, to guide its regulation of the Perth Casino in respect of the minimisation of gambling-related harm.
- 207** The PCRC finds that, in that regard, the GWC has not done what it should to capably and effectively regulate the risk of gambling-related harm at Perth Casino.

- 208** The PCRC concludes that the Department:
- a. has not had regard to available information and research, in particular, that of GRA to which it has access, to guide its recommendations and advice to the GWC in respect of the regulation of the risk of gambling-related harm at Perth Casino; and
 - b. has not kept the GWC apprised of the work of GRA.
- 209** The PCRC finds that, in that regard, the Department has not adequately supported the GWC to regulate the risk of gambling-related harm at Perth Casino.

Regulation of Perth Casino's RG framework by the GWC

- 210** The GWC does not routinely inspect or audit the effectiveness of Perth Casino's RG framework.
- 211** In December 2017, the GWC requested Perth Casino to provide statistics in respect of third-party referrals for a patron to be excluded and referrals made 'in-house' to Perth Casino's RG team. Since then, there has been a standing item in GWC agenda papers summarising those statistics. Over time those statistics have been improved so that now, for example, detail is provided as to the concerning behaviour observed.²⁰⁸
- 212** There is no evidence that prior to December 2017 the GWC ever requested information from Perth Casino that would allow it to consider or evaluate the effectiveness of Perth Casino's RG framework, even on an ad hoc basis.
- 213** The PCRC has identified only two examples, both after June 2018, of the GWC seeking additional information from Perth Casino about its RG framework.
- 214** The most detailed requests were included in a paper tabled on 24 July 2018 by a former GWC member.²⁰⁹
- 215** The minutes of the GWC meeting on 28 August 2018 record that the author of the paper expressed concerns with the number of patrons activating 'pre-commitment' at Perth Casino, compared to Crown Casino Melbourne (**Melbourne Casino**) and thought that Melbourne Casino's RG practices were far ahead of those at Perth Casino.²¹⁰
- 216** The GWC members resolved that Perth Casino should provide a submission on the recommendations made in the VCGLR Sixth Review of the Casino Operator and Licence 2018 (**Sixth Review**),²¹¹ as if those recommendations had been made in Western Australia.²¹²
- 217** On 18 December 2018, Joshua Preston (**Preston**) (former Chief Legal Officer, Australian Resorts) presented Perth Casino's submission in response to the GWC's request.²¹³ The minutes of the meeting do not record any questions or a response from the GWC.
- 218** There is no evidence of the GWC evaluating, or attempting to evaluate, the RG framework before the Sixth Review.
- 219** The PCRC concludes that the GWC has not undertaken a complete review of Perth Casino's RG framework. It does not have an established approach to a review should it decide to review it.
- 220** The PCRC finds, in this regard, that the GWC has not effectively regulated the risk of gambling-related harm at Perth Casino.

The GWC's involvement in the provision of support services for gambling-related harm through the PGSSC

- 221** Established in 1995, the PGSSC's aims are to educate the community on the consequences of problem gambling and promote help services available for those experiencing gambling-related harm.²¹⁴ The PGSSC is a committee that exists to address problem gambling issues

- in Western Australia, funded by voluntary contributions from its members. Its funds are directed towards providing a 24-hour telephone helpline, face-to-face and online counselling service, awareness campaigns and online resources.²¹⁵
- 222** The GWC, as one of the contributors to the funding of the activities of the PGSSC, resolved in July 2021 to contribute \$146,000 to the PGSSC for the 2022 financial year.²¹⁶ This is an increase from the 2021 figure of \$57,000 (COVID-19 affected) and the 2020 figure of \$76,000.²¹⁷ There is no explanation for the increase.²¹⁸
- 223** While the funds of the PGSSC are held in an agency special purpose account of the GWC,²¹⁹ the PGSSC is not a committee of the GWC. As such, the PGSSC is not obliged to carry out any of the legislative responsibilities or functions of the GWC to minimise gambling-related harm, nor is it afforded any of the powers of the GWC.²²⁰ It therefore follows that the GWC cannot direct the PGSSC, nor is the GWC responsible for the work of the PGSSC.²²¹
- 224** In February 2020, the GWC resolved to request the PGSSC provide a briefing on the outcomes of its meetings.²²² Prior to this, the Department provided executive support to the PGSSC,²²³ but did not report the activities of the PGSSC to the GWC, other than through the preparation of the GWC's annual reports.²²⁴
- 225** It appears that the PGSSC meets on an ad hoc and infrequent basis,²²⁵ and receives regular reports from its service providers containing statistics. Minutes of its meetings record that these reports are mostly just noted.²²⁶
- 226** The current members of the PGSSC are representatives from gambling operators and regulators. The PCRC concludes that the members of the body that is responsible for the support services for gambling-related harm ought, so far as is practicable, to be independent of gambling industry stakeholders, given the potential for divided interests between harm minimisation and the maximising of revenue (including taxation revenue) from gambling operations.
- 227** Other than the modest provision of financial support to GRA, there is no evidence before the PCRC that the PGSSC has funded any gambling research. It is self-evident that research, with a Western Australian focus, is necessary if the PGSSC is to provide effective gambling help services to the community.
- 228** A number of current and former members of the GWC did not know about the PGSSC and so the PCRC infers that the work of the PGSSC is not significant to the GWC.
- 229** The focus of the PGSSC's services is currently the provision of online, in person and telephone support services, as this is where a majority of its funding is spent.²²⁷ Broadly speaking, this type of service requires the recipient to:
- a. be able to identify that they might have a problem and have the insight to ask for help; or
 - b. have someone refer them to the service, such as a family member or someone from the RG team at Perth Casino.
- 230** The PGSSC does not appear to have a permanent gambling education function and there is very limited information on the PGSSC's website. The website has a copy of its strategic plan and a link to a 'problem gambling' website which provides the details of the gambling helpline and a two-page gambling help brochure.²²⁸ Its historical lack of reporting to the GWC is also evidence that the PGSSC has not lobbied the GWC for any type of regulatory or policy reform or improvements.
- 231** The PCRC concludes that the activities of the PGSSC are directed more at assisting those already suffering at least moderate gambling-related harm by providing intervention services than to the minimisation of all gambling-related harm.

- 232** In the 2020 and 2021 financial years, the PGSSC received funding contributions in the sum of \$794,000 and \$1.062 million.²²⁹ In the 2019 financial year, the PGSSC did not seek contributions from its members on the basis that there was enough funding available.²³⁰ The PCRC infers that the PGSSC therefore has an adequate level of funding to sustain its current services, but that this level of funding might not be enough if significant changes were to be made to its service offering. There is also an element of unreliability in the funding model, given that contributions are voluntary.
- 233** In Chapter Fifteen: Enhancements to the Regulatory Framework the PCRC examines what a more effective organisation might look like.

Part Three: Crown's management of the risk of gambling-related harm at Perth Casino

The relevance of minimising gambling-related harm to suitability

- 234** The licensee of Perth Casino is, due to the special nature of a casino licence, expected to organise and conduct gaming operations at the casino in a socially responsible manner.
- 235** The standard of conduct expected of a casino licensee when operating pursuant to the licence is informed by the broad public interest and, consequently, public confidence and trust in licensed gaming operations. It is axiomatic that the public will not repose their confidence and trust in casino gaming operations where the licensee does not take reasonable steps to protect its patrons from the risk of gambling-related harm. Consequently, the expectation that the casino licensee will act in a socially responsible manner includes the expectation that they will do what is reasonable to minimise the risk of gambling-related harm.
- 236** The regulatory framework in respect of the operation of casino gaming in Western Australia contains few prescriptive harm minimisation measures. Crown has not been provided with regulatory guidance by the GWC, including after Perth Casino began providing the GWC with statistics relating to its RG framework in 2018. The absence of regulation may inform the content of, but will not abrogate, the expectation that a casino operator will do what is reasonable to minimise the risk of gambling-related harm.
- 237** Whether a casino licensee meets the standard of conduct expected of them is relevant to an assessment of their suitability to hold a casino gaming licence. That is also the case for associates involved in the organisation and conduct of gaming operations whose suitability also stands to be assessed.

Crown's approach to minimising gambling-related harm

- 238** Perth Casino's RG framework is implemented by and on behalf of Perth Casino. However, Perth Casino's approach to minimising gambling-related harm is subject to control and oversight by CRL.²³¹ Crown has adopted a group level approach to its RG function.²³² The CRL Responsible Gaming Policy provides the overarching policy for all Crown properties.²³³ CRL determines the policies which apply at Perth Casino and the resources available to implement them. As the harm minimisation function of Perth Casino is effectively centralised at the Crown group level, the analysis in this part generally refers to 'Crown's' system unless it is necessary to identify a particular corporate entity.
- 239** Crown has introduced Perth Casino's RG framework in circumstances where the regulatory framework did not compel it to. That said, an important feature of the RG framework, the RG Code, has been adopted by Perth Casino in circumstances where a forerunner to the

code was required in 2002 by the GWC as a condition for the approval of additional EGMs.²³⁴ Further, as a result of Crown's centralised approach to harm minimisation, the requirements of the VCGLR that certain measures be implemented at Melbourne Casino may have resulted in those measures also being introduced at Perth Casino.

- 240** The impression that the PCRC has gained from reviewing Perth Casino's records is that the individual members of its RG team are committed to their function and attempt to minimise gambling-related harm. The concerns that the PCRC outlines below relate to the adequacy of the systems at Perth Casino, the way in which they have been implemented, and the organisational culture those systems and their implementation reflect, rather than to the performance of individual employees.

An evolving RG framework

- 241** Perth Casino's RG framework has in recent years undergone, and is continuing to undergo, significant change. That change can be traced to three different sources, each of which is examined in this chapter:
- recommendations made by CRL's independent Responsible Gaming Advisory Panel (**RGAP**) in an August 2020 report titled 'Review of Crown Resort's Responsible Gaming Programs and Services' (**RGAP Report**);²³⁵
 - an announcement by the CRL board in May 2021 of various changes (collectively referred to as the **RG Enhancements**);²³⁶ and
 - 'an enterprise-wide program that is intended to surpass state-based regulatory requirements', a draft of which was presented to the CRL board on 21 December 2021 (**RG Change Program**).²³⁷
- 242** To a large extent, the changes recommended by the RGAP Report and announced as part of the RG Enhancements already form part of Perth Casino's RG framework. When assessing the adequacy and effectiveness of the framework, the PCRC generally regards the framework as modified by those components. The changes contemplated by the RG Change Program, having not yet been introduced, are considered separately.

Components of the current RG framework

- 243** Perth Casino's RG framework comprises numerous policies and procedures.²³⁸ These include Perth Casino's RG Code (previously known as the RG Code of Practice);²³⁹ CRL's Code of Conduct;²⁴⁰ the CRL RG Policy;²⁴¹ the RG Risk Register;²⁴² and the RG Compliance Plan.²⁴³ All employees have RG responsibilities and are required to undertake RG training (albeit that it is limited training) to comply with the CRL Code of Conduct.²⁴⁴ Perth Casino's RG Code is a key initiative that underpins the RG framework,²⁴⁵ but is not to be read to the exclusion of Perth Casino's internal policy, procedure and training documents. It was last substantively revised in 2017.²⁴⁶
- 244** In aggregate, the foreword of Perth Casino's RG Code is consistent with and primarily reflective of the informed choice model. The Rockloff Report indicates, and Crown accepts,²⁴⁷ that Perth Casino's RG Code 'contains the usual provisions of an informed choice model.'²⁴⁸ However, Crown's philosophy in respect of harm minimisation is not limited to a passive informed choice model; aspects of its RG framework such as the Crown model (discussed below) are consistent with a public health approach.
- 245** Perth Casino's RG Code sets out, in high level terms, some of the significant features of the RG framework. This includes an explanation of how Perth Casino intends to detect gambling-related harm and the programs that are available in the event it does so. Broadly, these programs include exclusion (self-exclusion, third-party exclusion and involuntary

exclusion), PAS, PSL and the RG Centre.²⁴⁹ Each of the programs are given further content or direction in a series of Standard Operating Procedure (**SOP**) and Work Place Instruction (**WPI**) documents.²⁵⁰

The significance of carded/rated play

- 246** Before considering the elements of the Perth Casino's RG framework, some comments should be made about Perth Casino's capacity to gather gaming data.
- 247** As discussed below, Perth Casino operates a loyalty program called Crown Rewards. Patrons who play on EGMs or table games can present their Crown Rewards card to accrue points. Crown refers to gaming in which patrons make use their Crown Rewards card as carded play or rated play. Where a patron engages in carded play, information about their gaming, such as how much they bet, how long they play for, and where they play, is automatically captured and retained. Over time, Perth Casino can build up a detailed history of a patron's carded play gaming behaviour.²⁵¹
- 248** This information is also relied upon by systems used for Perth Casino's harm minimisation function. For example, a software system known as 'Splunk' is used to automatically notify the RG team of patrons who are on-site for longer than specified threshold periods.²⁵² As explained in relation to the Crown Model below, the data obtained from carded or rated play can also be used to identify whether patrons are playing in a way that might indicate a risk of problem gambling or gambling-related harm.
- 249** Carded play is the only tool allowing for automatic and reliable tracking of patron time on-site.²⁵³ While the VCGLR recommended that Melbourne Casino develop a tool to assess uncarded play and indications of gambling-related harm,²⁵⁴ there is no available system to satisfy that recommendation.²⁵⁵

Responsible Gaming team and the Responsible Gaming Centre

- 250** The RG team at Perth Casino and the resources available to it have recently been substantially increased. The RG team at Perth Casino now consists of 10 full-time and two part-time RG Advisors (**RGAs**), an RG Compliance and Administration Officer and an RG Administration Officer. All members report to Strelein Faulks.²⁵⁶ An RG Reporting/Data Manager at Melbourne Casino reports to the three GMRGs across Crown's properties. The RG team have access to, and consult with,²⁵⁷ two RG Psychologists located in Melbourne.²⁵⁸ There are currently two to three RGAs on duty for each shift. Perth Casino intends to increase that to three RGAs for all shifts.²⁵⁹
- 251** Perth Casino is presently seeking to recruit an RG Operations Manager, RG Evaluation Manager and a part time RG Psychologist (Research). The Operations Manager will be responsible for the RGAs and will manage rostering, internal relationships and stakeholder involvement and internal RG training. The Evaluation Manager will be responsible for the evaluation of data across the three Crown properties to inform RG initiatives. This position will be based in Perth.²⁶⁰ The RG Psychologist will identify and review national and international literature on gambling harm minimisation and provide training sessions.²⁶¹
- 252** Crown has appointed a person to the new position of Group Executive General Manager, Responsible Gaming (**GEGM RG**). They will be responsible for the design, development and implementation of a comprehensive Crown Group RG framework further incorporating harm minimisation, harm prevention and problem gambling management.²⁶²
- 253** The RG Centre, recently enlarged and repositioned, is a dedicated area of Perth Casino from which the RG team operates. Patrons can access the centre 24 hours per day, seven days per week, to speak with RGAs, obtain information in relation to exclusions, PSL and PAS, and obtain referrals to problem gambling and financial counselling support services.²⁶³

Manual detection of gambling-related harm: the 'observable signs'

- 254** A 'critical aspect' of Perth Casino's RG framework is its reliance on staff to identify patrons who display behaviour that may indicate problem gambling (**observable signs**).²⁶⁴ The relevant behaviours are listed in Perth Casino's RG Code and include self-disclosure of problems or requesting to self-exclude; getting angry while gaming or showing signs of distress; or trying to borrow money for gaming.²⁶⁵
- 255** Perth Casino employees are expected to report patrons exhibiting observable signs to the RG team.²⁶⁶ A member of the RG team will then gather all available information and attend the gaming floor to observe and interact with the patron.²⁶⁷ If the RG team is involved in multiple incidents with a patron, or if an RGA is not satisfied as to a patron's well-being, the patron may be requested to leave the casino and not return to the casino until a formal meeting has been held with the RG team.²⁶⁸

Exclusion

- 256** Perth Casino patrons can self-exclude to prohibit themselves from entering or remaining in gaming areas for a minimum of 12 months.²⁶⁹ Perth Casino promotes its self-exclusion program by means of posters on the back of toilet doors.²⁷⁰
- 257** Third-party exclusion applications allow a family member, friend or other person to request that Perth Casino unilaterally exclude a patron.²⁷¹ Once contacted by a third party, the RG team will conduct an investigation into the patron's gaming behaviour, and consider whether intervention is warranted, even if the third party does not want to proceed.²⁷²
- 258** Where Perth Casino believes that patrons are putting themselves or others at potential risk of harm as a result of their gaming behaviours, it will involuntarily exclude them. Patrons can appeal their exclusion to Perth Casino and then to the GWC.²⁷³
- 259** Perth Casino makes use of facial recognition technology to identify excluded people.²⁷⁴ A person that is found at Perth Casino in breach of their voluntary or involuntary exclusion may be made subject to a higher exclusion barring them from Perth Casino.²⁷⁵
- 260** A self-excluded patron may apply to amend or revoke their exclusion after 12 months. Before an exclusion is revoked, a patron must demonstrate that they have taken steps to manage their gambling behaviour (for example, by undertaking counselling).²⁷⁶

Player activity statements and play safe limits

- 261** Crown Rewards members who play EGMs and Fully Automated Table Games (**FATGs**) can request a PAS at any time. A PAS provides information about each member's level of play, including amounts won and lost and their total duration of play.²⁷⁷ Turnover (being the amount of money that a patron has bet on a given day, as opposed to the amount they have won or lost) is not recorded.²⁷⁸
- 262** PSL allow Crown Rewards members who play EGMs and FATGs to set money and (or) time limits. The limits only apply if the member engages in carded play. If a patron reaches their PSL, the EGM on which they are playing will alert them. The patron can choose to continue playing but will not accrue any further rewards points. The RG team receives an automatically generated alert once a limit is exceeded and are instructed to attend and observe the patron after each alert.²⁷⁹

Play periods

- 263** Perth Casino's Play Period Policy (**PPP**) is intended to assist patrons to manage fatigue, monitor for RG concerns, and provide support using a harm-minimisation approach.²⁸⁰

- 264** From December 2020, patrons on-site for more than 18 hours were asked to leave and could not return for 24 hours (**2020 WPI**).²⁸¹ The policy was updated on 4 October 2021 to permit a maximum of 12 hours on-site (**2021 WPI**).²⁸²
- 265** Under the 2021 WPI, gaming staff recruited to a Play Period Response Team are responsible for monitoring patrons at various points prior to the 12 hour limit. The Play Period Response Team alert the RG team if they note patrons exhibiting observable signs.²⁸³

Automated detection of gambling-related harm

- 266** The RG team manually monitors live gaming data as part of its day-to-day operations. It can review a patron's carded play history when assessing an individual.²⁸⁴ The RG team has not historically focused on analysis of gaming data to identify problem gamblers.²⁸⁵

The Crown model

- 267** The Crown model is a predictive tool that uses carded play data to predict whether patrons might be at risk of problem gambling.²⁸⁶ It does this by, in essence, comparing a patron's carded play data against the data of known problem gamblers.²⁸⁷ Where it appears that a patron might be at risk the RG team can assess whether to intervene. That some patrons do not always use carded play can compromise the effectiveness of the Crown model in identifying patron behaviour.²⁸⁸
- 268** The Crown model does not operate in real time. Instead, each month, reports are run in respect of 'top' patrons that the model has identified as potentially at risk of becoming self-excluded due to negative gambling behaviours. Those patrons are placed on a paging system to alert the RG team when they are next on the property. This allows RGAs to discretely observe the patrons before making an approach where appropriate.²⁸⁹
- 269** The Crown model was initially developed in 2017 by the Melbourne Casino Customer Analytics team.²⁹⁰ It was trialled during 2018 and 2019. However, further development and refinement was delayed due to the COVID-19 closure of Melbourne Casino.²⁹¹ In early 2021, the Crown model was assessed as unsuitable for Perth.²⁹² Perth Casino's Customer Analytics team has been developing a Perth version. A six-month trial of the Perth version commenced in November 2021.²⁹³

Other uses of patron data

- 270** More generally, Perth Casino can use patron gaming data to track patrons and identify concerning patterns.²⁹⁴ The data collected from carded play for total spend and hours gambled provides this capability.²⁹⁵
- 271** Additionally, Perth Casino carries out sophisticated analysis of patron gaming data for business monitoring and marketing purposes. For example, Perth Casino analyses patron data to identify the type of marketing or offers that it might send to patrons.²⁹⁶ Data analysis is regularly circulated to staff within the Perth Casino.²⁹⁷ This includes daily operation reports which identify turnover and the number of carded and uncarded patrons in venues.²⁹⁸ A monthly 'Top Players Report' is also distributed to staff.²⁹⁹ These reports include information regarding the EGMs being played, how long patrons are gambling, and their average bet and turnover.³⁰⁰

RG training

- 272** All staff undertake an online RG training module during orientation.³⁰¹ This module has changed over time.³⁰² It was updated in 2021 for the first time since 2015.³⁰³ The current module is interactive and, amongst other things, requires staff to choose how they would

act when faced with patrons exhibiting signs of problem gambling.³⁰⁴ Until recently, refresher training was provided every two years; it is now conducted annually.³⁰⁵

- 273** RGAs receive face-to-face, role specific training. Training focuses on the RG team and Perth Casino’s RG Code, specifically relating to exclusions, time out options, revocations and barring. It also outlines play periods and Crown Rewards processes.³⁰⁶ The training explains that some people are particularly vulnerable to gambling-related harm because of their brain function and will struggle with being able to stop gambling on their own.³⁰⁷ That is, the training focuses on problem gamblers.
- 274** RG manager training was not introduced to Perth Casino until 2021.³⁰⁸ Facilitator-led RG training is also delivered to VIP gaming staff and security staff when they commence at Perth Casino.³⁰⁹

The Responsible Gaming Advisory Panel and the RGAP Report

- 275** Crown established the RGAP in November 2018.³¹⁰ It provides advice in relation to RG programs, services and initiatives at Crown’s casinos.³¹¹ It can have up to five members.³¹²
- 276** The current RGAP members are Professor Alexander Blaszczyński (**Blaszczyński**) (chair), Professor Paul Delfabbro (**Delfabbro**) and Professor Lia Nower (**Nower**).³¹³ They are eminent academics who regularly publish in the area of problem gambling and harm minimisation measures.³¹⁴
- 277** In 2019, Crown asked the RGAP to assess its RG framework, including a review of current RG practices, policies and procedures.³¹⁵ The resulting RGAP Report identified both strengths and weaknesses, and made 17 recommendations.³¹⁶ The CRL board ‘largely accepted and endorsed’ those recommendations and has been implementing them.³¹⁷
- 278** Amongst other things, the report recommended an increase in RG training. Two of the recommendations were concerned with the use of data to detect gamblers at risk of harm. The first suggested expanding the Crown model such that it would attempt to identify patrons at risk of harm rather than just patrons likely to self-exclude.³¹⁸ The second suggested that patron data be used to develop a model for identifying at-risk patrons.³¹⁹ Pre-commitment data was said to be potentially useful to this development.

Management and governance of the risk of gambling-related harm

- 279** Between 2017 and 2020, the harm minimisation function for the Crown Group was centralised under Preston.³²⁰ Under the current structure, the CRL position responsible for RG is the GEGM RG, which reports to the Chief Risk Officer.³²¹ Steven Blackburn (**Blackburn**) is the current Group Chief Risk Officer and assumed management of the RG framework in February 2021 (then as the Group Chief Compliance and Financial Crime Officer).³²²
- 280** Perth Casino’s RG team and CEO have input into the settings of the overarching group level RG framework, which is implemented at a local level to take account of particular needs. It is possible to depart from the Crown group RG strategy if there is some reason to do so.³²³ The result is that both CRL and the Burswood entities are responsible for the Perth Casino’s RG framework: the former for developing it and the latter for having input into its development and being responsible for its implementation.
- 281** Strelein Faulks, until September 2021, reported to Sonja Bauer (**Bauer**) (former Group General Manager Responsible Gaming (**Group GMRG**)), and then through to Blackburn.³²⁴ They now report directly to Blackburn because the Group GMRG role has been made redundant,³²⁵ but will report to the GEGM RG when they commence with Crown.³²⁶
- 282** Perth Casino’s Responsible Gaming Management Committee (**RGMC**) is comprised of members of Perth Casino’s operations team. It was established in 2006 and meets three

times a year. The RGMC's purpose is to oversee the implementation of Perth Casino's RG Code and provide oversight.³²⁷ It is responsible for executing the Perth Casino's RG framework and monitoring whether RG is managed effectively at the casino. This means ensuring any issues relating to RG are appropriately escalated.³²⁸

- 283** CRL's Responsible Gaming Committee (**RG**C), a board committee, meets six times a year. It reports to the Crown board. The purpose of the RGC is to monitor and review RG programs and policies at each of Crown's wholly owned businesses.³²⁹ The Perth Casino GMRG attends RGC meetings as an invitee. Information from this committee is delivered back to the RGMC and vice-versa.

Deficiencies in Crown's approach to minimising gambling-related harm

- 284** Crown accepts that aspects of its RG systems and practices can, and should, be improved.³³⁰ Some improvements have already been made in accordance with the RGAP Report's recommendations and the RG Enhancements. Consideration of the RG framework as it was prior to those recent changes is of value. It illustrates the nature of the deficiencies in that framework and how they undermined Perth Casino's capacity to effectively minimise the risk of harm.
- 285** All of the measures that are identified in this section are ones that Perth Casino could have implemented, but has not. Considered individually, each measure is a reasonable means by which to minimise the risk of gambling-related harm. This is not to say that it was or is necessary for Perth Casino to implement all of the measures. The PCRC acknowledges that implementing some measures may have obviated the need to implement others. Further, not all of the measures discussed below are of equal importance in minimising the risk of gambling-related harm. For example, the adequate resourcing of the RG team, appropriate design and diligent enforcement of the PPP, and a formal program to evaluate the effectiveness of the RG Framework, are each significant reasonable measures. That Perth Casino has previously not taken them in and of itself leads the PCRC to conclude that it has not taken reasonable steps to minimise gambling-related harm. That Perth Casino has also not implemented the other measures discussed below reinforces that conclusion.

Deficiencies in Perth Casino's RG Code

- 286** This section outlines the deficiencies the PCRC perceives in Perth Casino's RG Code. The code is not the whole, but is an important part, of Perth Casino's harm minimisation initiatives, policies and practices. The code articulates, both to Perth Casino's officers and employees and the wider public, what Crown considers to be its responsibility and role in minimising the risk that its services will cause gambling-related harm. To that extent, it can shape corporate culture and behaviour.
- 287** Until recently, the language and content of Perth Casino's RG Code suggested that it was largely directed towards problem gamblers and the harm that they might suffer, rather than acknowledging that any patron might suffer harm. It referred to patrons who 'have difficulties with gaming responsibly', thus impliedly criticising those who did suffer harm as being irresponsible. It did not commit Crown to the 'responsible service' of gaming in the same way that it did for alcohol.³³¹
- 288** In evidence to the PCRC, Bauer agreed that aspects of the code's language suggested that it was for patrons to gamble responsibly; that any harm they suffered was a result of their own behaviour; and that this approach differed from the code's approach to the responsible service of alcohol.³³²

- 289** Recent updates to the code address this issue to some extent. Crown has removed references to ‘small numbers’ of patrons who may have difficulties with ‘gaming responsibly’. The code now refers to a ‘focus on harm minimisation’; commits Crown to RSG; and recognises its own ‘responsibility’ in respect of harm minimisation.³³³
- 290** These changes are consistent with Blackburn’s evidence to the PCRC. Blackburn considers that the appropriate model for Crown to adopt in order to minimise harm is one which embraces ‘all elements’ and focusses on harm prevention and minimisation in addition to addressing problem gambling.³³⁴ Blackburn intends by the RG Change Program to advocate this view to the RGC.³³⁵
- 291** However, the Perth Casino’s RG Code remains deficient in a number of respects, set out below.
- 292** First, Perth Casino’s RG Code fails to provide clear guidance as to the content of the observable signs that it lists.³³⁶ Three such signs are often gambling for long periods without a break, significant decline in personal grooming or appearance and frequent visits to the ATM and/or EFTPOS. No further detail is provided. Perth Casino’s training program does not compensate for the lack of detail.
- 293** Secondly, Perth Casino’s RG Code fails to include as an observable sign behaviour that research says is most commonly exhibited by problem gamblers: spending over \$300 per session.³³⁷ It may legitimately be questioned whether that precise figures is appropriate in a casino environment, where people might be expected to gamble more than in hotels and clubs of the kind where the research was conducted. These differences may mean that it would be appropriate to adapt this indicator for Perth Casino, as has been done with other observable signs in Perth Casino’s RG Code.³³⁸ Crown plans to ‘consider’ research into casino specific observable signs by the third quarter of 2022 and, ‘if valuable’, commission that research in the fourth quarter of 2022.³³⁹ It could have commenced such research much earlier (the first study it relies on was published in 2002). As is noted below at [314], other casinos have implemented systems to identify patrons as being at risk of harm depending on turnover or losses (although with higher thresholds).
- 294** Thirdly, Perth Casino’s RG Code does not impose objective and verifiable obligations on the casino or its employees in respect of the gaming environment that it provides. One example is ‘breaks in play’. The code states that ‘customers are encouraged to take regular breaks in play’.³⁴⁰ It does not indicate how or when encouragement is given, or for how long patrons will be encouraged to take breaks (although the new code states that encouragement ‘may’ include reminders from employees).³⁴¹ Similarly, Perth Casino’s RG Code provides that procedures are implemented to ‘offer’ patrons who win large prizes the opportunity to take breaks in play.³⁴² By contrast, Melbourne Casino’s RG Code provides that ‘EGM winnings of accumulated credits above \$2,000 must be paid by cheque and not made out to cash’.³⁴³ Receiving winnings by cheque means that those winnings cannot immediately be gambled and lost.
- 295** Fourthly, Perth Casino’s RG Code does not include provisions found in codes in other jurisdictions around Australia and of which Crown is aware. Bauer accepted that the inclusion of some of these provisions – such as a definition of intoxication and confirmation that it applies to people affected by drugs other than alcohol, or regularly providing patrons with a PAS so that they could see how much they are spending at the casino – may be an improvement.³⁴⁴ The latter provision is part of Melbourne Casino’s code and could be implemented at the Perth Casino.³⁴⁵ The PCRC did not receive expert evidence that such provisions would effectively minimise harm. However, their absence emphasises that Crown has not evaluated codes in other jurisdictions to ascertain whether they contain reasonable measures to minimise harm that ought to be incorporated into Perth Casino’s RG Code.³⁴⁶ Crown’s approach in this respect has been to do no more than what it considered itself obliged to do. The PCRC notes that CRL’s

Responsible Gaming Policy, which applies to Perth Casino, commits Crown to complying 'with all relevant legislation pertaining to responsible gaming' but does not extend to doing what is reasonable to minimise the risk of gambling-related harm.³⁴⁷

- 296** Fifthly, Perth Casino's RG Code does not commit Perth Casino to conducting, commissioning or supporting research into gambling-related harm from casino gaming in Western Australia or the effective minimisation of such harm. Earlier versions did.³⁴⁸ Such support could have, amongst other things, involved providing de-identified data to researchers.
- 297** Considered collectively, the deficiencies set out above reveal that, notwithstanding the recent improvements, both CRL and Perth Casino have not taken sufficient steps to minimise the risk of harm. This suggests a generally reactive and restrained rather than proactive approach to the design and improvement of Perth Casino's RG Code.
- 298** The PCRC concludes that:
- a. Perth Casino's RG Code is deficient in that it does not provide clear guidance in respect of the detection of observable signs; it does not commit Crown to the use of objective criteria to identify patrons at risk of harm by reference to their spending; it does not impose specific obligations to take steps that may encourage a reduction in harm; and does not commit Crown to conducting or supporting research into gambling-related harm in Western Australia; and
 - b. CRL and Perth Casino have not taken sufficient steps to improve Perth Casino's RG Code, in that they have not assessed provisions in other codes of which they were aware so as to adopt provisions which are reasonable to minimise harm.

Perth Casino's reliance on observable signs

- 299** Relying on observable signs to detect problem gamblers is beset with difficulties. The RGAP Report notes that 'all of the studies generally agree' that there are organisational and personal barriers to their effective use, which barriers 'become more significant when venues are larger, there are more people, and the area of the gaming floor is larger'.³⁴⁹ Perth Casino is a large venue with thousands of visitors each day.
- 300** Blaszczyński has separately noted 'the limitation of staff observation'.³⁵⁰ Blackburn is aware that Blaszczyński considers the ability of staff to manually observe uncarded players for signs of harm to be materially limited.³⁵¹
- 301** The evidence before the PCRC suggests that a significant majority of the Perth Casino patrons who are problem gamblers or suffer gambling-related harm are not detected or are not detected until such time as they have suffered significant harm and taken steps to self-exclude. As a result, it appears that Perth Casino's current systems do not allow for effective intervention to assist at-risk patrons before they suffer serious harm.
- 302** By way of overview:
- a. Perth Casino's records reveal that the majority of patrons who self-exclude have not previously been detected as a result of displaying observable signs; and
 - b. estimates of the number of problem gamblers frequenting Perth Casino suggest that staff are only identifying a small fraction of those problem gamblers.
- 303** The PCRC does not attempt to identify why Perth Casino staff are failing to detect patrons who are likely problem gamblers or suffering harm. Three possibilities (individually or in combination) might explain those results, namely:
- a. patrons did not exhibit behaviour constituting observable signs;
 - b. staff did not notice any relevant behaviours which the patrons exhibited; and (or)

- c. staff did notice the behaviours, but for some reason did not notify the RG team of their observations and so no intervention was staged.
- 304** It is irrelevant which possibility (or combination) apply to Perth Casino for present purposes. The significant points for this aspect of the PCRC's inquiry are twofold:
- a. a system which is primarily reliant on manual observation of patrons to identify observable signs does not appear to effectively detect problem gamblers or patrons suffering from harm; and
 - b. Perth Casino does not appear to have identified that its system is apparently ineffective or, until recently, to have taken steps to address that apparent deficiency.

Perth Casino has been ineffective in detecting patrons who self-exclude

- 305** The PCRC examined records of patrons who had self-excluded in 2020 to establish if they had come to the attention of the RG team prior to doing so. It was assumed that patrons who self-exclude do so because their gambling is causing them harm and are likely to be problem gamblers. That assumption appears to inform Perth Casino's policies.³⁵² The Crown model also equates self-exclusion with harm.³⁵³
- 306** Perth Casino's policies require that concerning behaviour reports be created when reports are made to the RG team.³⁵⁴ A review of the concerning behaviour reports, as well as other reports such as patron welfare reports, show that only 20 of the 182 patrons who self-excluded in 2020 had been the subject of a concerning behaviour report in the 12 months prior to their self-exclusion.³⁵⁵ That is, Perth Casino did not report to the RG team approximately 90% of those patrons who chose to self-exclude in the course of the year before they did so. A study upon which Perth Casino's RG Code relies suggests that some of the behaviours generally referenced in the code are exhibited by approximately 41% of problem gamblers.³⁵⁶ The PCRC assumes that problem gamblers at Perth Casino behave broadly similarly to problem gamblers at other venues.
- 307** Strelein Faulks did not accept that most people who self-exclude do so on the basis that they had experienced gambling-related harm. Strelein Faulks estimated that perhaps half of the people who self-exclude do so for other reasons.³⁵⁷ Even if this were correct, and only 91 of the 182 patrons self-excluded because of harm, Perth Casino would still have failed to identify approximately 70% of those patrons. In any event, the PCRC does not place weight on Strelein Faulks' estimate. Strelein Faulks gave evidence that she did not 'know the answer' and had not looked at the numbers.³⁵⁸ The PCRC's own review of interviews conducted with patrons seeking self-exclusion suggest that more than half of those patrons have suffered harm as defined by Crown.³⁵⁹ It is unnecessary to draw any conclusion as to the exact percentage of patrons who self-exclude on the basis of harm: it is clear that Perth Casino's system does not detect the majority of those patrons.

Perth Casino has been ineffective in detecting problem gamblers more generally

- 308** The above conclusion is supported by other data. Some 0.9% of gamblers in Western Australia are problem gamblers. A further 3.9% are at moderate risk of becoming so.³⁶⁰ Close to 20,000 people enter the casino each day, but some go in multiple times.³⁶¹ If it were to be assumed that 10,000 unique visitors attended Perth Casino each day in 2019, then some 90 problem gamblers and 390 at moderate risk gamblers would, on average, have been present on any given day. However, in 2019, Perth Casino identified only two or three people a day as displaying concerning signs.³⁶²
- 309** These estimates are consistent with and corroborative of the conclusions reached in relation to self-exclusion. Perth Casino appears not to detect a majority of problem gamblers at the casino. There is at least some identification of concerning behaviour. However, it is an order

of magnitude less than what might be expected if manual observation of observable signs was effective in identifying patrons suffering harm. It remains industry standard and good practice to look out for observable signs. However, Perth Casino's data demonstrates the significant limitations of any system that relies solely on observable signs.

310 The above analysis is consistent with Rockloff's evidence that:³⁶³

... if venue interventions based on observed problem gambling behaviours effectively minimise gambling harm in [Perth Casino], this would be a unique finding in our decades of research into RSG.

Perth Casino has not properly responded to its ineffective detection of gambling-related harm

311 Perth Casino has long had possession of the documents which allowed for the above analysis. This suggests that it has not properly reviewed documentation available to it in order to evaluate the effectiveness of its RG framework, or not taken steps to improve its effectiveness. Similarly, Perth Casino has not actively evaluated whether staff intervene when patrons display observable signs.³⁶⁴ Crown, appropriately, accepts that this has been a weakness and must be improved. It has appointed a person who will evaluate the effectiveness of RG practices at Perth Casino and says that this will be a focus of the RG Change Program.³⁶⁵

312 Perth Casino has also now taken, or is beginning to take, other steps to improve this aspect of its RG framework's effectiveness. There is no reason it could not have done so before now. Staff now receive annual RG refresher training.³⁶⁶ Perth Casino is increasing the number of RGAs (although only so as to increase by one the number on shift at any given time).³⁶⁷ It is introducing the Crown model and is making greater use of automated systems. However, the Crown model is not fully operational at Perth Casino. The PCRC is not aware of when it will be.

313 None of the above changes were voluntarily and proactively introduced. As explained below, the increase in RG team numbers and training was in response to the announcement of the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**). The Crown model was developed at Melbourne Casino from 2017 in answer to recommendations by the VCGLR.³⁶⁸ Perth Casino could have begun developing its own version of the Crown model at the same time. Other casinos around Australia have, pursuant to regulator requirement, been making use of automated detection systems for even longer. The Adelaide casino has, since May 2014, operated an automated system which alerts casino staff to intervene when, amongst other things, patrons have gambled more than specified amounts in a given time period.³⁶⁹ As early as 2007, the Auckland SkyCity casino tracked the gambling activity of patrons so as to potentially exclude people deemed to be problem gamblers.³⁷⁰

314 The PCRC recognises that Crown is not alone in its previous failure to use technology to identify gambling-related harm. However, that the Crown model has only recently been developed in answer to an interstate regulator requirement is an indicator of Crown's previous attitude to harm minimisation: doing what it felt it was obliged to do rather than what might reasonably be required to minimise gambling-related harm.

315 The PCRC concludes that:

- a. the majority of Perth Casino patrons who self-exclude do so as a result of suffering gambling-related harm and are likely problem gamblers;
- b. Perth Casino detects by observable signs only a small minority of those suffering harm. It has accordingly been ineffective in detecting patrons suffering harm;

- c. Perth Casino has failed to review and analyse its records to assess whether patrons suffering harm were being detected, or otherwise monitor the effectiveness of its RG framework; and
- d. until 2021, Perth Casino did not take steps to better detect such patrons.

316 The PCRC concludes that:

- a. Perth Casino has not sufficiently prioritised Perth Casino's RG framework to analyse documentary records, or evaluate the way in which staff respond to observable signs, so as to determine its effectiveness; and
- b. CRL and Perth Casino have not sought to implement automated systems to detect harm prior to the VCGLR recommending that Melbourne Casino do so, despite similar systems being in use at other casinos.

Play periods have not appropriately been set

317 One of the observable signs identified in Perth Casino's RG Code is patrons who often gamble for long periods of time without a break.³⁷¹ Since 2016, Perth Casino has adopted a number of policies to provide guidance as to excessively long gambling periods.

318 On 1 September 2016, Perth Casino adopted an SOP for patrons who spent 'excessive time' at the casino. Those who 'gambled for a 24-hour period' would not be allowed to remain on the gaming floor. They might be directed to take a break at an earlier time 'if RSG concerns [were] identified'. Read as a whole, the SOP was directed towards patrons who had been on-site at Perth Casino for 24 hours, regardless of whether they had gambled continually. The SOP stated that Perth Casino was 'committed to providing programs and initiatives to minimise problem gambling behaviours'.³⁷² It thus indicated that Perth Casino was of the view that patrons who generally engaged in gambling activity over a 24-hour period were likely to either suffer gambling-related harm or be at risk of suffering harm. Nothing in the SOP required patrons to take breaks from gambling at particular intervals prior to the 24-hour limit. The RG team (then referred to as the 'RSG' team) was required to 'use their discretion' when reminding customers of their requirement to take a break from gambling.

319 The literature available in 2016 (some of which was later referenced in Perth Casino's RG Code and which had been available since 2002)³⁷³ indicated that session times of 'five to six hours and beyond would raise concerns especially if linked to a number of sessions per week'.³⁷⁴ Other studies, also completed before the introduction of the 2016 SOP, found that often gambling for long periods (three hours or more) without proper breaks was a 'red flag' indicator of problem gambling.³⁷⁵

320 From January 2021, Perth Casino updated its stance via the 2020 WPI.³⁷⁶ By this time, Perth Casino's RG Code included specific reference to the research which suggested that gambling for three hours or more without proper breaks is a sign of problem gambling.³⁷⁷ The 2020 WPI stated that a patron could be 'on-site' for a maximum of 18 hours (including breaks from gambling of less than four hours) and was required to take an 8-hour break between visits to the casino. If a patron exceeded the 18-hour limit they would be barred from returning to the casino for 24 hours. Although the 2020 WPI suggested that patrons should (at least after 12 hours on-site) take 'reasonable breaks' prior to reaching 18 hours on-site, it did not define such breaks or require that patrons take them. Perth Casino's systems only generated Splunk alerts once patrons were on-site for more than 12 hours. On the first occasion a patron was on-site for more than 12 hours, the RG team was required to intervene and explain the 18-hour limit. On subsequent occasions, the RG team was only required to 'monitor' the patron.

321 The 2020 WPI allowed for patrons to be on-site and gambling continually for just less than 12 hours per day – every day – without the RG team being automatically alerted. Further, the

2020 WPI (which required an 8-hour break between sessions) would have allowed patrons to gamble for 14 hours per day – every day – without any guarantee of intervention. While the WPI required the RG team to have regard to ‘multiple consecutive extended periods of play’ in considering whether a patron was displaying observable signs, it did not specify the number of extended periods of play (if any) that would require the patron to take a break from gambling.

- 322** There is no explanation in the 2020 WPI as to why Splunk alerts were not generated as soon as patrons exhibited the ‘red flag’ indicator of often gambling for three hours or more without a proper break. There is no explanation as to why patrons were not required to take a break if they had gambled for a similar period in recent days.
- 323** The PCRC concludes that, whatever the reason, the 2020 WPI allowed for gambling behaviour consistent with problem gambling and, accordingly, likely to be indicative of or the cause of gambling-related harm.
- 324** Crown accepts that both the 2016 SOP and 2020 WPI were inappropriate.³⁷⁸
- 325** In May 2021, CRL announced that it would reduce the maximum play period at its casinos. The change came into effect at Perth Casino on 4 October 2021 via the 2021 WPI.³⁷⁹ In broad terms, this policy provides that patrons may not spend more than 12 hours on-site at Perth Casino, regardless of how long they have gambled in that time, and that patrons must take a 12-hour break between visits to the casino. If a patron exceeds the 12-hour limit they are barred from returning to the casino for 12 hours. Further, patrons can be on-site for a maximum of 48 hours in any seven-day period. If a patron exceeds the 48-hour limit they are barred from returning for 72 hours. The RG team may request that a patron leave the casino if observable signs are (or other concerning behaviour is) observed or reported, in which case the patron will be barred from attending the casino for 24 hours.
- 326** Blackburn has said the current 12-hour maximum play period is nothing more than their common-sense response to extraordinarily long time limits.³⁸⁰ Crown has acknowledged and accepts that this change ‘could have been implemented sooner’.³⁸¹
- 327** Very few patrons ever remain on-site at Perth Casino for 12 hours or more. More than 97% of visits end before that time.³⁸²
- 328** The 2021 WPI provides for alerts to be generated at certain points prior to a patron being on-site for 12 hours. These are where a patron has: played continually on one device for 3.5 hours; been on-site for six hours without a break from gambling of at least one hour; been on-site for eight hours without a break of at least two hours; and been on-site for 10 hours. Where such an alert is generated a member of the Play Period Response Team is required to observe the patron. They may engage with the patron but are not required to ask them to leave, or to take a break. If they note the patron displaying observable signs, they are required to report those concerns to the RG team.³⁸³ As already discussed, the evidence suggests that Perth Casino does not effectively detect observable signs.
- 329** Thus, the 2021 WPI does not prevent a patron from gambling for up to 12 hours continuously, unless a member of the RG team chooses to intervene on the basis of the patron displaying observable signs. Within that 12-hour period, there is no certainty of intervention by the RG team.
- 330** The 2021 WPI allows a patron to gamble continually on EGMs, so long as they switch machines before 3.5 hours, for just less than six hours per day – every day – without anyone being automatically alerted. Similarly, a patron could gamble continually on the same EGM for more than 6 hours per day – every day – and never be subject to intervention or required to take a break from gambling. The WPI does not make clear that the research explains that often gambling continuously for three hours or more is in and of itself a ‘good predictor’ of problem gambling.³⁸⁴ The 2021 WPI should reflect that fact and instruct the Play Period Response Team to accordingly be sensitive to any other observable signs.

- 331** Considered as a whole, the 2021 WPI continues to allow for gambling behaviour that is consistent with problem gambling and, accordingly, likely to be indicative of or the cause of gambling-related harm.
- 332** In October 2021, the RCCOL recommended that no patron be permitted to gamble on an EGM for more than 12 hours in any 24-hour period, or for more than 36 hours per week.³⁸⁵ While the recommended daily limit is consistent with the 2021 WPI, the recommended weekly limit is substantially lower. Perth Casino has given no indication that it will revise the 2021 WPI weekly limit to be consistent with the RCCOL recommendation, or impose a 36 hour gambling cap. Similarly, the RCCOL recommended that patrons ‘take a break of at least 15 minutes after three hours of continuous gambling’.³⁸⁶ Perth Casino has given no indication that it will revise the 3.5 hour trigger down to three hours in light of this recommendation, or revise the 2021 WPI to require (or even suggest) that patrons take a 15 minute break from gambling at that time.
- 333** Blackburn is ‘committed to ongoing consideration’ of what might be an appropriate maximum play period timeframe.³⁸⁷ The RG Change Program indicates that Crown will conduct research to form an evidence-based view as to appropriate play periods.³⁸⁸ The PCRC considers that it would be appropriate for Crown to provide that completed research to the GWC immediately after it is available so that the GWC can consider whether it should issue a direction as to maximum play periods.
- 334** The PCRC concludes that:
- a. the 2021 WPI may not result in any material decrease in gambling-related harm at Perth Casino because it does not require patrons to take breaks from gambling at any time before 12 hours of continuous play and relies on the detection of observable signs; and
 - b. CRL and Perth Casino have not updated, or considered whether to update, the current maximum play period at Crown casinos following the RCCOL recommendations.

Play periods have not properly been observed and enforced

- 335** The PCRC analysed Perth Casino’s records to determine whether the requirements in the PPP were being enforced. Records from June 2021 were examined on the basis that this was immediately after the 2020 WPI was formally approved by Strelein Faulks (although the underlying policy was developed in 2020 and operative from January 2021).³⁸⁹ Records from October 2021 were examined on the basis that this was the first month in which the 2021 WPI was operative.³⁹⁰ The PCRC reviewed responses to Splunk alerts recorded in Perth Casino’s collaboration tool and examined the available patron welfare reports.³⁹¹
- 336** Crown submits that it is inappropriate to rely on this analysis for reasons including that it was not put to witnesses; it is unfair to examine records immediately after a change of policy when teething problems might be expected; and Crown did not have sufficient time to review and respond to the analysis.³⁹² The PCRC has taken these submissions into account. However, the records for June 2021 were in respect of a policy that had been in place for five months. The policy that commenced in October 2021 was largely based on the previous policy. It was not possible for the PCRC to fully analyse the records and put them to witnesses in light of the time taken by Crown to provide the data in human readable format. Crown was able to conduct a detailed review of another analysis discussed in the closing observations.³⁹³ It has not suggested any flaw in the PCRC’s analysis of these records. Finally, it would be reasonable to expect Crown to have already conducted its own review of the effectiveness of the PPP implementation.

Analysis of play period records

- 337** In June 2021, over 80% of all Splunk alerts did not have a patron welfare report as required by the 2020 WPI. Of the alerts relating to patrons on-site for 18 hours or longer, approximately 75% had no corresponding patron welfare report as required. Of those, approximately 50% had no corresponding entry in the collaboration tool, suggesting there was no observation of or interaction with the relevant patron whatsoever.
- 338** The 2020 WPI policy is predicated on the assumption that patrons on-site for 18 hours or more are at risk of suffering gambling-related harm and should be removed for their own wellbeing.³⁹⁴ Perth Casino's failure to interact with and remove patrons who have been on-site for 18 hours, where staff have been notified of their presence, is a failure to take steps to ameliorate a recognised risk for which Perth Casino accepts it is responsible. Perth Casino's records show that its staff failed to comply with the 2020 WPI throughout the whole of the month. This, in turn, suggests that Perth Casino was not monitoring or analysing its records and taking steps to address any non-compliance.
- 339** In October 2021, over 85% of all alerts relating to patrons on-site for 12 hours or longer did not have a patron welfare report as required by the 2021 WPI. Of those, approximately 70% did not have a corresponding entry in the collaboration tool, suggesting there was no staff observation of or interaction with the relevant patron whatsoever.
- 340** During examination, Blackburn was asked whether he had any knowledge as to whether there was currently an issue at the Perth Casino with alerts being responded to in a timely fashion. Blackburn said:³⁹⁵
- My understanding is that the responsiveness is working effectively. I think there may be individual instances where something may have happened but not in any way material.
- 341** It is unclear on what this understanding was based. However, if Perth Casino conducted a review of the 2021 WPI's implementation, that review does not appear to have evaluated the performance of its RG team. This is notable given that Blackburn has identified Crown's previous failure to evaluate its RG framework as an inadequacy.³⁹⁶
- 342** It is at least possible that in some instances there may have been staff observation of patrons notwithstanding an absence of the records required by the WPIs. However, responding to the Splunk alert in the collaboration tool imposes little burden. It is unlikely that RGAs would have declined to update the application on a substantial number of occasions if they had gone to the effort of observing a patron. The obligation to complete a patron welfare report once a patron has been on-site for 12 hours was a requirement under both the 2020 and 2021 WPIs. Staff are therefore likely to have known of their obligation to complete a report. Further, that there were 302 patron welfare reports completed as required in October 2021 demonstrates that the RG team are generally aware of and attempting to discharge their obligation.
- 343** The PCRC concludes that the more likely explanation for the RG team's failure to respond to all Splunk alerts is a lack of resources, particularly given the increase in the number of alerts in October as compared to June 2021 (greater than 260% increase). The 2,221 alerts in October for patrons on-site for 12 hours or longer averages out to approximately 72 per day, or three per hour. The time taken for an RGA to access and consider Crown's records in respect of the patron; locate the patron; discuss the 2021 WPI requirements and then ensure that the patron leaves, is likely to be considerable. This conclusion is supported by data which shows that, even where members of the RG team did interact with patrons and then record those interactions, they often were not able to reach the patron until more than half an hour after receiving the Splunk alert. In October, of the 275 patron welfare reports that were completed, only 94 showed that RG team members dealt with the patron within 30 minutes of the Splunk alert, while 181 reports showed that patrons were not dealt with until after that time.

- 344** Crown does not accept the above analysis. However, it has since provided evidence showing that it has substantially increased the resources available to enforce the PPP, doubling the staff assigned to the Play Period Response Team (from 12 in October 2021 to 24 in January 2022).³⁹⁷
- 345** The PCRC concludes that:
- a. patrons who remain on-site at Perth Casino for more than 12 hours continuously in order to gamble are at risk of suffering gambling-related harm; and
 - b. Perth Casino staff, at least until October 2021, failed to observe or interact with a majority of patrons who remain on-site beyond that period of time.
- 346** The PCRC concludes that Perth Casino has inadequately implemented, monitored and enforced their PPP, and thus exposed some patrons to the risk of gambling-related harm, and CRL has not taken steps to ensure that the maximum play periods that it announced are properly implemented, monitored and enforced at Perth Casino.

Play Safe Limits are unused and thus ineffective

- 347** Despite the name, a PSL does not restrict Crown Rewards members to gambling within the time and spend limits they have nominated. They can continue to gamble but will not accrue rewards points. A PSL system cannot truly limit patrons in the absence of mandatory carded play (that is, where a patron is not able to gamble without either inserting their membership card into an EGM or presenting it to a dealer at a table game). Even if Perth Casino were to lock a Crown Rewards member's card, they could gamble with cash.
- 348** The PSL system has had virtually no uptake at Perth Casino. Between August 2019 and March 2021 only a single person signed up.³⁹⁸ Strelein Faulks says it 'is believed' that this is because it is associated with problem gambling, but provides no basis for that belief.³⁹⁹ It might equally be that patrons decide that there is no point in signing up for a system that is only reliably effective at preventing them from accruing rewards points.
- 349** Systems such as PSL are predicated on the belief that people make rational judgements about acceptable losses before gambling, whereas it is more difficult to make such judgements whilst betting and losing money.⁴⁰⁰ A system that empowered patrons to make binding decisions about time and spend limits would be consistent both with the informed choice and harm minimisation models.
- 350** Crown has the resources to implement an effective pre-commitment system.⁴⁰¹ The RCCOL recommended the introduction of a pre-commitment system that is:⁴⁰²
- a. full (where all patrons must use the system – that is, mandatory carded play);
 - b. mandatory (where patrons must set pre-commitment limits); and
 - c. binding (where patrons cannot keep gambling once the limits are reached).
- 351** In the 2010 Inquiry, the Productivity Commission recommended that all EGM play should be made subject to full pre-commitment systems allowing for binding limits.⁴⁰³ Subsequent research suggests that such systems would likely be effective at reducing harm.⁴⁰⁴ No regulator imposed a pre-commitment system in accordance with the recommendation. However, Crown has had many years to trial such a system to determine whether it effectively reduces gambling-related harm and should voluntarily be introduced at Perth Casino. It has not done so. Neither have casinos in other States and Territories. However, in Western Australia a binding pre-commitment system could not result in loss of custom to hotels and clubs as Perth Casino is a monopoly supplier of EGMs.
- 352** The PCRC concludes that:
- a. the PSL system is ineffective in minimising gambling-related harm;

- b. CRL and Perth Casino are aware that the system is ineffective;
- c. CRL and Perth Casino have long been aware of recommendations that EGMs should be subject to full and binding pre-commitment systems; and
- d. CRL and Perth Casino could have trialled an effective pre-commitment system via mandatory carded play at Perth Casino as a reasonable harm minimisation measure had they wished to do so, but did not.

Perth Casino's harm minimisation function has been inadequately funded and resourced

- 353** On 24 May 2021, CRL approved substantial increases in both the resourcing of the RG team at the Perth Casino and the remuneration of its members.⁴⁰⁵ The remuneration of Crown's RG team across all casinos was increased by up to 60%.⁴⁰⁶ Approval was given for the Perth Casino to increase the RG team from 12.5 full-time equivalent to 17.5 full-time equivalent.⁴⁰⁷
- 354** Crown accepts that the resourcing and remuneration of the RG team was not adequate for a number of years prior to May 2021.⁴⁰⁸
- 355** The inadequate remuneration of the RG team had been brought to Perth Casino's attention in June 2019, by way of a detailed proposal written by Strelein Faulks.⁴⁰⁹ Bauer confirmed that Strelein Faulks had raised, on numerous occasions, the resourcing and remuneration of the RG team at Perth Casino.⁴¹⁰ Although there were remuneration reviews, there was an ongoing disparity in pay between gaming staff and RG team. Bauer did not think there should be any such disparity.⁴¹¹
- 356** Inadequate remuneration and resourcing has impacted Perth Casino's RG function. In July 2020, Strelein Faulks notified the RGMC of RG team resignations,⁴¹² advising that the RG Centre had been required to close five times since the casino reopened after the COVID-19 shutdown due to inadequate staffing levels.⁴¹³ In January and February 2021, Strelein Faulks wrote to Crown executives to argue in support of a general increase in remuneration for the RG team.⁴¹⁴ Strelein Faulks noted that she had been 'campaigning for a number of years to have it reviewed',⁴¹⁵ adding that dissatisfaction and staff turnover had resulted in the RG department 'being under resourced for months on end'.⁴¹⁶
- 357** It appears that no material steps were taken in respect of Strelein Faulks' complaints until after 24 March 2021, being the day on which Commissioner Finkelstein announced that the areas of investigation for the RCCOL included 'most importantly, the manner in which [Melbourne Casino] deals with gambling addiction'.⁴¹⁷
- 358** Strelein Faulks considers that remuneration for the RG team at the Perth Casino is now appropriate, although she cannot yet say whether additional resources will be needed.⁴¹⁸
- 359** Crown submits that the PCRC can be assured that the current leadership will ensure appropriate resourcing of Perth Casino's RG function into the future. However, as explained in relation to Perth Casino's failure to monitor the implementation of the PPP, it does not appear there has been proper evaluation of the current effectiveness of Perth Casino's RG framework. Crown has not otherwise provided information as to the steps that it is taking to determine the appropriate resourcing of Perth Casino's RG framework. The RG Change Program indicates that the adequacy of RG resourcing will be considered no earlier than April 2022.⁴¹⁹
- 360** Crown also argues that the previously inadequate resourcing of Perth Casino's RG function does not mean there was an under-appreciation of the function itself. However, Strelein Faulks agreed that they had to fight to get Crown 'to pay proper regard' to Perth Casino's RG function and not just focus on gaming profits.⁴²⁰ A failure to sufficiently resource that function for years, even while Strelein Faulks was drawing attention to the serious impacts

of that under-resourcing, suggests that CRL and Perth Casino did not place sufficient importance on minimising harm to properly resource the staff charged with securing that goal.

361 The PCRC concludes that, prior to May 2021:

- a. CRL and Perth Casino had for many years been aware of the inadequate resourcing of Perth Casino's RG function and the inadequate remuneration of its RG team and did not take any steps to address the issue; and
- b. appropriately resourcing the RG team at Perth Casino at an earlier time would likely have meant that it would have been better able to provide assistance to Perth Casino's patrons so as to minimise gambling-related harm.

Perth Casino has not been subject to effective oversight by Burswood Limited

362 Perth Casino's risk management processes have been discussed in Chapter Four: Corporate Governance. The PCRC reviewed the minutes of meetings of the RGMC, the Perth Executive Risk and Compliance Committee (**Perth ERCC**), and the BL board that took place in the financial year ending 2021, in order to ascertain the extent to which BL maintained oversight of the risk of gambling-related harm at Perth Casino.

363 At each of its meetings, the RGMC considers recurring matters such as training and incident statistics and an 'environment scan' of gambling-related harm articles and research, as well as specific issues such as the rollout of EFTPOS facilities to table games.⁴²¹ References to the work of the RGMC are occasionally,⁴²² but not always,⁴²³ incorporated into the agenda packs for meetings of the Perth ERCC.

364 A summary of the Perth ERCC's work is incorporated into agenda packs for BL meetings in a 'Legal, Risk & Compliance Board Report' or 'Legal & Regulatory Update'. While these agenda packs often include brief references to matters relevant to gambling-related harm (such as the rollout of EFTPOS facilities),⁴²⁴ and intermittently include RG updates,⁴²⁵ they do not contain a recurring harm-minimisation item. The minutes suggest that BL does not engage in any substantive discussion in relation to, or impose requirements in respect of, Perth Casino's harm-minimisation function.⁴²⁶

365 An example of BL's lack of engagement in respect of matters relevant to harm minimisation is provided by the 2019 changes to EGM speed of play discussed in Part Two. The agenda paper and minutes of the BL board meeting in February 2019 did not provide any indication that an application to amend speed of play, being an application with obvious potential harm-minimisation impacts, was soon to be made.⁴²⁷ The agenda papers for the 31 May 2019 meeting did not refer to the application, although the minutes show that Lonnie Bossi (**Bossi**) (Crown, Former Chief Operating Officer, Perth Casino) reported that it had been made.⁴²⁸ The agenda papers for the 8 August 2019 meeting stated only that the regulator had approved the application.⁴²⁹ The minutes suggest there was some discussion of the fact that the change might 'potentially generate some media and public commentary' and that a watching brief should be kept.⁴³⁰ Significantly, nothing in the minutes suggest that BL was advised that the changes might be relevant to the risk of gambling-related harm. The documentation confirms that BL was not asked to consider or approve the application before it was made, notwithstanding the harm minimisation implications of the change.

366 The PCRC concludes that BL has not regularly or substantively engaged with the issue of gambling-related harm at Perth Casino and has not exercised effective oversight in relation to the casino's harm minimisation function. The PCRC notes, however, that the agenda packs for the BL board meetings of 23 August and 10 December 2021 apparently suggest that it may in future consider a 'Responsible Gaming Update' as a standing item.⁴³¹ This is a positive step.

Crown and the RGAP

- 367** Crown was not obliged to establish the RGAP. It did so in order to obtain expert advice as to harm minimisation at its different casinos, with the impetus for the RGAP's establishment being recommendations made in the Sixth Review.⁴³² It is clear from the documentary evidence before the PCRC that the RGAP has provided substantial assistance to Crown in the development of the RG Change Program.
- 368** The members of the RGAP receive commercial remuneration for their services to Crown in the form of a monthly retainer.⁴³³ In return, they are required to meet twice annually and additionally as required. Crown may end a member's appointment at its discretion and at any time.⁴³⁴ Members accordingly do not have the security of (a limited) tenure, which is generally recognised as an important mechanism to ensure independence of advice.
- 369** Blackburn agreed that a limited tenure for members of the RGAP might be useful.⁴³⁵ The PCRC encourages Crown to considering introducing limited tenure to assist in securing the independence of the RGAP.
- 370** The Rockloff Report raised concerns that some RGAP members had previously received direct funding from the gambling industry for their research and – while at pains to point out that it was not calling into question the integrity of any members – was concerned that they may be 'subtly and even unconsciously influenced by their financial self-interests'.⁴³⁶ Philander does not consider there to be any evidence that industry funding creates biases or conflicts of interests in work that is being published.⁴³⁷
- 371** It would diminish the value of the RGAP to Crown and to the community if the independence of the RGAP was to be compromised as a result of the arrangements by which it was constituted or by its membership. Stephen McCann (**McCann**) (CEO of CRL), agreed that the independence of the RGAP is important so that it can advise Crown untainted by the commercial interests that affect Crown.⁴³⁸
- 372** The PCRC is cognisant that it would be difficult for Crown to obtain advice from experts if it did not offer payment. It is not uncommon for professionals to provide services for payment without compromising their independence or detachment.
- 373** As to the issue of the composition of the RGAP, and as discussed earlier, there are different approaches to harm minimisation. The evidence of Rockloff and Philander shows that there is a lively and ongoing debate as to these different approaches amongst academics. There may be a question whether the composition of the RGAP is sufficiently broad to ensure that its work is informed by multiple different points of view.⁴³⁹ In saying this, the PCRC does not call into question the expertise of RGAP members or the quality of its advice.
- 374** Overall, it is in the interest of Crown and the public of Western Australia for the RGAP to be constituted by independent experts and for its members to have the security required to enable them to provide independent advice to Crown. Crown has an important role to play in ensuring these objectives are met. The GWC could consider playing a role in reviewing the terms and conditions of the RGAP members' appointments to assist in meeting these objectives.
- 375** For the avoidance of doubt, none of the above comments should be understood as suggesting that the PCRC's concerns as to the structure of the RGAP amount to an adverse finding against Crown for establishing the RGAP.

Prioritising revenue ahead of harm minimisation

- 376** This section considers whether Perth Casino has prioritised its pursuit of profit over and above meeting the expectation that it will do what is reasonable to minimise the risk of gambling-related harm.

- 377** Blackburn does not believe that ‘responsible gaming is inconsistent with profit’.⁴⁴⁰ However, there is at least a potential tension or conflict between the expectation that a casino licensee will do what is reasonable to minimise the risk of harm and its obligation to shareholders to maximise profit. Problem gamblers likely account for a significant proportion of revenues, at least in respect of EGM spending.⁴⁴¹ Harm suffered by problem gamblers will be reduced if they reduce their spending to what they can afford. Conversely, casino revenues will decrease commensurate with a reduction in patron spending.
- 378** Perth Casino uses multiple strategies to drive ‘incremental revenue’ (that is, additional revenue) from Crown Rewards members, particularly ‘premium’ members. This approach poses an obvious risk that patrons may be induced to spend more than they can afford.

Revenue breakdown – the importance of small numbers of players

- 379** The PCRC reviewed EGM gaming data for patrons using carded play at Perth Casino in 2019, 2020 and the first half of 2021. That analysis indicates that, amongst other things:
- patrons who had at least one session in the top 0.1% longest carded play sessions in a year were responsible for between approximately 17% and 26% of the casino’s total carded play revenues between 2019 and 2021;⁴⁴²
 - while EGM sessions of two hours or longer comprise only approximately 0.68% of all carded play sessions, they contribute to approximately 9.5% of all turnover and 4.5% of all carded play revenues;⁴⁴³
 - the top 500 individual patrons by carded play losses were responsible for between approximately 22% and 28% of Perth Casino’s total carded play revenues from 2019 to 2021. The proportion increased every year between 2019 and 2021;⁴⁴⁴
 - the top 100 individual patrons by carded play losses were responsible for between approximately 8% and 11% of Perth Casino’s total carded play revenues from 2019 to 2021. The proportion increased every year between 2019 and 2021;⁴⁴⁵ and
 - each of the top 500 individual patrons by carded play losses in 2019 lost more than \$37,000 and in 2020 more than \$32,000. In 2021, where the figures for only the first half of the year were available, they lost nearly \$20,000.⁴⁴⁶ The patron who lost the most in each of those years lost \$356,000, \$528,000 and \$391,000 respectively.
- 380** These figures may be put in perspective by considering that 162,000 of Perth Casino’s Crown Rewards members have been active in the last 12 months.⁴⁴⁷
- 381** This analysis shows that the heaviest gamblers account for a disproportionate amount of Perth Casino’s turnover and revenue. Questions therefore arise as to whether Perth Casino is overly reliant on the revenue it earns from this small cohort. As is explained below, until mid-2021 Perth Casino had not undertaken any assessment of the financial capability of its premium members. Accordingly, the PCRC concludes that Perth Casino has not previously been in a position to know whether that cohort is able to sustain its losses without suffering harm.

Loyalty and Reward Programs

- 382** For many years, Crown has offered its patrons a loyalty program. The program, currently known as Crown Rewards,⁴⁴⁸ allows members of the program to accrue and redeem points throughout Crown’s resort complexes in both Perth and Melbourne. The rate at which members accrue points depends on the goods or services purchased. Points can subsequently be exchanged for goods and services, including gaming credits.⁴⁴⁹
- 383** Members also accrue ‘status credits’ by which they are elevated to different membership tiers and obtain different benefits. Higher tiers afford greater value benefits. Members on

the gold tier or higher may become Pearl Room members. Status credits are earned as a consequence of accruing points. The rate of accrual depends on the nature of the service purchased. 'Casino points' are accrued by playing on EGMs or table games. 'Lifestyle points' are accrued by spending money at restaurants, bars and hotels. A casino point is worth three lifestyle points when it comes to accruing status credits.⁴⁵⁰

- 384** The differences in the rate at which points and status credits are accrued means that the amount of money spent by a member to reach different membership tiers may vary. For example, to become a gold member requires 40 status credits.⁴⁵¹ A member who makes use of Crown's restaurants, bars or event and conference services will spend \$30,000 to accrue this many points. A member who makes use of Crown's hotel services would need to spend \$12,000 to do so. By contrast, a member who plays on EGMs would need to bet \$100,000. Given the 90% RTP of EGMs, that member can be expected to lose \$10,000. Accordingly, the most cost-effective way for a member to obtain status credits and increase their membership tier will – in broad terms – be through gambling.
- 385** Crown Rewards points do not expire. By contrast, status credits expire every six months: a patron's membership tier is determined each October and April based on the credits accrued in the preceding six months.⁴⁵² Thus, patrons who wish to maintain a high membership tier must spend or gamble a significant amount of money on a continuing basis; a gold tier member who obtains status credits through gambling on EGMs can expect to lose approximately \$20,000 per year.
- 386** One of the issues raised in the course of the PCRC is whether Crown's loyalty program might cause or contribute to gambling-related harm. Studies have demonstrated an association between loyalty programs and gambling-related harm. It is not yet clear whether there is any causative link. Both the RGC and the RGMC have been referred to numerous articles discussing the apparent association between loyalty programs and gambling-related harm, with the first such article cited by each committee in 2016.⁴⁵³
- 387** Neither CRL nor Perth Casino took any steps to research whether the Crown Rewards program increased the risk of harm to its patrons until after the announcement by the RCCOL in March 2021.⁴⁵⁴ Crown has indicated that it now intends to conduct research in relation to this issue.⁴⁵⁵
- 388** The PCRC concludes that:
- a. consistent with the usual purpose of loyalty programs, CRL has designed the Crown Rewards program so as to require members to spend money with Crown on an ongoing basis, either by gambling or purchasing other Crown services, in order to maintain their membership tier;
 - b. the structure of Crown's Rewards program may encourage members to gamble in preference to purchasing other Crown services because of the differential rate at which status credits are earned in respect of those activities;
 - c. from about 2016, CRL and Perth Casino were aware of a possible association between loyalty programs and gambling-related harm; and
 - d. until May 2021, CRL and Perth Casino did not investigate whether Crown's program increased the risk of harm.

The Pearl Room

- 389** Crown Rewards members with a gold or higher tier membership may apply (or be invited to apply) to become Pearl Room members. The Pearl room is a members only gaming area of the Perth Casino.⁴⁵⁶ Pursuant to the requirement or suggestion of regulators, Crown has imposed as a condition of membership that patrons maintain a gambling turnover of at least

- \$100,000 per year.⁴⁵⁷ The turnover requirement means that Pearl Room members must bet significant sums of money every month to retain their membership (and the benefits and status that it offers). The 'house edge' for all casino games dictates that over the long term all Pearl Room members will lose a significant amount of money to retain their membership. The effect of the turnover requirement is that patrons who maintain a gold tier or higher membership other than through gambling (such as by regularly using Crown's hotels, restaurants or conference facilities) would not be eligible for Pearl Room membership.
- 390** Average household income in Western Australia for 2015 to 2016 (the most recent period for which figures are available) was \$1,789 per week, while average household spending on goods and services was \$1,420 per week.⁴⁵⁸ It may therefore be inferred that many Perth Casino patrons cannot afford to be Pearl Room members.
- 391** It may also be inferred that few patrons could maintain their Pearl Room membership without being at risk of suffering gambling-related harm.
- 392** Studies have estimated RG limits for the Australian population. For example, a 2018 study suggested a limit of 20 to 30 gambling sessions per year; expenditure of \$380 to \$615 per year; expenditure of 0.83% to 1.68% of an individual's gross personal income; and two gambling activities.⁴⁵⁹ This limit was said to be broadly consistent with prior limits calculated in Canada. This study is not definitive. However, it provides some basis to consider that in order for it to be 'safe' for a patron to spend \$20,000 per year on Pearl Room membership that patron should earn approximately \$1.2 million per year. Very few Western Australians do. Further, it is reasonable to infer (and the evidence before the PCRC confirms) that some Pearl Room members who are unable to maintain this level of spending from their own resources may resort to unsustainable strategies, such as depleting savings; going into debt; or engaging in criminal activity, in order to maintain their membership.
- 393** In about July 2021, Perth Casino introduced new anti-money laundering and counter terrorism financing (**AML/CTF**) measures. Amongst other things, Crown Rewards members whose gambling reaches 'predetermined thresholds' may be requested to complete a Patron Declaration Form providing the ranges and sources of their income and wealth.⁴⁶⁰ Alternatively, they can provide Perth Casino with an accountant's certificate to certify their ranges of income and wealth. The PCRC understands that the thresholds which trigger the Patron Declaration Form requirement are significantly higher than the minimum spend required to be a Pearl Room member.⁴⁶¹
- 394** The purpose of the Patron Declaration Form is to 'confirm that the member's financial position is adequate to sustain their level of gaming activity and provide comfort that the sources of their funds and wealth are from legitimate channels'.⁴⁶² While primarily intended to prevent money laundering, these new measures will likely also act as harm minimisation measures: Perth Casino can be expected to intervene if patrons do not have the financial capacity to absorb their ongoing losses.
- 395** However, patrons are not required to complete a Patron Declaration Form, or update it periodically, to apply for or maintain Pearl Room membership.⁴⁶³ Crown submits that it would be unnecessary and unduly burdensome for patrons to impose such a requirement. The PCRC does not accept that submission. Given the level of gambling required to be and remain a Pearl Room member; the significant costs of such gambling over time; the fact that such costs could not reasonably be met by the majority of Western Australians; and the obvious risk that high levels of gambling may constitute or ultimately lead to problem gambling, the PCRC concludes it would be appropriate for Perth Casino to require all Pearl Room members to complete a Patron Declaration Form to demonstrate their financial capacity to be a member. The RGAP Report recommended that Crown liaise with financial institutions to allow for checks on certain patrons.⁴⁶⁴ The same would be appropriate in respect of Pearl Room members.

- 396** The PCRC concludes that:
- a. extending Pearl Room membership to a Crown Rewards member increases the risk that they may suffer gambling-related harm at Perth Casino; and
 - b. Perth Casino does not do what is reasonable to mitigate the risk of harm, in that it does not take steps to ascertain if Pearl Room members have the capacity to afford their membership.
- 397** The PCRC concludes that since July 2021 Perth Casino is taking steps to improve their information collection in respect of premium patrons in some instances. This confirms that it has the capacity to gather financial information as necessary.

Case study five: Patron BA

- 398** Patron BA was a private witness before the PCRC. Their experience illustrates the potential consequences that can result when a casino patron, who does not have the financial capacity to be a Pearl Room member, is invited by Perth Casino to become a member and then continues to gamble at a level sufficient to maintain their membership tier so as to enjoy particular benefits.
- 399** In 2015, Patron BA attended Perth Casino twice per week while their children were at school. Patron BA played on EGMs to escape the realities of home life. They hid their attendance from their family. Patron BA was employed as a bookkeeper, earning approximately \$40,000 per annum. As their gambling increased, Perth Casino invited Patron BA to upgrade their Crown Rewards gold membership to include Pearl Room access. Patron BA did so.
- 400** Patron BA was eventually gambling around \$7,500 per day. They used three EFTPOS cards to withdraw more than the maximum daily limit at Perth Casino's ATMs and their turnover in a four-week period was repeatedly more than \$200,000. Perth Casino maintained detailed records of Patron BA's gambling habits and spending in the Pearl Room. To facilitate their gambling habit, Patron BA obtained additional credit cards in their name, stopped paying their children's school fees and began stealing from their employer.
- 401** An RG staff member never approached Patron BA. They did not believe they had a gambling problem until they were arrested for theft. After they had been arrested, Patron BA self-excluded in order to access free counselling for their gambling addiction. They were sentenced to four years and six months imprisonment for their crimes against their employer.
- 402** Patron BA's marriage ended. Their employer was granted a compensation order for over \$1 million, though it is estimated that Patron BA stole much more. They were declared bankrupt in the following months. The theft financially crippled the small business from which the funds were stolen.

Use of Hosts

- 403** Perth Casino employs 'hosts' to provide personal service to casino patrons and ensure a positive patron experience.⁴⁶⁵ Hosts focus on 'premium' or 'high value' patrons, including Pearl Room members.⁴⁶⁶ Perth Casino relies on hosts to drive 'repeat visitation'⁴⁶⁷ of premium patrons and increase their 'length of visits/visitation/spend per visit'.⁴⁶⁸
- 404** Perth Casino also relies on hosts to persuade or encourage patrons to become Pearl Room members.⁴⁶⁹ Hosts are 'there to, in a sense, create revenue', to ensure there is growth in visits and spend by patrons who are pleased with the service that they receive, and are looking for 'incremental revenue'.⁴⁷⁰
- 405** Evidence provided to the PCRC by a former host indicates that hosts offer complimentary

- goods and services – referred to as ‘comps’ – to patrons in a way that is intended to increase their gambling. Richard Smith (Director of Premium Gaming – Gaming Machines) gave evidence that comps were, ultimately, used to keep patrons coming back to gamble but only to ‘maintain’ levels of play rather than induce additional play.⁴⁷¹ The PCRC rejects this evidence. It is inconsistent with the evidence of others and Crown’s documents.
- 406** Certain hosts are responsible for managing a portfolio of premium patrons.⁴⁷² They are issued with mobile telephones so that premium patrons can contact the hosts 24/7.⁴⁷³ Hosts are responsible for, amongst other things, organising promotional events to which premium patrons are invited. They can issue patrons with comps in recognition of and in proportion to the amount of money they gamble. Comps might include free meals at restaurants in the Crown Perth Resort complex, or free hotel stays. Hosts use comps to drive revenue growth.
- 407** Hosts might, for example, invite premium patrons to Perth Casino to be issued with a comp on a day other than the days on which they ordinarily come to Perth Casino.⁴⁷⁴ This is at odds with some of Perth Casino’s written policies as to the use of comps, which provide that they should not be provided as an inducement to gamble and ‘must not be provided in a way that is calculated to result in an excessive level of gambling’.⁴⁷⁵ Having regard to those policies, it can be inferred that Perth Casino is aware of the risk that the use of comps might contribute to members gambling excessively and purports to take steps to ameliorate that risk.
- 408** While they receive RG training,⁴⁷⁶ hosts are not trained to (and do not) have regard to whether offering comps might result in excessive gambling.⁴⁷⁷ A draft policy dated 2020 and titled ‘Pearl Room Complimentary Offers’ does not require that thought should be given to the risk of gambling-related harm when issuing a comp.⁴⁷⁸ Another, titled ‘Comp Strategy’, talks of using comps to invoke ‘a sense of surprise and delight that results in increased revenue’.⁴⁷⁹
- 409** The PCRC infers from the evidence it has received that, while Perth Casino is aware that it is inappropriate for hosts to use comps to induce patrons to spend more, hosts are encouraged to do just that. Inducing patrons to increase their spending increases the risk that they will spend more than they can afford. The PCRC has received submissions from patrons who have detailed their experiences in becoming Pearl Room members, after which their spending increased to the point where it caused harm. One patron who suffered significant harm was actively recruited to become a Pearl Room member: ‘[A host] found him in the high limit area of the [main gaming floor], built a good rapport with him and eventually converted him into [a Pearl Room member]’.⁴⁸⁰
- 410** Crown accepts that it would be appropriate to update its policies to include a section addressing RG considerations when issuing comps (or invitations to promotions, further discussed below).⁴⁸¹ It says that it will consider its approach to promotional activities more generally once the research into the Crown Rewards program is available.
- 411** The PCRC concludes that:
- a. a primary reason for the employment of premium or VIP hosts is to induce patrons to increase the amount of money they spend in gambling at Perth Casino;
 - b. a primary reason for which hosts issue comps is to increase the amount of money that patrons who receive those comps spend when gambling at Perth Casino; and
 - c. while they receive RG training, hosts are not trained to and do not consider, or consider sufficiently, the possibility that issuing comps may ultimately cause or increase the risk of harm.
- 412** The PCRC concludes that Perth Casino has not done, and presently does not do, what is reasonable to minimise the risk of gambling-related harm, in that it knowingly permits and encourages hosts to induce patrons to spend additional money at Perth Casino without any,

or any sufficient, steps being taken to mitigate the risk that this will cause those patrons gambling-related harm.

Case study six: Patron K

- 413** The case study of Patron K, another private witness before the PCRC, provides an example of the relationship between a premium patron and their Perth Casino host. It shows the ways in which the comps offered by hosts both entice patrons to gamble more at the casino and can also make it easier for them to gamble there.
- 414** Patron K was manager of a suburban Perth bank and considered a leader within the organisation. They had frequented Perth Casino since around the age of 20. After the breakdown of a relationship, Patron K was diagnosed with post-traumatic stress disorder and a generalised anxiety disorder. They began gambling heavily at Perth Casino and developed a gambling addiction. Patron K played on EGMs almost exclusively and often gambled from 7pm to 4am, five to seven days per week. They spent more time at Perth Casino than in their own home. Staff brought Patron K food and drinks while they gambled. On several occasions, Patron K was given between 20 and 35 alcoholic drinks in a night.
- 415** To facilitate their gambling, Patron K stole large amounts of cash from their employer, between \$50,000 and \$400,000 on each occasion. They were granted high-roller status at the casino due to the large amounts of money spent on gambling and became known to a number of Perth Casino managers and directors of various teams. Perth Casino was aware that Patron K was a bank manager. During this time, Patron K was consistently the number one EGM player at Perth Casino, turning over more than \$2.5M in a six-month period.
- 416** Patron K was given access to a personal host who organised gratuities for them, including free hotel rooms. The access to hotel rooms made it easier for Patron K to gamble; they could go straight from the casino complex to work and then back again. Patron K would receive frequent communications from their host offering them free hotel rooms, meals and event access. Patron K thinks that these promotions and other Perth Casino advertising had an effect on their gambling and prompted them to attend the casino.
- 417** After approximately 18 months, Patron K's employer discovered that they had been stealing. In total, they stole \$3.7 million. Within days of being interviewed and charged by WA Police, Patron K self-excluded from Perth Casino. Following arrest, Patron K was diagnosed with bipolar disorder. They were sentenced to five years and six months imprisonment. None of the stolen money has been recovered.
- 418** At the time of offending, Patron K did not consider that their gambling was causing them any personal harm. They were aware of Crown's RSG services but did not think those services could assist them.

Functions, events and gifts for premium patrons

- 419** Hosts stage free events, functions or promotions for premium patrons.⁴⁸² For example, Perth Casino has a corporate box at Optus Stadium and RAC Arena and uses them to entertain patrons. Whenever the corporate boxes are available, hosts will invite to the relevant activity those members who they consider will most enjoy it.⁴⁸³ Generally speaking, events will be staged at Perth Casino or all members attending the event will meet at the casino beforehand and then return there afterwards.⁴⁸⁴ Premium members brought to the casino in this way may well take the opportunity to gamble. Perth Casino closely tracks whether they do so.
- 420** The PCRC examined an 'Event Analysis Report',⁴⁸⁵ one of hundreds of similar documents prepared by 'Customer Analytics Strategy & Finance', which analyses the gaming activity of members who attended an AFL game in March 2021. The report compares the average

gaming activity of each member with their activity in the week of the AFL game, to determine if there was an increase. It also contrasts overall incremental revenue against the cost of hosting the members to conclude that there was a '140% ROI'. Evidence was received that the term ROI should be understood as 'return on investment', being a term used by senior management when discussing events.⁴⁸⁶

- 421** In addition to these events, Perth Casino also offers 'gifts' to different tiers of Crown Rewards members, including alcoholic drinks, confectionary and hampers.⁴⁸⁷ These gifts can only be obtained in person from the casino. Requiring patrons to attend at the casino to collect these gifts means that those who do will have the opportunity to gamble. If they gamble (and lose) more than they otherwise would have, and the increase in revenue is greater than the cost of the gifts, then Perth Casino will profit. Perth Casino closely studies increases in revenue attributable to the provision of gifts.⁴⁸⁸
- 422** The same principle applies when Perth Casino provides gift cards to patrons. Gift card collections are recorded in gaming shift reports.⁴⁸⁹ Crown's analysis of a 2015 'Mother's Day Crown Gift Card Giveaway', for example, showed that the promotion 'generated incremental gaming revenue of \$209k, and overall gross contribution of \$102k'.⁴⁹⁰ The analysis concluded that 'the success of this promotion was a direct result of its effectiveness at influencing participants to make additional visits to the complex throughout the week of Mother's Day'.
- 423** The redemption period for gifts is generally limited to a week or two.⁴⁹¹ It is sometimes as brief as a few days.⁴⁹² This confirms that the purpose of the gifts is to entice patrons to immediately attend the casino, regardless of whether they had intended to do so. The PCRC infers that the use of gifts tends to increase the frequency at which patrons visit the casino and, consequentially, the amount of money that they gamble there.
- 424** Perth Casino's internal documentation related to the RG Change Program notes that research suggests that the location of where prizes are given may be a risk factor in relation to gambling-related harm.⁴⁹³ The RGAP suggests that prize draws which require people to maintain a level of commitment to gambling (for example visits to the venue to gamble or a certain level of expenditure) could be seen as encouraging additional high-risk gambling and are best avoided.⁴⁹⁴
- 425** None of the evidence suggests that Perth Casino carries out any assessment of members invited to free events or functions, or to whom gifts are offered, to assess whether those members could afford an increase in their spending. Similarly, there is no evidence that Perth Casino takes other steps open to it, such as not inviting to free events or functions, or not offering gifts or gift cards to, patrons who have come to the attention of the RG team as a result of having displayed observable signs.
- 426** The PCRC concludes that:
- a. Perth Casino invites premium patrons to free events or functions, and provides them with gifts and gift cards, for the dominant purpose of inducing them to increase their gambling turnover (and, consequentially, losses);
 - b. Perth Casino does not assess the patrons who are invited to events or functions, or provided with gifts and gift cards, to consider whether they could afford an increase in spending on gambling;
 - c. for those patrons who cannot afford an increase in spending on gambling there is an increased risk that they may suffer gambling-related harm; and
 - d. consequentially, Perth Casino does not do what is reasonable to minimise the risk of harm from its promotional activities.

Marketing campaigns to Crown Rewards members

- 427** Perth Casino markets itself by broadcast media advertising to the general public and through electronic direct mail (**EDM**) sent directly to existing patrons. Only patrons who have indicated that they wish to receive marketing materials are sent EDM. Patrons can unsubscribe from Perth Casino's mailing list at any time.⁴⁹⁵ Crown Rewards members (or provisional members) who have not unsubscribed will be sent EDM weekly or more frequently.⁴⁹⁶ The emails in an EDM campaign contain a number of promotional items. The items displayed to members depends on their membership tier.⁴⁹⁷
- 428** Perth Casino tracks the effectiveness of the EDM it sends by analysing how many of the email messages are opened and which promotional items are clicked on. The PCRC examined Perth Casino EDM sent in May 2021 being, in particular, the 'World of Entertainment' (**WOE**) emails that are sent to members on a weekly basis.⁴⁹⁸ The WOE email of 27 May 2021, for example, contained promotional items ranging from special events at Perth Casino venues to announcements of new EGM games and 'multiplier' events (which offer patrons the chance to accrue double or triple as many points or credits as normally available). Perth Casino's analysis showed that the point and credit multipliers were amongst those promotions most often clicked on.⁴⁹⁹
- 429** Promotions offering additional points or credits are self-evidently intended to induce patrons to gamble,⁵⁰⁰ and to gamble more than they otherwise would. Kelly Townson (**Townson**) (Perth Casino's General Manager of Marketing) in evidence to the PCRC suggested, to the contrary, that Perth Casino is 'not asking our customers to do anything more than they have done historically in the past'.⁵⁰¹ The PCRC does not accept that evidence. The obvious purpose of such a promotion is to provide members with an incentive to gamble more than they otherwise would have during the promotional period. If Perth Casino wished to ensure that patrons did not exceed their historical spend then it could cap point multipliers at a patron's long-term average spend, which it does not.⁵⁰² The same applies to status credit multiplier promotions. Status credits expire every six months. Promotions that allow patrons to accrue more credits than they ordinarily do may lead to them reaching a membership tier higher than their usual gaming would support. A desire to maintain that tier might in future induce members to spend more than they can afford. The PCRC notes that caps are used in other promotions, because 'anything uncapped would be concerning from an RG perspective'.⁵⁰³
- 430** The chair of the RGAP supports the general principle that inducements to gamble more than intended should be avoided.⁵⁰⁴ Perth Casino has not indicated that it will in the future desist from campaigns making offers that provide members with inducements to gamble more than they otherwise might have done.
- 431** As already discussed, research shows an association between problem gambling and loyalty program membership. Townson accepted that, if Crown Rewards members were those most likely to be at risk of problem gambling, then Perth Casino had an obligation to be sensitive to the risk that promotions marketed to such members might cause or contribute to gambling-related harm.⁵⁰⁵ Perth Casino does not send EDM to members who have self-excluded or been barred from the casino.⁵⁰⁶ It includes references to 'responsible gaming' in EDM footers.⁵⁰⁷ The PCRC therefore infers that Perth Casino is aware that sending marketing materials may cause or contribute to harm if those materials induce people to gamble more money than they can afford to lose.⁵⁰⁸ Further, particularly within more recent times, the RG team is consulted on gaming-related promotions and may suggest changes in wording to those promotions. Townson gave as an example of the impact of RG involvement a trend towards prize draws being virtual, such that patrons do not have to be present at the casino to enter or win.⁵⁰⁹ This is a positive development.

- 432** However, Perth Casino does not take other steps reasonably open to it in order to ensure that the EDM it sends does not cause or contribute to harm. It does not remove from its mailing lists patrons who have come to the attention of the RG team as a result of having displayed observable signs.⁵¹⁰ It has not indicated that it will do so in the future. It does not attempt to remove patrons whose spending patterns might indicate that they are at risk of gambling-related harm.⁵¹¹
- 433** Further, Perth Casino has not – until recently – included in all EDM the national problem gambling helpline number and the national problem gambling on-line counselling website address. Regulation 43(6) of the GWC Regs requires that any gambling operator who publishes a ‘gambling advertisement’ in Western Australia must ensure that those details are prominently displayed. Perth Casino complies with reg 43 in respect of materials marketed to the general public, such as in the Crown Rewards brochure.⁵¹² However, it has not historically included those details in EDM that it sends to patrons.
- 434** There is a legitimate debate whether Perth Casino’s EDM come within the scope of reg 43. Perth Casino considers that they do not on the basis that EDM are not ‘published’ within the meaning of reg 43 because they are sent to Perth Casino patrons who do not constitute ‘the public or a section of the public’. This view was shared by the Department.⁵¹³ There are strong arguments to the contrary. Judicial decisions in an analogous context, being prohibitions on the advertising of tobacco products, suggest this view is too narrow.⁵¹⁴
- 435** Putting the issue of legality to one side, the broader question is whether it is reasonable for Perth Casino to comply with the requirements of reg 43, even if not required to do so and, therefore, whether Perth Casino should be expected to do so.
- 436** As is noted in Part Two of this chapter, reg 43 is informed by consumer protection principles and intended to minimise the risk of gambling-related harm. The evident purpose of reg 43(6) is to ensure that gamblers are reminded of (and can contact) support available to them whenever they are reminded of gambling. Including the helpline number and counselling website address in all EDM imposes no financial burden. Townson could not think of any reason it would not be appropriate to include the helpline and website in EDM. Townson thought it would be a sign of good corporate citizenship.⁵¹⁵ Townson also made clear that the omission has been deliberate,⁵¹⁶ and that Perth Casino was considering a draft policy which expressly provides that such details are ‘not required for [marketing] sent only to members or for on-site advertising’.⁵¹⁷
- 437** Crown has informed the PCRC that, after reflecting on the above matters, Perth Casino has now modified its marketing templates to include the helpline and website details. Crown has not yet given any indication that it is taking steps to exclude from its marketing activities patrons who have come to the attention of the RG team as a result of displaying observable signs, or patrons whose gaming activity indicates that they might be at risk of suffering gambling-related harm.
- 438** The PCRC concludes that Perth Casino:
- a. recognises that its marketing materials may cause or contribute to harm if they induce patrons to gamble (and lose) more than they can afford;
 - b. designs some promotions to encourage patrons to spend beyond their average historical spend (such as by, for example, without capping multiplier promotions); and
 - c. does not take reasonably available steps to ensure that it does not send marketing material to patrons that may be at particular risk of suffering gambling-related harm, such as those who have come to the attention of the RG team as a result of displaying observable signs.

Failure to consider harm minimisation when pressing for changes to EGM speed of play

- 439** As noted in Part Two, when Perth Casino in 2019 proposed reducing the minimum EGM speed of play from five to three seconds, it argued that the change would not have any impact on gambling-related harm. By raising the issue, Perth Casino made clear that it recognised the potential for the change to increase the risk of gambling-related harm.
- 440** There is no evidence to suggest that Perth Casino investigated the risk of gambling-related harm arising from the use of EGMs (or particular features of EGMs such as their minimum speed of play) before making this claim. James Sullivan (**Sullivan**) (Gaming Product Manager) gave evidence that in 17 years at Perth Casino, he was not aware of any review of potentially harmful EGMs features.⁵¹⁸
- 441** Perth Casino did not provide the GWC with research as to the significance of speed of play on the risk of gambling-related harm. It must be noted that this proposal was made only months after Preston listed as a 'harm minimisation strategy' that EGMs in Western Australia had a higher minimum speed of play than in other jurisdictions.⁵¹⁹
- 442** Crown now accepts that its RG team should have been consulted about the impact that a reduction in minimum speed of play might have on gambling-related harm.⁵²⁰ Proper consideration should have been given to those impacts in circumstances where Perth Casino was aware that EGM speed of play was potentially relevant to the harm they might cause. The PCRC acknowledges that, more recently, Perth Casino has consulted with its RG team prior to the introduction of new types of (skill based) EGMs.
- 443** Following the changes to speed of play, Perth Casino tracked the performance of those EGM games that made use of the new speed of play criteria. It found that those games, on average, earned 160% of the revenue of older games, with some new games in the Pearl Room earning 260% of the revenue of older games.⁵²¹
- 444** It is not possible to say with certainty whether these apparently significant increases in EGM earnings have resulted in any increase in gambling-related harm to patrons. On the one hand, that Western Australia's borders have largely been closed throughout the COVID-19 pandemic means that any additional revenues have been earned from local residents. On the other, there is a perception within Crown that increased revenues reflect the fact that residents who cannot leave the State for vacations have more disposable income available for leisure spending at Perth Casino.
- 445** Crown concedes that it could have done more to monitor the effects of the change.⁵²² However, it argues that the evidence shows that the change in EGM speed of play has not had a material impact on harm. The PCRC rejects that submission. It is based on Rockloff's conclusion that there is no evidence that EGMs at Perth Casino operating with a five second speed of play in 2019 were safer than those operating elsewhere with a three second speed of play.⁵²³ Rockloff also said that a five second speed of play would generally reduce the cost of play and make for a safer EGM.⁵²⁴ It remains the case that there has been no proper assessment of the impact of the change to EGM speed of play at Perth Casino.
- 446** The PCRC concludes that:
- a. Perth Casino was aware when proposing to the GWC in 2019 that the minimum EGM speed of play be decreased that a decrease in the minimum speed of play might result in an increase in gambling-related harm;
 - b. Perth Casino did not consider the extent of any potential increase in harm to determine whether it was appropriate to advance the proposal to the GWC; and
 - c. by failing to conduct a formal review of the impact of reduced EGM minimum speed of play on the level of gambling-related harm, Perth Casino failed to do what was reasonable to minimise the risk of gambling-related harm.

Remediation

- 447** Since its receipt of the RGAP Report in August 2020, and the announcement of the RG Enhancements in May 2021, Crown has taken, and continues to take, steps to reform its harm minimisation function.
- 448** Those steps can be broadly characterised as changes to the personnel and reporting structure of Crown’s RG department on the one hand and changes to operational policies and procedures on the other. The reforms are being conducted at a group level, with operational policies and procedures to then be implemented by each of the casinos.

Changes to personnel and reporting structure

- 449** Blackburn is responsible for both Crown’s AML/CTF function, and its harm minimisation function through its RG department. Blackburn reports directly to the CEO of CRL and CRL’s board.⁵²⁵ Thus, Blackburn’s appointment carries with it the potential to increase the profile of Crown’s RG function and ensure that it is visible to the board.
- 450** Blackburn’s duties, as reflected in his employment agreement did not expressly include RG.⁵²⁶ Blackburn learned that he would be responsible for Crown’s RG function once he commenced work in late February 2021.⁵²⁷
- 451** When Blackburn commenced with Crown, Bauer as Group GMRG reported to Michelle Fielding (EGM Compliance); Fielding reported to Blackburn. In March 2021 Bauer commenced reporting directly to Blackburn, who said that this would ‘help reflect the importance we place on RG to external parties’.⁵²⁸
- 452** Blackburn is a financial crime and compliance expert, with extensive experience in that area.⁵²⁹ When he commenced working at Crown, Blackburn had no experience, training or qualifications in relation to gambling-related harm minimisation.⁵³⁰ Blackburn has since been provided with relevant materials and read and consulted as widely as possible in the time available. However, Blackburn frankly acknowledges that this does not amount to ‘a great deal of experience in this space’.⁵³¹ Blackburn is responsible for two significant areas of Crown’s compliance obligations, both of which are undergoing significant reform, and he simply cannot be across everything.⁵³² Blackburn’s responsibilities have apparently increased again since the close of evidence: having now been appointed as Group Chief Risk Officer, Blackburn will also now lead Crown’s Group Risk Management function.⁵³³
- 453** That Blackburn was tasked with responsibility for both Crown’s AML/CTF function and its harm minimisation function, in circumstances where Blackburn is an expert in the former but not the latter, raises the questions whether:
- a. the responsibilities that have been assigned to Blackburn are more extensive than can reasonably be discharged by one person; and
 - b. Crown has to date provided Blackburn with sufficient resources to discharge those responsibilities.
- 454** In evidence to the RCCOL, Blackburn agreed that whoever was to head the RG department would need to spend a substantial amount of time supervising and managing that department, but did not agree that it had been an error to ask them to carry out that function in addition to their other responsibilities.⁵³⁴ Blackburn did not agree that the CRL board was asking too much of them and indicated that as a senior executive he would rely on his team for assistance.⁵³⁵ Similarly, before the PCRC, Blackburn referred to his ability to rely on his team.⁵³⁶
- 455** A consequence of Blackburn not having personal expertise in relation to harm minimisation is that he must, to a degree, rely on the opinions of others who do have such expertise.

- 456** This issue was explored in the RCCOL in relation to the issue of play periods. Blackburn explained that he was persuaded to accept a 12 hour play period by his team.⁵³⁷ Blackburn agreed that he did not yet know whether this was an appropriate maximum and that, if it was not, he would need to revisit the team who had told him it was.⁵³⁸ Since that time, Bauer has left Crown. Blackburn accepted that his reliance on others in relation to harm minimisation distinguished that area of his responsibilities from AML/CTF and compliance: in the latter his expertise means that he can ask the right questions.⁵³⁹ Blackburn resiled somewhat from that position before the PCRC, where he suggested that he could apply critical analysis to any advice that he received and seek additional assistance to test that advice.⁵⁴⁰
- 457** Given Blackburn's repeated indication that he consider that he is able to discharge responsibilities relating to harm minimisation with the assistance of his team, it is of note that, while Crown was undertaking significant reform to its RG framework, that team was incomplete. On 27 August 2021, Blackburn advised the GWC that Bauer's role of Group GM RG was to be made redundant and replaced with that of the GEGM RG, being an 'elevated and broader role' with greater authority, accountability and responsibility.⁵⁴¹ Bauer subsequently left Crown on 30 September 2021. The PCRC has not been advised that anyone has acted in the GEGM RG role. As is discussed below, the role has now been filled, although the relevant person has not yet commenced with Crown.
- 458** Bauer's departure, and the absence of an acting GEGM RG, means that there has until now been no dedicated subject matter expert to take charge of the development of the RG Change Program. In the absence of such an expert, the coordination of the RG Change Program has fallen to Nic Emery (**Emery**) (Crown's Chief Marketing Officer).⁵⁴² The documents suggest that while Blackburn was often informed of activities related to the RG Change Program, its coordination has largely been left to Emery.
- 459** On 20 January 2022, Crown advised the PCRC that the GEGM RG role has been filled by an 'international global expert in RG' with a doctorate in psychology and clinical experience.⁵⁴³ The PCRC has been provided with their CV. The person has not received final visa approval and as a result Crown has not been able to make public announcements regarding their appointment.
- 460** The PCRC has not examined the proposed GEGM RG. However, the PCRC has reviewed their CV and is satisfied that they have extensive experience in relation to gambling-related harm. In particular, the PCRC notes that they appear to have a focus on player health rather than a narrower 'responsible gaming' approach. The proposed GEGM RG appears to be well qualified to continue to drive the substantial reforms that Crown has identified in its RG Change Program. The PCRC considers that the GEGM RG will likely be able to provide substantial support to Blackburn.
- 461** The PCRC concludes that:
- a. prior to Blackburn's changes to reporting lines, Crown failed to properly recognise the importance of its RG department by having it report directly to senior management;
 - b. in order for Blackburn, as Group Chief Compliance Officer (and now Chief Risk Officer), to discharge their responsibilities in respect of harm minimisation, substantial support from subject matter experts is needed; and
 - c. Blackburn has since October 2021 been responsible for the development of a substantial RG Change Program without the support of a dedicated harm minimisation subject matter expert.

The RG Enhancements

- 462** As already noted, on 24 May 2021, the CRL board approved the RG Enhancements.⁵⁴⁴ The RCCOL found that the enhancements were ‘in direct response’ to RCCOL’s examination of gambling-related harm.⁵⁴⁵ The PCRC reaches the same conclusion.
- 463** The RG Enhancements were primarily concerned with an increase in full-time equivalent numbers for the RG team at Perth Casino and Melbourne Casino as well as an increase in remuneration.⁵⁴⁶ Those changes have been examined earlier in this chapter. They also sought to better support the collection and evaluation of data, with the intention that it be analysed to identify patterns and typologies that might then be used to address problem gambling.
- 464** The RG Enhancements also included a number of operational changes that could be implemented immediately or within a short period of time. The changes approved by the CRL board that apply to Perth Casino were that Crown would:⁵⁴⁷
- implement a 12-hour maximum time limit on play for domestic players;
 - cease operation of the BUS Program (previously providing organised transport to Perth Casino);
 - recruit additional RGAs from culturally and linguistically diverse backgrounds;
 - establish controls to ensure that Crown Rewards member offers do not require patrons to exceed historical behaviours in relation to spend or visit frequency;
 - provide a patron with a non-gaming promotional voucher upon signing up to the Crown Rewards program; and
 - review the loyalty program to determine whether there are any aspects that may be causing patrons harm and determine what measures may be put in place to control those risks.
- 465** The PCRC concludes that the changes comprising the RG Enhancements represented improvements to Perth Casino’s previous RG framework. Specific issues relevant to the changes to maximum play periods have been discussed above.

The RG Change Program

- 466** The RG Change Program is the holistic total of all changes currently underway in respect of Crown’s RG function.⁵⁴⁸ This includes the implementation of the RGAP Report recommendations and responses to the RCCOL recommendations.
- 467** The RG Change Program is still at an early stage of development. Blackburn foreshadowed the existence of the program when he gave evidence to the RCCOL on 1 July 2021. Blackburn then noted that the RG Enhancements were ‘not an uplift program’ but ‘that will come’.⁵⁴⁹
- 468** In November 2021, when Blackburn gave evidence before the PCRC, the RG Change Program consisted of a single document. It was a preliminary draft and was said to form ‘the start of an ongoing, consolidated program’ of work.⁵⁵⁰
- 469** The RG Change Program had not, at that time, been finalised, approved, or presented to the CRL board or the boards of other Crown companies.⁵⁵¹ There was nothing in the document, or Blackburn’s evidence, which indicated with any certainty which parts of the program might ultimately be implemented or over what timeframe that would be done. Despite these limitations, it was apparent from the available supporting documentation that Crown had, since September 2021, invested a relatively substantial amount of time and effort in identifying and considering those initiatives which it might adopt in order to improve its RG framework.⁵⁵²

- 470** On 21 December 2021, Blackburn presented to the CRL board a document titled 'Draft Responsible Gaming Program'.⁵⁵³ This document contained much of the same content as had appeared in the November version of the program. That content has now been more clearly laid out. It conceptually frames the 'RG Ecosystem' by reference to three pillars or components, being 'preventing harm', 'minimising harm' and 'reducing harm'. It also identifies two further components, being 'understanding harm' and 'empowering change'. Collectively, they are referred to as the 'Five Key Components'.⁵⁵⁴ Each of the components then lists sets of initiatives that Crown intends to pursue, providing a brief description and estimated timing for their implementation.
- 471** Consistently with Crown's recognition that gambling-related harm can be suffered by people who are not problem gamblers, and occurs across a continuum,⁵⁵⁵ the document broadly defines harm and frames risk assessment in terms of 'customers who may be more likely to experience harm' rather than those who might be problem gamblers.⁵⁵⁶
- 472** The initiatives within each component range from reasonably specific measures with clear implementation dates to relatively uncertain and contingent possibilities.
- 473** For example, in the 'evaluation & data analysis' section of the 'understanding harm' component is an initiative called 'data assessment and standardisation'. That initiative requires identifying and mapping available data sources, and determining a platform for data integration and analysis, by the first quarter of 2022 (although actual standardisation and consolidation of data, and sharing of that data with regulators, is not anticipated to occur prior to the third quarter of 2022).
- 474** A small number of initiatives relevant to other components have already been completed. The 'systems' section of the 'empowering change' component notes that Crown has identified customer relationship management software to be used for harm minimisation and executed a contract with a technology provider.⁵⁵⁷
- 475** Many initiatives are more distant. For example, in the 'risk assessment' section of the 'understanding harm' component is an initiative called 'customer risk methodology and process'. The key activities for this initiative require that Crown develop a list of risk factors; determine and integrate available data sources; automate model and implement scoring; and deliver an interaction plan. This initiative has an implementation timeframe which only begins in the fourth quarter of 2022 and then runs through until the first quarter of 2023.
- 476** Other initiatives may never be implemented. For example, in the 'research' section of the 'understanding harm' component is an initiative called 'observable signs research'. The key activities for this initiative require that Crown determine the value in dedicated research with a focus on duration and (or) intensity indicators and, if determined to be valuable, commission research. Considering the value of commissioning research is scheduled for the third quarter of 2022. Making a decision on whether to commission research is scheduled for the fourth quarter of 2022.⁵⁵⁸ It is not clear why such a long timeframe is considered appropriate. The question of whether further research might be appropriate would seem to be one that could immediately be asked of the RGAP (or the VRGF).
- 477** Not all of the deficiencies in Perth Casino's existing RG framework that have been identified in this chapter are addressed by the RG Change Program. For example, nothing in the document suggests that Crown intends to provide its staff with additional guidance as to the meaning of the current observable signs or to review the circumstances in which hosts can offer comps.
- 478** In places, the language of the RG Change Program lacks clarity of intention. While an objective of the November 2021 preliminary draft was to 'identify high risk promotional elements and ensure they are removed from gaming promotions', the current objective in the RG Change Program is to 'create and deliver an inclusive, robust marketing accessible

to all customers and relating to all three stages in the customer health/harm lifecycle'.⁵⁵⁹ Similarly, a statement recognising 'the general principle ... that inducements to gamble more than intended should be avoided' has been removed from the current draft.

- 479** The RG Change program is not yet finalised. The document is identified as a draft. The introduction states that the program, and prioritisation of the initiatives it contains, 'will change over time'. It expressly draws attention to the fact that the incoming GEGM RG may wish to alter the program. The timelines proposed for each initiative are aspirational and dependent on a number of factors, including availability and capacity of resources.⁵⁶⁰
- 480** There are other indicators the RG Change Program remains a work in progress. First, there is not yet any estimated cost for the roll-out of the program. The CRL board has been advised that 'next steps' include 'completion of detailed project estimate'.⁵⁶¹ Secondly, and importantly, the CRL board was presented with the RG Change Program but not asked to approve it. Instead, the CRL board 'noted' the document; queried whether the timelines were too ambitious; and requested that management reconsider the language of 'minimising harm' and 'reducing harm'.⁵⁶² Thirdly, although the RG Change Program was presented to the CRL board in December 2021, the PCRC is unaware as to whether it has been considered by the BL board.
- 481** In light of the above, questions arise as to the priority which Crown ascribes to its harm minimisation function and pursuit of changes to the RG framework. Comparatively, it took three months from the time that Blackburn commenced with Crown for Blackburn to produce a comprehensive Financial Crime and Compliance Change Program and for the CRL board to approve that program. At the time of writing, it has been 12 months since Blackburn commenced with Crown. There is still no finalised and approved RG Change Program.
- 482** Further, the persons who are now relied on by Crown to implement changes are largely the same persons who do not appear to have appreciated the need for those changes in the first instance. In particular, as was put to Blackburn, the RGAP, which is to be tasked with independently reviewing the RG Change Program, did not identify or volunteer the common-sense improvements included in the RG Enhancements.⁵⁶³
- 483** The RG Change Program appears to the PCRC to be the result of a significant amount of effort over a number of months and reflective of an attempt to improve the harm minimisation function at Crown's casino properties. If all the measures referenced in the program are fully implemented it would likely materially improve Crown's RG framework. However, the PCRC concludes that there remains significant uncertainty as to what changes will ultimately result from the implementation of the RG Change Program and when those changes might be implemented. Although the (very broad) intention of management is now somewhat clearer, whether the CRL board will approve that intention or require changes to it remains to be seen. As a consequence, the PCRC is unable to form a view as to the overall adequacy of the RG Change Program.

Part Four: Adequacy of communications

- 484** As set out in Chapter One: Subject Matter of Inquiry And Terms of Reference a casino licensee and its associates are required to communicate with the GWC in an honest, open, competent and accountable manner. They must not knowingly or recklessly provide false or misleading information, or information which makes a material omission, and should take steps to verify the accuracy of information before communicating it.
- 485** The communications in this part focus on the consideration of amendments to EGM speed of play in 2014 and 2019. The changes to speed of play have been examined for different purposes in Part Two of this chapter and in Chapter Five: Regulation of Perth Casino and Chapter Thirteen: Electronic Gaming Machines.

- 486 For the reasons set out below, the PCRC concludes that Perth Casino's communications with the GWC with regard to these (proposed) changes to EGM speed of play are examples of where it failed to communicate openly with the GWC in relation to applications that would be expected to have some impact on gambling-related harm.
- 487 These are but two examples of a general inattention to the issue of gambling-related harm in communications between Crown and the GWC. Even within these two examples there are further details which are not brought out in the following descriptions which clearly show that in the past Crown failed to adequately communicate with the GWC in relation to harm minimisation. For example, the 2019 EGM speed of play change submission also requested a change to permit multi-line playing of EGMs at Perth Casino. This was a substantial change that would, broadly speaking, enable patrons to lose money more quickly and yet it received barely more than a line of text in the submission.

EGM speed of play: 2014 proposed changes

- 488 As examined in Part Two of this chapter, at the March 2014 GWC meeting, the GWC tasked Connolly to liaise with Perth Casino with a view to increasing the minimum speed of play of EGMs.⁵⁶⁴
- 489 On 17 June 2014, Connolly met with Paul Hulme (**Hulme**) (Former Gaming & Regulatory Compliance Manager at Perth Casino) and requested that Hulme provide information explaining the impact this change would have on Perth Casino.⁵⁶⁵ Hulme emailed the details of the request to Bossi and Preston. Bossi was not convinced the process could 'be avoided' without being requested to appear before the GWC, after which Preston replied to note that he would need to 'provide some solid points to dispense with [the] issue'.⁵⁶⁶
- 490 On 18 June 2014, in answer to Preston's email, Bossi provided bullet point contentions under the headings financial, RSG, employment, political and other stakeholders. Bossi said that they 'wouldn't start with all of these' as they were 'not convinced we can stop this', and that they suspected the GWC was attempting to 'get all our reasons out'.⁵⁶⁷
- 491 On 20 June 2014, Preston emailed Connolly with bullet point statements to the effect that the change of minimum speed of play from five to six seconds would: (1) result in losses of 'between \$40m and \$50m per annum in revenue', of 'between \$8.4m and \$10.5m per annum' in gaming tax payable to the State Government, and of the jobs of Crown Perth Resort staff; (2) mean that Crown would reconsider its provision of food, beverage, restaurant and other offers made to the public; and (3) make Perth Casino's EGMs even slower than those in other Australian jurisdictions.⁵⁶⁸
- 492 Preston's email did not mention any potential impact on harm minimisation efforts or the responsible service of gaming points raised by Bossi in his email on 18 June 2014. Preston could not recall any reason that the impact of the change on patrons was not considered when responding to the request.⁵⁶⁹
- 493 Connolly's response to Preston's email of 20 June 2014 said that '[t]he revenue loss figures sound a bit heavy so I am assuming you have made some assumptions and that the loss estimated is if the GWC determined to slow game speed across the board'.⁵⁷⁰
- 494 Connolly confirmed in evidence to the PCRC that he thought the likely financial implications of the proposed change sounded 'a little overestimated but that's what I got from him [Preston]'.⁵⁷¹
- 495 There is no evidence that Preston challenged the assertion that the figures were 'heavy'.⁵⁷²
- 496 The PCRC concludes that the emails between Bossi and Preston, in particular, suggest that Perth Casino was tailoring its response to Connolly with the aim of preventing the GWC's proposed changes. As such, the PCRC concludes that Perth Casino did not communicate with the GWC in an open manner.

- 497 The PCRC also concludes that, by way of the email dated 20 June 2014, Perth Casino's communication with Connolly (as a representative of the GWC), lacked openness and accountability as to how the financial impact of the change in speed of play had been calculated, and in that the estimates were such that a reasonable person might have been of the view that they were exaggerated.
- 498 As such, the PCRC finds that the Burswood entities' email dated 20 June 2014 was not an adequate communication with the GWC.

EGM speed of play: 2019 changes

- 499 On 7 March 2019, Felstead sent a submission to Ord (**March 2019 Submission**) by email (with Connolly and Preston copied) proposing, among other things, that the minimum speed of play be changed from five to three seconds.⁵⁷³
- 500 Connolly emailed Preston noting that there was 'a lot' in the March 2019 Submission and suggested that Felstead attend the GWC's March meeting to explain the proposal.⁵⁷⁴ Felstead, Preston and Sullivan gave a presentation at that meeting.
- 501 The content of Perth Casino's submission has been described in Part Two of this chapter.
- 502 In an internal email dated 14 March 2019, Hulme noted that there was 'no actual financial modelling [in support of the March 2019 Submission]'.⁵⁷⁵ For example, it did not include a comparison between interstate casinos and Perth Casino of tax rates on EGM revenue. It also did not include an analysis of EGM revenue at Perth Casino compared to other casinos or mention that any apparent commercial disadvantage between minimum speeds of play had to be balanced against Perth Casino's commercial advantages in having a monopoly on EGMs.⁵⁷⁶ When examined by the PCRC, Hulme did not accept the proposition that this could have been potentially misleading, but said that 'you can always write something better in hindsight.'⁵⁷⁷
- 503 Sullivan confirmed that he had input into the presentation in respect of the financial implications,⁵⁷⁸ but could not recall why 2016 was chosen as the starting year to demonstrate the revenue decline.⁵⁷⁹ Sullivan accepted that the table showing the decrease in revenue did not include a comparison with Crown's experiences at its other gaming properties such as Melbourne Casino and was not sure whether Melbourne was experiencing the same decrease. Sullivan accepted that it 'may have been relevant' to draw this to the GWC's attention to understand whether it was an economy-wide decline as opposed to one affecting Perth alone but could not comment further as he had no visibility of the Melbourne numbers.⁵⁸⁰
- 504 Sullivan accepted that the presentation stated that the minimum speed of play in Western Australia contributed to 'significant commercial disadvantages',⁵⁸¹ and that it did not detail the advantages to Western Australia, in particular the fact that Perth Casino has a monopoly on EGMs in Western Australia.⁵⁸²
- 505 The PCRC concludes that a competent casino licensee and its close associates would not have made a submission that a decline in financial revenues from EGMs was due in part to 'competitive challenges', and that a change to the minimum speed of play was required to address this decline, without undertaking a financial analysis of all of the potential factors affecting the decline in revenue. The PCRC concludes that the statements made in CRL and the Burswood entities' submission and presentation regarding the reasons for the financial decline in Crown's performance were not open or competent.
- 506 Felstead said that the reference in the submission to the proposed amendments not having 'any impact'⁵⁸³ on gambling-related harm was incorrect and that he corrected this to 'negligible' or 'minimal' impact in the course of the presentation to the GWC at its March

meeting.⁵⁸⁴ Felstead took the view that the impact would be minimal because the majority of EGMs on the gaming floor were new EGMs with features (such as free games and jackpots), which increased the average spin rate to about nine to 10 seconds.⁵⁸⁵

- 507** As Felstead accepts,⁵⁸⁶ Crown did not seek any independent advice as to whether the requested changes might lead to an increase in gambling-related harm.⁵⁸⁷ This is despite the fact that Bossi was aware that reducing speed of play would 'dilute' factors relevant to harm minimisation.⁵⁸⁸ It was Preston's 'view' that the reduction in the minimum speed of play from five to three seconds would not have a material effect on the extent of problem gambling.⁵⁸⁹
- 508** The PCRC concludes that it was misleading to state, and there was insufficient available evidence to support the statement, that there would be a negligible impact on individual EGM players and gambling-related harm from the proposed changes.
- 509** On that basis, the PCRC finds that the March 2019 Submission and presentation on changes to speed of play were not adequate communications by the Burswood entities with the GWC.

Part Five: Recommendations for reform to Perth Casino's gaming operations

- 510** In this section, the PCRC makes recommendations for changes in gambling operations at Perth Casino to mitigate the risk of gambling-related harm.
- 511** A number of potential changes were discussed in the Rockloff Report. The PCRC has also reviewed a considerable amount of academic literature discussing potential avenues by which the risk of gambling-related harm, particularly relating to EGMs, might be reduced. In written closing observations to the parties, the PCRC drew attention to possible recommendations that it considered might be open on the evidence and in light of general academic research.
- 512** In response, Crown, the GWC and the Department variously submitted, or concurred with submissions, generally to the effect that the PCRC should be cautious or refrain from making any specific recommendations for changes in gambling operations on the basis that:
- a. the PCRC lacks the operational expertise to assess the feasibility and effectiveness of some of the open recommendations, either singularly or in combination;
 - b. some of the open recommendations might impact directly on the revenues of Perth Casino and thereby its financial capacity, which would in turn impact on future assessments of Crown's suitability;
 - c. where the PCRC cannot quantitatively assess such impacts, it should frame recommendations in terms that allow for subsequent consideration and implementation by a policymaker; and
 - d. as a result, the PCRC should preferably recommend that the GWC consider whether it should direct certain changes to Perth Casino's gambling operations rather than recommending that the changes definitely be implemented.
- 513** GWC and the Department have not, in the past, properly attended to the GWC's responsibility to regulate Perth Casino in a manner that takes into account the need to minimise harm caused by gaming. The PCRC has not seen evidence indicating a major shift in this approach.
- 514** The submission as to the impact on the revenue of Perth Casino requires particular consideration. As is discussed in this chapter, problem and at-risk gamblers struggle to regulate the amount of time and (or) money that they spend on gambling. It is likely that a portion of Perth Casino's revenue comes from problem gamblers. It is to be expected that

some effective harm minimisation strategies may reduce the revenue of Perth Casino from gambling operations. Indeed, in some cases, the fact that revenue has been reduced may be indicative of the effectiveness of a strategy.

- 515** Against that background, the extent to which a negative impact on revenue will militate against a conclusion that a particular strategy or step is a reasonable one to minimise harm or the risk of harm may depend on such things as the extent and (or) severity of the particular harm (for example, in the case of EGMs) and the likely effectiveness of the step, as well as the size of the revenue impact that is anticipated. It may be posited that a particularly effective strategy to address a high risk of severe harm, even if it might cause a material reduction in revenue, could nevertheless be a reasonable step to take.
- 516** Otherwise, the PCRC has been mindful of the submissions referred to above when considering the recommendations that it should make in respect of changes to the gambling operations at Perth Casino for the purpose of minimising the risk of gambling-related harm.
- 517** In considering whether a strategy or step is a reasonable one to minimise harm or the risk of harm, it will be necessary to consider at least:
- the prevalence and severity of the harm in respect of which the step is to be taken;
 - the burden that would be imposed on the licensee to take this step in terms of cost of implementation, physical resourcing and management and business or financial impacts;
 - the likely efficacy of the proposed measure to reduce or minimise gambling-related harm, considered alone and having regard to other harm minimisation strategies or steps that are in place or proposed; and
 - the extent to which the measure may impact on the recreational opportunity and enjoyment of other patrons who are not suffering gambling-related harm.
- 518** Further, the PCRC considers that it would not be advisable to adopt an approach in which action on any measure was delayed until there was consensus on the efficacy of measures to minimise the risk of gambling-related harm. Philander suggested that the process of testing different interventions might take ten to 20 years to develop a 'full tool kit' of measures.⁵⁹⁰ In Rockloff's view:⁵⁹¹
- When we put off trying these methods for want of evidence, the evidence will never arrive. If we never try pre-commitment, for instance, then we will never know whether or not it works.
- 519** The PCRC considers that the likely efficacy of a proposed measure ought, where appropriate, to be considered by reference to the 'precautionary principle'. That principle, in effect, requires that, where there is a risk of serious harm, lack of full scientific certainty should not be used as a reason to postpone measures to prevent or reduce that harm.
- 520** While acknowledging the need for caution in advocating for changes where the likely effectiveness is not clear, there are some recommendations that the PCRC concludes are appropriate to make immediately, rather than to leave for the consideration by the GWC. Those recommendations relate to the introduction of a mandatory pre-commitment system; the use of mandatory carded play in order to capture player data and access to that data; confirmation of the financial capacity of Pearl Room members; and a reduction in maximum EGM bet sizes.
- 521** Each of these recommendations respond to obvious risks of gambling-related harm. The PCRC is satisfied that none of them would impose a significant additional burden on the licensee (in the case of the mandatory pre-commitment system because such a system has already been recommended by the RCCOL, and thus will ultimately be implemented by

Crown at the Melbourne Casino in any event). The PCRC is satisfied that there is a proper basis to consider that the measures will likely reduce the risk of gambling-related harm. There is no reason to consider that the measures would impact in any material way on the recreational opportunity or enjoyment of patrons not suffering harm. While some involve a degree of initial administrative configuration, particularly for patrons who do not currently use carded play, they do not impose continuing demands on patrons.

PCRC Recommendations

Mandatory pre-commitment scheme and play period limits

- 522** The rationale, benefits and evidence in support of pre-commitment systems have been discussed in Part Three of this chapter. The PCRC recommends that the GWC require the licensee to introduce a full, mandatory, binding loss pre-commitment and play period limits scheme for EGM play at Perth Casino as soon as practicable (**EGM Scheme**).
- 523** In making this recommendation, the PCRC notes that the RCCOL also recommended that there be a similar scheme at Melbourne Casino.⁵⁹² Crown has indicated that it is committed to working with the VCGLR to implement that scheme.⁵⁹³
- 524** The PCRC is cognisant that there are arguments against the introduction of such a scheme. They include philosophical concerns, such as whether a scheme may be paternalistic and whether gamblers may have privacy concerns, as well as more practical concerns, such as that gamblers may migrate to other gambling operators (including unlawful operators) who do not impose limits.
- 525** However, those arguments may be of less significance in the Western Australia context. First, the proposed system allows patrons to choose their own limits. Secondly, Crown has made it clear that it intends ultimately to move to cashless gaming. Concerns as to privacy can therefore be put to one side because once a digital wallet is introduced all gambling activity will be tracked (which the PCRC considers to be a desirable outcome). Thirdly, Perth Casino has a monopoly on EGMs. It is not possible for users to migrate to other EGM operators.
- 526** The introduction of the EGM Scheme at Perth Casino is likely to be considerably simpler than in other jurisdictions. Before the RCCOL, the State of Victoria submitted that practical and technical matters would present challenges in transitioning from the existing voluntary system to a mandatory system. In particular, 'much would depend' on the third party provider of EGM monitoring services.⁵⁹⁴ There is no third party provider in Western Australia. There is also no need to coordinate a pre-commitment scheme with gambling operators who provide EGMs in hotels and clubs.
- 527** There is therefore no reason for Perth Casino to delay introducing the EGM Scheme until issues relevant to Melbourne Casino have been resolved.
- 528** In Part One of this chapter, the PCRC referred to the description given to gambling-related harm by the authors of the Rockloff Report as being the negative consequences of spending too much money and (or) time on gambling. The PCRC infers that those who spend more on gambling than they can afford to lose are at risk of suffering harm and, when they do so regularly, may be (or become) problem gamblers.
- 529** The monetary limit beyond which gambling losses may cause or constitute harm will therefore depend on the financial position of individual patrons.
- 530** Against that background, the PCRC recommends that the GWC stipulate that the EGM Scheme require patrons to pre-set weekly loss and time limits, with a default loss limit to be set taking into account research as to 'safe' gambling limits. It further recommends that GWC consider requiring the scheme to have the following attributes:

- a. patrons should be able to unilaterally raise their loss limit to a prescribed maximum figure, with increases taking effect after a period of delay to be determined by the GWC;
 - b. the prescribed maximum figure to be specified by the GWC and could be set as, for example, a percentage of current Western Australian full-time adult average weekly earnings as reported by the Australian Bureau of Statistics;
 - c. patrons wishing to raise their limit above the prescribed maximum be required to apply to Perth Casino for approval and provide documentation, to be specified by the GWC, to demonstrate that they can afford gambling losses up to that limit;
 - d. Perth Casino be under no obligation to raise a patron's loss limit above the prescribed maximum and, if it does, it must substantiate in writing to the patron the reasons why; and
 - e. an approved limit to be in place for a fixed period only and not indefinitely, save that patrons may decrease their limits with immediate effect at any time. If after the fixed period a patron wishes to again raise their limit above the prescribed maximum they should again apply for approval and provide updated documentation.
- 531** In relation to play periods, while there are studies which suggest that gambling often on EGMs for three hours or more continuously is an indicator of problem gambling, there is no research that indicates a maximum amount of time spent gambling in any day or week, beyond which patrons might ordinarily be expected to suffer gambling-related harm. In Part Three of this chapter, the PCRC noted:
- a. Crown's current play period limit of 12 hours on-site (which, effectively, amounts to a limit of 12 hours continuous gambling on EGMs per day); and
 - b. RCCOL's recommendations that no patron be permitted to gamble on an EGM for more than 12 hours in any 24-hour period, or for more than 36 hours per week and that patrons be required to take a 15-minute break after three hours of gambling.
- 532** As already noted, Crown's play period limits are based on 'common sense'. RCCOL's recommendations do not appear to be based on any academic research or empirical study.
- 533** The PCRC recommends that, as an immediate priority, the GWC investigate the currently available research and information about appropriate play period limits for EGM play to inform the content of the EGM Scheme. The RG Change Program indicates that that Crown will conduct research to form an evidence-based view as to appropriate play periods.⁵⁹⁵ In the event there is insufficient research and information available or Crown does not conduct the research as indicated, the PCRC recommends that the GWC commission the necessary research, again as a priority.
- 534** In the interim, the PCRC considers that some limits on play periods should be imposed as part of the EGM Scheme, on the basis that an absence of limits is likely to unreasonably expose patrons to the risk of gambling-related harm.
- 535** The PCRC recognises that the RCCOL's recommended daily play period limit does not appear to be based on research as to its likely effectiveness. Nevertheless, it is not obviously unreasonable and reflects the current Crown policy that Blackburn described as 'common sense'.
- 536** As to the weekly limits, the research which suggests gambling often on EGMs for three or more hours continuously is an indicator of problem gambling may be used to inform those limits. A weekly limit of 28 hours, that is, no more than four hours per day (based on the research referred to above with some measure of adjustment) seems justifiable as a reasonable interim measure to minimise harm.
- 537** Against this background, the PCRC recommends that the GWC stipulate the following interim play period time limits for the EGM scheme, to be reconsidered in the light of further research. A patron:

- a. is required to take a minimum 15 minute break after three hours of continuous gambling on an EGM;
- b. may gamble on EGMs for no more than 12 hours in a 24 hour period; and
- c. may gamble on EGMs for no more than 28 hours in a seven-day period.

538 The PCRC recommends that the GWC stipulate that the scheme is to be administered by Perth Casino through mandating carded play on EGMs as a means of capturing player data and enforcing loss and play limits.

539 The PCRC recommends the imposition of appropriate and meaningful sanctions if Perth Casino breaches a requirement of the scheme.

Player card data

540 Although mandatory carded play allows Perth Casino to capture player data, in the absence of direction from the GWC there may be uncertainty as to what data should be captured. The PCRC considers that it is essential that sufficient data be obtained to allow researchers to investigate the prevalence of gaming-related harm at Perth Casino, and the effectiveness of steps that Perth Casino might adopt or the GWC might require in order to minimise gambling-related harm.

541 The RCCOL recommended that a direction be issued to Melbourne Casino to collect minimum data categories. The PCRC adopts that approach, and recommends that the GWC direct Perth Casino to collect, to the extent practicable, player data relating to:

- a. player buy-in (time, amount);
- b. player buy-out (time, amount);
- c. play periods (date, start time, end time);
- d. player turnover;
- e. player losses and wins;
- f. gambling product; and
- g. such further information as the GWC reasonably requires for AML/CTF and RSG purposes.

Access to data

542 Once Perth Casino has collected player data it must be made available to researchers in order for there to be proper study of both the prevalence of casino gambling-related harm in Western Australia and the success (or otherwise) of measures that Perth Casino might adopt or the GWC might impose to minimise that harm.

543 The RCCOL provided a series of recommendations as to the manner in which data from Melbourne Casino should be made available. The PCRC, with respect, considers those recommendations to be sensible and generally adopts them. Consistency in approach between Perth Casino and Melbourne Casino will no doubt be an advantage to Crown given that its harm minimisation is dealt with as a group level function.

544 The PCRC has in Chapter Fifteen: Enhancements to the Regulatory Framework recommended the establishment of an independent advisory body. The PCRC recommends that the independent advisory body, in consultation with the GWC and Perth Casino, be responsible for establishment and maintenance of a repository containing data collected by Perth Casino. The independent advisory body should:

- a. identify the data to be included in a repository; and
- b. ensure the data is up-to-date and comprehensive.

- 545** The PCRC further recommends that the independent advisory body should, in consultation with the GWC and Perth Casino, be required to carry out the following tasks:
- oversee the design and structure of the repository and its user interface;
 - identify the data that is to be publicly available and the data that will have restricted access;
 - ensure processes and procedures are put in place for the efficient maintenance and updating of the repository;
 - establish protocols to anonymise data to respect the privacy of gamblers;
 - establish a register of recognised researchers; and
 - establish a simple process by which a request for data is to be made.
- 546** To the extent possible, anonymised data that is suitable to be made publicly available should be made available for general public inspection via an information website.

Proof of financial capacity for all Pearl Room members

- 547** The PCRC has above recommended that patrons who wish to be able to lose more than the maximum prescribed by the EGM Scheme must be approved by Perth Casino and in order to be approved must produce documentation that establishes their financial capacity. The same general principle should apply in relation to Pearl Room members. As discussed in Part Three of this chapter, to be a Pearl Room member means that, on average, a patron can be expected to lose at least \$20,000 per year (assuming they obtain their status credits by gambling and play on EGMs). The amount they can be expected to lose if playing table games will vary depending on the game played and their level of skill. It will be substantial. Very few Western Australians can afford such losses. Perth Casino should be satisfied that a patron can sustain such losses before enrolling them in a program which essentially requires such losses.
- 548** The PCRC recommends that the GWC issue a direction requiring Perth Casino to:
- impose as a condition of applying for Pearl Room membership that patrons produce to Perth Casino documentation evidencing their financial capacity;
 - as a pre-requisite to accepting a patron as a Pearl Room member, provide to the patron a certificate stating that it has considered the information with which it has been provided; has requested and considered any further information that it considers appropriate; and is satisfied that the patron has the capacity to meet the losses ordinarily associated with being a Pearl Room member. Perth Casino is to retain a copy of patron certificates for a period of five years after their date of issue and provide them to the relevant patron or produce them to GWC officers on request;
 - at periodic intervals to be determined by the GWC, request and consider updated documentation evidencing each Pearl Room members' financial capacity and, in the event that it is satisfied of their ongoing financial capacity, provide to the patron an updated certificate; and
 - in the event that financial documentation, or updated financial documentation, is not provided, decline or cancel the patrons' Pearl Room membership.

Reduction in EGM maximum bet size

- 549** Crown accepts that EGM maximum bet sizes on Perth Casino's main gaming floor could be reduced to \$10 so as to align with non-VIP areas at casinos in New South Wales and those operating in restricted mode in Victoria.⁵⁹⁶ There is no reason EGMs in Western Australia should allow higher maximum bet size than elsewhere.

- 550** The PCRC recommends that the GWC issue a Direction requiring Perth Casino to reduce the maximum bet size of all EGMs on the main gaming floor to \$10.

Matters it may be appropriate to further consider

- 551** As noted above, the PCRC has, in the course of its inquiry, reviewed a considerable amount of academic literature directed towards minimising gambling-related harm, and particularly harm arising from the use of EGMs. Many of the measures proposed in the literature might be reasonable steps to regulate the organisation and conduct of gaming operations at Perth Casino in accordance with the approach explained at paragraph [518] above.
- 552** However, the wide range of issues to which the ToR has required that the PCRC direct its attention, and the limited time available in which to conduct its investigation and finalise this report, has meant that the PCRC has not been able to receive sufficient evidence to conclude whether that is the case.
- 553** Similarly, the PCRC has identified certain measures potentially available to the GWC that might assist it in its supervision and regulation of Perth Casino's harm minimisation function. However, the PCRC has not received evidence as to the practicality of implementing those measures or the extent to which they might impose burdens on the GWC or Perth Casino or be unnecessary because of other reforms already being implemented by the GWC.
- 554** In light of the foregoing, the PCRC considers that it appropriate simply to list for the GWC's consideration those matters which the PCRC has identified as potentially appropriate measures to minimise the risk of gambling-related harm at Perth Casino, or to assist in GWC's supervision and regulation of Perth Casino's harm minimisation function. It will be for the GWC to determine which of the measures, if any, should formally be evaluated and potentially implemented. For the avoidance of doubt, the PCRC does not suggest that the measures listed below are the only ones that merit consideration. The GWC will need to remain constantly engaged with ongoing research and alive to the promise of new measures as time goes by.

Measures relevant to the organisation and conduct of casino gaming operations

Mandatory carded play for table games

- 555** As discussed in this chapter, carded play is the only immediately available and reliable tool for tracking patron time on-site. It may be appropriate for the GWC to consider mandatory carded play for table games, in addition to that required to enable the EGM Scheme. It may also be appropriate to consider commissioning research into maximum time and loss limits for table game play beyond which there is a significant risk of harm.

Additional automated risk monitoring

- 556** As discussed in this chapter, reliance on observable signs to detect gambling-related harm may be ineffective and the Crown Model does not provide live monitoring. It may be appropriate for the GWC to consider investigating other automated risk monitoring systems in use around Australia and the world with a view to directing Perth Casino to adopt additional systems that the GWC considers would effectively supplement the Crown model.

Structural features of EGMs

- 557** It may be appropriate for the GWC to consider requiring Perth Casino to implement, by way of modifications to the WA Appendix and EGM Policy, some or all of the structural changes discussed below.

Remove losses disguised as wins

- 558** These ‘features’ have been prohibited in Tasmania, such that there is good reason to consider manufacturers can provide versions of EGM games where they are disabled.

Further reduction in maximum bet size

- 559** The Productivity Commission recommended in the 2010 Inquiry that EGMs have a maximum bet limit of \$1.⁵⁹⁷ With inflation, \$1 in 2010 is approximately \$1.25 today. It may be appropriate for the GWC to consider further lowering the maximum bet size for EGMs on the main gaming floor of Perth Casino to below \$2 per game and monitoring the results of that change.

Notification of average losses

- 560** While information as to the average or expected hourly loss when playing on EGMs may currently be available in their information menus, there is no evidence that all patrons check that information or are aware that it is available. In order to be properly informed, they should know of their likely losses. It may be appropriate for the GWC to consider directing Perth Casino to display notices on EGMs providing information as to the average loss per hour to be expected when playing the machine. In this respect, attention is drawn to the Rockloff Report.⁵⁹⁸

Increase minimum EGM speed of play

- 561** The research as to the effect of different minimum speeds of play is equivocal. However, speed of play affects the extractive capacity of EGMs and the evidence in this chapter shows that, while the reasons might be debated, Perth Casino EGMs with a lower minimum speed of play earn more revenue. Perth Casino did not conduct any assessment of three and five second games prior to seeking GWC approval for the 2019 changes. In those circumstances, it may be appropriate for the GWC to give further consideration to the 2019 changes.

Jackpot maximums and jackpot expiry

- 562** Research referred to in Part One of this chapter suggests that jackpot-enabled EGMs may positively influence play and intensity. Experiments show that where jackpots expired for some players after a fixed number of bets those players stopped playing earlier and lost less money.⁵⁹⁹ The implementation of a jackpot expiry system might lead to patrons ceasing play rather than chasing losses in the hope of a large win.
- 563** It may be appropriate for the GWC to consider directing Perth Casino to limit the maximum size of EGM jackpots or implement jackpot expiry based on number of bets or time betting.

Measures relevant to the GWC’s supervision of Perth Casino’s harm minimisation function

Regular reporting of RG framework performance

- 564** As explained in this chapter, analysis of Perth Casino’s records suggests that the PPP set out in the 2020 WPI and 2021 WPI have not been properly enforced. It may be appropriate for the GWC to consider directing Perth Casino to provide it with a monthly report of the effectiveness of its RG framework including, but not limited to, an analysis of the extent to which its PPP has been properly and promptly enforced.
- 565** The PCRC was assisted in its understanding of the nature of the carded EGM gaming at Perth Casino by analysis of data provided by Crown in answer to notices to produce. It may be appropriate for the GWC to consider directing Perth Casino to provide it with regular

analysis showing patron turnover and losses, particularly in relation to patrons showing significant or unusual turnover and losses, along with an explanation of what if any steps Perth Casino is taking in relation to those patrons.

Reporting of discretionary complimentary items

566 The evidence in this chapter shows that hosts use comps to, amongst other things, induce premium patrons to gamble more at Perth Casino. It may be appropriate for the GWC to consider directing Perth Casino to develop a written policy requiring that hosts, before offering material comps to a patron: confirm that the relevant patron has not been identified as being at-risk by automated systems or observable signs in the previous 12 months; be positively satisfied that the relevant patron would not be at risk of harm if they were to increase their spending; and record the reasons for that satisfaction and details of the comp (with those records to be made available to GWC officers on request).

Regulation of promotional activities generally

567 This chapter has explained how Perth Casino makes use of events, functions and gifts to induce Crown Rewards patrons to increase their spending. It may be appropriate for the GWC to consider directing Perth Casino to develop a written policy requiring that, before any person offers events, functions and gifts to patrons that person: confirm that the relevant patron has not been identified as being at-risk by automated systems or observable signs in the previous 12 months; be positively satisfied that the relevant patron would not be at risk of harm if they were to increase their spending; and record the reasons for that satisfaction and details of the offer (with those records to be made available to GWC officers on request).

ATM/EFTPOS Policy

568 The PCRC has concluded that the GWC's current ATM/EFTPOS Policy adopts inconsistent approaches to the treatment of EFTPOS and ATM facilities; is poorly designed in that it allows for daily limits to reset at midnight; and assumes that EFTPOS cash withdrawals or chip purchases on the gaming floor will be subject to effective observation when there is reason to suspect that that is not the case. It may be appropriate for the GWC to consider reviewing the policy to ensure a consistent and coherent approach to ATM and EFTPOS facilities.

Endnotes

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155 Connolly, transcript [TRA.0001.0001.0001] 3586 – 3588.

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158 GWC, agenda papers (22 July 2019 meeting) [GWC.0002.0016.0281_R] 9.

159 GWC, agenda papers (22 July 2019 meeting) [GWC.0002.0016.0281_R].

160 GWC, agenda papers (22 July 2019 meeting) [GWC.0002.0016.0281_R] 9.

161 GWC, minutes (23 July 2019 meeting) [GWC.0002.0016.0285_R] 2.

162 Ord, transcript [TRA.0001.0001.0001] 3472.

163 Ord, transcript [TRA.0001.0001.0001] 3472.

164 Connolly, transcript [TRA.0001.0001.0001] 3588.

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166 Fiorentino, witness statement [GWC.0003.0012.0074_R] 23.

167 Sargeant, witness statement [GWC.0003.0019.0039_R] 26.

168 GWC, agenda paper (19 December 2017 meeting) [GWC.0004.0017.0003].

169 GWC, agenda papers (30 April 2019 meeting) [GWC.0002.0016.0272_R] 176; GWC, minutes (30 April 2019 meeting) [GWC.0002.0016.0273_R] 4; GWC, agenda papers (25 June 2019 meeting) [GWC.0002.0016.0277_R] 70, 128; GWC, agenda papers (29 October 2019 meeting) [GWC.0002.0016.0289_R] 132; GWC, agenda papers (26 November 2019 meeting) [GWC.0002.0016.0291_R] 48; GWC, agenda papers (17 December 2019 meeting) [GWC.0002.0016.0293_R] 15 – 16; GWC, agenda papers (25 February 2020 meeting) [GWC.0002.0016.0296_R] 73; GWC, agenda papers (28 April 2020 meeting) [GWC.0002.0016.0298_R] 227.

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- 172 GWC, minutes (28 February 2012 meeting) [GWC.0002.0016.0051_R] 4.
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- 174 GWC, agenda papers (26 February 2019 meeting) [GWC.0002.0016.0266_R] 218 – 227.
- 175 GWC, agenda papers (26 February 2019 meeting) [GWC.0002.0016.0266_R] 221 – 277.
- 176 GWC, minutes (26 February 2019 meeting) [GWC.0002.0016.0270_R] 4 – 5.
- 177 GWC, ATMs at Crown Perth (5 September 2016) [GWC.0001.0013.0057].
- 178 Felstead, transcript [TRA.0001.0001.0001] 2172 – 2173; Chopping, transcript [TRA.0001.0001.0001] 3331.
- 179 GWC, minutes (28 May 2019 meeting) [GWC.0002.0016.0276] 3.
- 180 Email from Crown to Beecroft (8 March 2021) [CRW.706.004.0024_R]; Letter from Bossi to Ord (8 March 2021) [CRW.709.004.1747_R]; Crown, Trial EFTPOS Facility at Table Games: Research Insights (March 2021) [CRW.700.066.6326].
- 181 GWC, agenda papers (27 July 2021 meeting) [GWC.0012.0001.2333_R] 8; Department, EFTPOS/Contactless Payments and ATMs at Perth Casino policy [PUB.0028.0001.0001].
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- 188 Chopping, transcript [TRA.0001.0001.0001] 3332
- 189 Chopping, transcript [TRA.0001.0001.0001] 3315, 3329.
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- 191 Department, Briefing Paper for Minister of Racing and Gaming (March 2017) [DLG.8001.0023.8919] 28 – 29; Email from Sargeant to Connolly and Beecroft (9 July 2017) [DLG.8002.0001.8732]; Gambling Research Australia, Western Australian Response (12 July 2017) [DLG.0004.0007.1241].
- 192 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (14 December 2021) [PCRC.0002.0038.0001] 8.
- 193 Department, Director General Briefing: Gambling Research Australia – Memorandum of Understanding [DLG.0021.0002.0001] 1.
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- 195 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (14 December 2021) [PCRC.0002.0038.0001] 5.
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- 197 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (14 December 2021) [PCRC.0002.0038.0001] 7 – 8
- 198 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (14 December 2021) [PCRC.0002.0038.0001] 8.
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- 202 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (14 December 2021) [PCRC.0002.0038.0001] 6.
- 203 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (14 December 2021) [PCRC.0002.0038.0001] 6 – 8.

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214 PGSSC, Strategic Plan 2017 – 2020 [GWC.0005.0003.0003] 2.

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216 PGSSC, minutes (27 May 2021 meeting) [CRW.709.158.3173] 2

217 PGSSC, Financial Contributions and Strategic Plan (2020 – 2021) [GWC.0005.0002.0028]; Crown, Problem Gambling Support Services Committee Overview [CRW.709.158.3178] 3.

218 GWC, agenda papers (27 July 2021 meeting) [GWC.0012.0001.2333_R]; GWC, minutes (27 July 2021 meeting) [GWC.0012.0001.2573_R] 14; PGSSC, minutes (27 May 2021 meeting) [CRW.709.158.3173] 2.

219 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (10 June 2021) [PCRC.0002.0003.0001] 2 – 3.

220 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 15(1).

221 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 15(2).

222 GWC, minutes (25 February 2020 meeting) [GWC.0002.0016.0297] 10.

223 PGSSC, Strategic Plan 2017 – 2020 [GWC.0005.0003.0003] 2

224 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] 117 [492].

225 There was no meeting in 2020: PGSSC, agenda papers (17 June 2019 meeting) [CRW.700.014.0042]; PGSSC, agenda papers (27 May 2021 meeting) [CRW.700.014.0021] 2; PGSSC, agenda papers (1 July 2021 meeting) [CRW.700.066.1927].

226 PGSSC, agenda papers (27 May 2021 meeting) [CRW.700.014.0021]; PGSSC, agenda papers (1 July 2021 meeting) [CRW.700.066.1927]; PGSSC, minutes (1 July 2021 meeting) [CRW.700.066.1924].

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228 Department, Problem gambling (6 August 2020) [PUB.0036.0011.0001].

229 PGSSC, Cash Position Statement from 2010 to 30 April 2021, spreadsheet [GWC.0005.0004.0007].

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231 Blackburn, transcript [TRA.0001.0001.0001] 6035.

232 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 575 [143].

233 Strelein Faulks, witness statement [CRW.998.002.0622_R] [74(b)].

234 GWC, minutes (17 December 2002 meeting) [GWC.0007.0011.0192_R] 84.

235 RGAP, Review of Crown Resort’s Responsible Gaming Programs and Services [CRW.507.001.1078].

236 CRL, agenda papers (24 May 2021 meeting) [CRW.512.103.0440_R] 53.

237 Crown, Draft Responsible Gaming Change Program (24 December 2021) [CRW.701.011.5781].

238 Strelein Faulks, witness statement [CRW.998.002.0622_R] [74] – [78].

239 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109].

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- 243 Crown, Annual Compliance Plan FY21 [CRW.700.065.2679_R].
- 244 Crown, Crown Resorts Limited Code of Conduct [CRW.701.002.0423] 7.
- 245 Letter from Preston to Ord (14 November 2018) [CRW.707.001.0231_R] 9.
- 246 Strelein Faulks, witness statement [CRW.998.002.0622_R] [74(a)].
- 247 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 567 [113].
- 248 M Rockloff, N Hing, M Browne, A Russell, H Thorne, P Newall, T Visintin, 'Gambling Harm and Harm Minimisation in Western Australia', expert report (October 2021) [PCRC.0100.0001.0001] 26.
- 249 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 4 – 5.
- 250 Strelein Faulks, witness statement [CRW.998.002.0622_R] [74(c)].
- 251 Sullivan, transcript [TRA.0001.0001.0001] 2222.
- 252 Strelein Faulks, witness statement [CRW.998.002.0622_R] [118].
- 253 CRL, agenda papers (15 June 2021 meeting) [CRW.510.102.0943_R] 37.
- 254 VCGLR, Sixth Review of the Casino Operator and Licence (June 2018) [PUB.0004.0009.0001] 109.
- 255 RGC, minutes (7 October 2021 meeting) [CRW.701.011.1597] 2; Crown, Responsible Gaming (RG) Information & Insights [CRW.701.006.4410] 3; Blackburn, transcript [TRA.0001.0001.0001] 6033.
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- 257 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 572 – 573 [132].
- 258 Strelein Faulks, witness statement [CRW.998.002.0622_R] [14] – [17].
- 259 Strelein Faulks, witness statement [CRW.998.002.0622_R] [99].
- 260 Strelein Faulks, witness statement [CRW.998.002.0622_R] [18].
- 261 Crown, Responsible Gaming Psychologist (Research) Position Description (14 July 2021) [CRW.700.055.0001] 1.
- 262 Blackburn, transcript [TRA.0001.0001.0001] 6009 – 6010.
- 263 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 14; Strelein Faulks, witness statement [CRW.998.002.0622_R] [101].
- 264 Letter from Preston to Ord (14 November 2018) [CRW.008.042.8653_R] 9.
- 265 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 17 – 18.
- 266 Strelein Faulks, witness statement [CRW.998.002.0622_R] [101] – [102].
- 267 Strelein Faulks, witness statement [CRW.998.002.0622_R] [101] – [102].
- 268 Strelein Faulks, witness statement [CRW.998.002.0622_R] [113].
- 269 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 11.
- 270 RGMC, agenda papers (20 December 2011 meeting) [CRW.700.004.0236_R] 41 – 46.
- 271 Strelein Faulks, witness statement [CRW.998.002.0622_R] [142] – [147]; Crown, Third Party Workplace Instruction (December 2020) [CRW.700.033.0981_R].
- 272 Strelein Faulks, witness statement [CRW.998.002.0622_R] [147].
- 273 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 12.
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- 275 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 13; Strelein Faulks, witness statement [CRW.998.002.0622_R] [129].
- 276 Crown, Involuntary and Self – exclusions (27 February 2015) [CRW.700.025.3077_R].
- 277 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 16.
- 278 Crown, Player Activity Statement example [CRW.701.005.5076].
- 279 Strelein Faulks, witness statement [CRW.998.002.0622_R] [165].
- 280 Crown, 11.0 Play Period v 2.0 (October 2021) [CRW.701.011.1638] 1.
- 281 Crown, 11.0 Play Period v 1.0 (May 2021) [CRW.700.033.0944].
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285 Strelein Faulks, witness statement [CRW.998.002.0622_R] [199].

286 Strelein Faulks, witness statement [CRW.998.002.0622_R] [200].

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296 Sullivan, transcript [TRA.0001.0001.0001] 2320.

297 Sullivan, witness statement [CRW.998.002.0289_R] [260] – [266]; Townson, witness statement [CRW.998.002.0518_R] [27].

298 Crown, Gaming Machines Daily Operations Report [CRW.700.048.6877_R].

299 Sullivan, witness statement [CRW.998.002.0289_R] [266].

300 Sullivan, witness statement [CRW.998.002.0289_R] [266]; Crown, Top 20 EGM Players FY18 (December 2017) [CRW.700.045.6515_R].

301 Bauer, witness statement [CRW.998.002.0872_R] [52]; Crown, Responsible Service of Gambling Module [CRW.700.044.0744_R].

302 Crown, Changes to RSG Online Training [CRW.510.048.0324].

303 Crown, Responsible Gaming Online Training Storyboard [CRW.700.044.0672_R].

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310 Letter from Felstead to Blaszczyński (12 November 2018) [CRW.540.011.7177_R] 1.

311 Crown, Responsible Gaming Advisory Panel Terms of Reference [CRW.700.010.0186] 3; Strelein Faulks, witness statement [CRW.998.002.0622_R] [92].

312 Crown, Responsible Gaming Advisory Panel Terms of Reference [CRW.700.010.0186] 3.

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314 Rockloff and Philander, transcript [TRA.0001.0001.0001] 5851.

315 Strelein Faulks, witness statement [CRW.998.002.0622_R] [90].

316 Crown, Review of Crown Resort’s Responsible Gaming Programs and Services (August 2020) [CRW.507.001.1078] 6 – 8.

317 Blackburn, witness statement [CRW.998.002.1008_R] [38]; Strelein Faulks, witness statement [CRW.998.002.0622_R] [91].

318 Crown, Review of Crown Resort’s Responsible Gaming Programs and Services (August 2020) [CRW.507.001.1078] 61 [Recommendation 15].

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- 320 Preston, witness statement [JRP.0001.0001.0006_R] [11]; Letter from Felstead to Connolly (9 March 2017) [CRW.708.006.1504_R].
- 321 Crown, Perth Casino Business Operating Team (20 October 2021) [CRW.701.009.5021_R] 2; Crown, Announcement (23 December 2021) [CRW.701.011.6694_R].
- 322 Bauer, witness statement [CRW.998.002.0872_R] [116]; Blackburn, witness statement [CRW.998.002.1008_R] [5].
- 323 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 578 – 579.
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- 325 Bossi, transcript [TRA.0001.0001.0001] 5037 – 5038; Crown, October 2021 Perth Casino Business Operating Team [CRW.701.009.5021_R] 2.
- 326 Crown, GEGM – RG Position Description (21 September 2021) [CRW.700.104.3138] 7.
- 327 Letter from Preston to Ord (14 November 2018) [CRW.707.001.0231_R] 3 – 4.
- 328 Bossi, transcript [TRA.0001.0001.0001] 5038 – 5039.
- 329 Crown, RGC Charter (February 2020) [CRW.512.016.0006] 3.
- 330 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 558 [83].
- 331 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 2, 21.
- 332 Bauer, transcript [TRA.0001.0001.0001] 4855 – 4856, 4858.
- 333 Crown, Responsible Gaming Code of Conduct (2021/2022) [PUB.0033.0031.0009] 3, 5, 18. The new code appears to have been published in either December 2021 or January 2022.
- 334 Blackburn, transcript [TRA.0001.0001.0001] 6004.
- 335 Blackburn, transcript [TRA.0001.0001.0001] 6005.
- 336 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 17.
- 337 A Thomas, P Delfabbro, A Armstrong, ‘Validation study of in-venue problem gambler indicators’ [CRW.701.010.2786] 63 – 66.
- 338 The code notes that the signs it lists ‘are adapted from’ three listed studies. Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 18; Crown, Responsible Gaming Code of Conduct (2021/2022) [PUB.0033.0031.0009] 22.
- 339 Crown, Draft Responsible Gaming Change Program (24 December 2021) [CRW.701.011.5781] 8.
- 340 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 22. Neither the 2020 WPI nor 2021 WPI imposed any obligation on Perth Casino employees to encourage patrons to take breaks from gambling.
- 341 Crown, Responsible Gaming Code of Conduct (2021/2022) [PUB.0033.0031.0009] 25.
- 342 Crown, Responsible Gaming Code of Conduct (July 2021) [CRW.700.067.1109] 21.
- 343 Crown, Responsible Gambling Code of Conduct [PUB.0007.0029.0077] 6.
- 344 Consumer and Business Services, Gaming Machines Gambling Code of Practice (3 December 2020) [PUB.0007.0032.0079] 12; Tasmanian Liquor and Gaming Commission, Responsible Gambling Mandatory Code of Practice for Tasmania (1 March 2020) [PUB.0007.0032.0001] 11; Bauer, transcript [TRA.0001.0001.0001] 4863, 4867.
- 345 Crown, Responsible Gambling Code of Conduct [PUB.0007.0029.0077] 7; Sullivan, transcript [TRA.0001.0001.0001] 2267.
- 346 Bauer, transcript [TRA.0001.0001.0001] 4865.
- 347 Crown, Crown Resorts Limited Responsible Gaming Policy (December 2020) [CRW.510.045.0192_R] 4.
- 348 Burswood Entertainment Complex, Responsible Gambling Code of Practice (2010-2012) [CRW.700.067.1057] 17; Crown, Responsible Gambling Code of Practice [CRW.700.025.3081] 17.
- 349 RGAP, Review of Crown Resort’s Responsible Gaming Programs and Services [CRW.507.001.1078] 27.
- 350 Crown, Responsible Gaming Information and Insights [CRW.701.006.4410] 4.
- 351 Blackburn, transcript [TRA.0001.0001.0001] 6033.
- 352 Crown, 1.0 Self Exclusion WPI [CRW.700.033.0900_R] 1 – 2.

353 Letter from Blaszczyński to Bauer (2 December 2019) [CRW.510.052.4285_R]; RGAP, Review of Crown Resort's Responsible Gaming Programs and Services (August 2020) [CRW.507.001.1078] 53; Letter from Crown to VCGLR, Attachment B: Crown Model Trial (30 December 2019) [CRW.510.029.3783] 1.

354 Crown, 1.0 Self Exclusion WPI [CRW.700.033.0900_R] 3.

355 PCRC, Aide Memoire of 2020 Self – Exclusion Data [PCRC.0007.0005.0001_R] 1.

356 A Thomas, P Delfabbro, A Armstrong, 'Validation study of in-venue problem gambler indicators' [CRW.701.010.2786] 64.

357 Strelein Faulks, transcript [TRA.0001.0001.0001] 4498 – 4499.

358 Strelein Faulks, transcript [TRA.0001.0001.0001] 4498 – 4499.

359 PCRC, Aide Memoire of Reasons for Self – Excluding [PCRC.0007.0010.0001_R] 1; Crown, Draft Responsible Gaming Change Program (24 December 2021) [CRW.701.011.5781] 3.

360 M Rockloff, N Hing, M Browne, A Russell, H Thorne, P Newall, T Visintin, 'Gambling Harm and Harm Minimisation in Western Australia', expert report (October 2021) [PCRC.0100.0001.0001] 10 – 11.

361 Bossi, transcript [TRA.0001.0001.0001] 1962.

362 GWC, agenda papers (23 February 2021 meeting) [GWC.0002.0016.0363_R] 76.

363 M Rockloff, N Hing, M Browne, A Russell, H Thorne, P Newall, T Visintin, 'Gambling Harm and Harm Minimisation in Western Australia', expert report (October 2021) [PCRC.0100.0001.0001] 29.

364 Strelein Faulks, transcript [TRA.0001.0001.0001] 4492; Bauer, transcript [TRA.0001.0001.0001] 4879 – 4880.

365 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R] 606, 643 – 644.

366 Strelein Faulks, witness statement [CRW.998.002.0622_R] [61].

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521 Sullivan, transcript [TRA.0001.0001.0001] 2306.

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526 Blackburn, RCCOL, transcript [PUB.0020.0002.0001] 3019 – 3020.

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542 Blackburn, transcript [TRA.0001.0001.0001] 6010 – 6011, 6032 – 6033.

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553 Crown, Draft Responsible Gaming Change Program (24 December 2021) [CRW.701.011.5781].

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557 Crown, Draft Responsible Gaming Change Program (24 December 2021) [CRW.701.011.5781] 10, 25.

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561 Crown, Draft Responsible Gaming Change Program (24 December 2021) [CRW.701.011.5781] 28.

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563 Blackburn, transcript [TRA.0001.0001.0001] 6019, 6028.

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566 Email from Bossi to Preston (18 June 2014) [CRW.709.143.2604_R] 2 – 3.

567 Email from Bossi to Preston (18 June 2014) [CRW.709.143.2604_R] 1.

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571 Connolly, transcript [TRA.0001.0001.0001] 3582, 3594, 3598.

572 Email chain between Preston and Connolly (20 June 2014) [DLG.8001.0022.7525_R] 1.

573 Email from Felstead's executive assistant at Crown Perth Resort to Ord (7 March 2019) [CRW.709.145.4879_R], attaching Letter from Felstead to Ord (7 March 2019) [CRW.709.145.4880_R].

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575 Email from Hulme to McGregor and others (14 March 2019) [CRW.008.044.0223_R], attaching letter from Felstead to Ord (7 March 2019) [CRW.709.145.4880_R] and letter from Felstead to Ord (7 February 2019) [CRW.008.044.0236_R].

576 Hulme, transcript [TRA.0001.0001.0001] 2808 – 2809.

577 Hulme, transcript [TRA.0001.0001.0001] 2809.

578 Sullivan, witness statement [CRW.998.002.0289_R] [210] – [211].

579 Sullivan, transcript [TRA.0001.0001.0001] 2287.

580 Sullivan, transcript [TRA.0001.0001.0001] 2289 – 2290.

581 Sullivan, transcript [TRA.0001.0001.0001] 2290; Crown, presentation on WA Appendix Amendments (26 March 2019) [GWC.0002.0016.0269_R] 6.

582 Sullivan, transcript [TRA.0001.0001.0001] 2290.

583 Letter from Felstead to Ord (7 March 2019) [CRW.709.145.4880_R] 7.

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CHAPTER 13

Electronic Gaming Machines

CHAPTER THIRTEEN

Electronic Gaming Machines

Purpose of Chapter

- 1 The purpose of this chapter is to consider electronic gaming machines (**EGMs**) offered for use at **Perth Casino** and the authorisation of games to be played on those machines, particularly in the context of the prohibition of 'poker machines' in s 22(1) of the *Casino Control Act 1984* (**CC Act**).
- 2 As is discussed below, all of the games offered for use on EGMs at Perth Casino have been declared to be authorised games, or otherwise approved, by the Gaming and Wagering Commission (**GWC**) under the CC Act. The appropriateness of the manner in which the GWC has exercised its powers in respect of EGM games comes within the scope of **ToR 9**.

Approach of the PCRC

- 3 This chapter examines the meaning of the statutory provisions that apply to games played on EGMs at Perth Casino, including the meaning of the term poker machine as it appears in the CC Act. It then examines the type of EGMs offered for use at Perth Casino.
- 4 The chapter also includes a review of the guidelines which have been established by the GWC to guide its evaluation of whether EGMs are (or are not) poker machines.
- 5 In the course of that review, this chapter briefly traces the process by which the guidelines were developed and changed over time and, in particular, considers significant changes to the guidelines that were made in 2019.
- 6 The harm minimisation issues relevant to the offering and use of EGMs at Perth Casino are addressed in Chapter Twelve: Harm Minimisation.

Part One: Electronic Gaming Machines and Poker Machines

EGMs – what are they and where did they come from?

- 7 There is no authoritative definition of what is meant by an electronic gaming machine or EGM. The term does not appear in the Oxford, Macquarie, Cambridge or Collins English dictionaries.
- 8 However, the term is broadly defined in the **State Agreement**. Further, as discussed below, the manufacturers of gambling devices that are identified and sold as EGMs provide some indication as to the ordinary or everyday meaning of the term.
- 9 Clause 2 of the State Agreement has, since 2003, defined 'Electronic Gaming Machine' to mean, in essence, 'any electrical, electronic or mechanical contrivance or machine' by which authorised games can be played. The term 'authorised game' is in turn defined as bearing the same meaning as in the CC Act (namely, a game declared by the GWC to be an authorised game for the purposes of that Act).
- 10 That broad definition is generally similar to the definition of 'gaming machine' in s 84(1) of the *Gaming and Wagering Commission Act 1987* (**GWC Act**), discussed further below.

- 11 The first gaming machine – which has been described as ‘the forerunner of all modern gaming machines’ – was invented by Charles Fey, a Californian mechanic, in 1895.¹
- 12 This original gaming machine, known as the ‘Liberty Bell’, made use of three spinning reels or drums with each bearing 10 symbols on its circumference. The machine could be operated after inserting a 5-cent coin into a slot and pulling on a handle that caused the reels to spin. When the reels came to rest, the machine might pay out in accordance with the combination of symbols then being displayed.² When three bells were displayed, for example, the machine paid out 50 cents.³ Initially, the symbols on the spinning reels featured bells, horseshoes and playing cards, with fruit and numbers appearing later. The machines were known as ‘slot machines’ or ‘fruit machines’. In the 1950s, similar mechanical machines were manufactured by Aristocrat Technologies in Sydney and the symbols used were card faces which gave rise to the term ‘poker machine’.⁴
- 13 Although the Liberty Bell was a wholly mechanical device operated by means of levers and gears, gaming machines subsequently evolved to become electromechanical devices that used electricity to spin their reels and bring them to a stop. The first such device, called ‘Money Honey’, appears to have been introduced in around late 1963.⁵ The machine’s electromechanical workings allowed for the use of a ‘bottomless hopper’ which could pay out up to 500 coins without the help of an attendant.⁶ The introduction of electromechanical machines ultimately led to the obsolescence of the lever used to start a game.⁷
- 14 In time, physical spinning reels were replaced with a video representation of reels. The first purely video machine was made available in the Las Vegas Hilton Hotel in 1976.⁸ Aristocrat claims to have created the first ‘all electronic’ game, Wild West, in 1979.⁹ It appears that, by 1982, poker machines using video rather than physical reels were already common in the United States, although not yet common in Australia.¹⁰
- 15 Modern EGMs make use of ‘random number generators’, first patented in the United States in 1984,¹¹ to determine the result of each game. The random number generator’s output is represented by the symbols displayed at the conclusion of a game.¹²
- 16 The Gaming Technologies Association, the peak representative body for Australian gaming machine technology suppliers, asserts that:¹³
- EGMs are the purest form of random outcome gambling. No action by a player, a venue operator or regulator can influence the outcome of any individual play.
- 17 Contemporary EGMs utilise standard computer components such as motherboards, hard drives, monitors and other elements that would be recognisable to people familiar with the internal components of personal computers. The software that provides for the operation of EGMs is now typically stored on portable storage devices, including portable hard drives, DVD-ROM media and even USB sticks.¹⁴
- 18 The discussion above has focussed on EGMs which, as with original slot machines or poker machines, represent the result of a game through the display of randomly determined symbols. As already noted, once a game has commenced, these machines generally do not allow for any interaction between the player and the machine and players cannot influence the outcome of a game. However, there are some EGMs offered at Perth Casino which do allow for player interaction, such as ‘drawcard’ machines. These devices commonly replicate existing card games and allow players to decide whether to hold some or all of their cards or draw new cards after they are dealt an initial hand.¹⁵ As a result, players can influence the outcome of these games.
- 19 In his witness statement, James Sullivan (**Sullivan**), Gaming Product Manager (Gaming Machines) at Perth Casino, said there were broadly three types of EGM games currently offered at Perth Casino, being:¹⁶
- a. Table Games (largely Draw Poker);

- b. Keno Games – which have some similarity to lottery games; and
 - c. New Style Games – which have been developed for operation at Perth Casino and approved in accordance with applicable regulations in Western Australia. These are games of chance the outcome of which cannot be influenced by players.¹⁷
- 20 Where it is necessary to distinguish between different kinds of EGMs in this chapter the PCRC has adopted Sullivan’s suggested classifications. These EGMs are different to fully automated table games (**FATGs**) that are also offered at Perth Casino.

The prohibition on poker machines

21 Section 22(1)(a) of the CC Act provides that:

Subject to this section, the Commission, by notice published in the Gazette, may ... declare any game, except for a game played with poker machines, to be an authorised game for the purposes of this Act

- 22 Section 22(6) of the CC Act then prohibits a casino licensee from permitting any games other than authorised games to be played at a licensed casino.
- 23 The effect of these provisions is to empower the GWC to approve any game other than a game played with a poker machine to be an authorised game and a lawful game to be played at Perth Casino. However, the term poker machine is not defined in the CC Act or elsewhere. The meaning of the term in s 22 of the CC Act is accordingly to be ascertained by application of the general principles of statutory construction.

Principles of statutory construction

- 24 The general principles of statutory construction are well settled.¹⁸
- 25 The focus of statutory construction is upon the text of the relevant provision, having regard to its context, purpose and the policy of the provision.
- 26 In considering the text, weight is to be given to the natural and ordinary meaning of the words used by the legislature, consistent with and by reference to the language of the statute as a whole.¹⁹
- 27 The context includes the existing state of the law, the history of the legislative scheme and the issue or mischief to which the statute is directed.
- 28 Similarly, the purpose and policy of the legislation must be derived from the statutory text and not from any assumptions about the desirable reach or operation of the relevant provisions.²⁰ Preference is to be given to a construction that would promote that purpose.²¹
- 29 Regard may be had to extrinsic materials to confirm the ordinary meaning of the provision or to determine its meaning when the provision is ambiguous or obscure.²² The material that may be considered includes any relevant report of a Royal Commission or committee of inquiry that was laid before either House of Parliament before the time when the provision was enacted.²³
- 30 Generally speaking, the task when considering extrinsic materials is to identify the policy of the statute to better understand its language and the intended operation of the statute. An understanding of legislative policy by these means does not provide a warrant for departing from the process of statutory construction and attributing a wider operation to a statute than its language and evident operation permit.²⁴
- 31 Protective or remedial legislation (or a protective or remedial provision)²⁵ is to be construed beneficially, being as widely as its language will fairly allow.²⁶ This is a manifestation of the general principle that legislation is construed purposively. The principle is relevant when

choosing between different interpretations or when there is uncertainty as to meaning of relevant words.²⁷

- 32 It is also a principle of construction that a legislature intends to attach the same meaning to the same words when used in a subsequent statute in a similar connection.²⁸ Further, statutory texts enacted by the same legislature are to be construed, so far as possible, to operate in harmony and not in conflict.²⁹ This principle is relevant here because the term poker machine also appears in s 85 of the GWC Act, which refers to the authorisation of games for use in a casino under the CC Act. Accordingly, the term poker machine can be expected to bear the same meaning in the authorisation provision of the CC Act as in the section of the GWC Act which refers to it.
- 33 Section 8 of the *Interpretation Act 1984* (WA) provides that legislation shall be considered to be 'always speaking' and, where legislation is expressed in the present tense, 'it shall be applied to the circumstances as they arise, so that effect may be given to every part of the law according to its true spirit, intent, and meaning'. The meaning of this principle has been explained as follows:³⁰

[A] statute should generally be construed so as to apply to all things coming within the denotation of its terms, having regard to their connotation at the time of enactment. The connotation of a word or phrase is its essential attributes, which are to be determined as at the time of enactment. The denotation of a word or phrase is the class of things that, from time to time, may be seen to possess those essential attributes sufficiently to justify the application of the word or phrase to them.

The ordinary meaning of the term poker machine

Dictionary definitions

- 34 As is observed below, in addition to the term 'poker machine', the terms 'fruit machine' and 'roulette machine' are also used in the GWC Act.
- 35 Poker machine and fruit machine are terms defined in each of the Macquarie Dictionary, the Oxford English Dictionary, the Cambridge Dictionary and the Collins English Dictionary as follows:
- 36 The Macquarie Dictionary:
- poker machine** noun a coin-operated gambling machine, with images such as playing cards, pictures of fruit, etc., on a set of (usually three or four) wheels which are set in motion by pressing a button or pulling a lever, the score depending on the combination of symbols visible when the wheels come to rest.
- fruit machine** noun Chiefly British and US a poker machine, originally displaying its score in the form of replicas of various fruits.
- 37 Oxford English Dictionary:
- poker machine** n. originally U.S. a coin-operated gaming-machine which pays out according to the combination of symbols (usually representations of playing cards) appearing on the edges of the wheels spun by the operation of a lever.
- fruit machine** n. a coin- or token-operated gaming machine which pays out according to the combination of symbols (often representations of fruit) appearing on the edges of wheels spun by the operation of a lever
- 38 Cambridge Dictionary:
- poker machine** noun Australian English. a slot machine.

fruit machine noun UK. a slot machine.

slot machine noun a machine that you try to win money from by putting coins into it and operating it, often by pressing a button or pulling a handle.

39 The Collins English Dictionary:

poker machine NOUN Australian and New Zealand. a fruit machine.

fruit machine NOUN British. A gambling machine that pays out when certain combinations of diagrams, usually of fruit, are displayed.

40 Having regard to these definitions, the terms poker machine and fruit machine (and slot machine) appear to be synonyms, save that there is a greater likelihood that a fruit machine will display fruit symbols rather than card or other types of symbols.

41 The features of a poker machine/fruit machine that are shared by all of the dictionary definitions referred to above (in the case of the Macquarie and Collins dictionaries, inferentially by their characterisation of poker machines and fruit machines as gambling machines) are that:

- a. money (or a token that represents money) is required to be inserted into the machine to play a game; and
- b. the machine pays out for a win.

42 Three of the four dictionaries define a poker machine by reference to the feature that a score or win in respect of the game is derived from a combination of symbols displayed by the machine.

43 Two of the four dictionaries define a poker machine by reference to whether the machine displays symbols on a set of wheels.

44 The Macquarie Dictionary and the Collins English Dictionary also define the word pokie or pokies as a colloquial or an informal word to describe a poker machine(s).

45 The term roulette machine is not defined in any of the above-mentioned dictionaries. The Parliamentary debates record that term as having been used, without explanation, during second reading speeches introducing or amending the GWC Act.³¹ The PCRC has been unable to identify any authoritative information as to the historical nature of roulette machines. In the present day, it appears that the term roulette machine is used to describe an electronic version of the roulette table game that requires a degree of interaction by the player to place virtual counters or chips and spin the roulette wheel by pressing a button.³²

Ordinary usage

46 When the prohibition in s 22(1) of the CC Act was enacted, poker machines had been expressly prohibited in Western Australia since 1962. It is likely therefore that any ordinary usage of the term poker machine in Western Australia in 1985 would have reflected the ordinary usage at that time in New South Wales (**NSW**) or the Australian Capital Territory (**ACT**) where poker machines were not prohibited.

47 The GWC has drawn the PCRC's attention to the 1983 report published by the Victorian 'Board of Inquiry into Poker Machines' (**Poker Machines Report**). Chapter two of that report examined the history of poker machines, and their evolution from mechanical to electronic machines. The author, having canvassed this history, stated that 'the common characteristic between Fey's original slot machine and a modern poker machine as found in Australia is the existence of the spinning reels which decide or appear to decide the outcome of a game'.³³

48 The report goes on to explain:³⁴

Indeed there are, already available, 'poker machines' which, instead of using spinning mechanical reels, display simulated spinning reels on a colour video screen ... They are common in the United States of America. It is a short step from there to machines which play various other games upon the insertion of a coin either with or without the subsequent manipulation of a handle ... the United States slot machine market would appear to be moving towards video type machines of one kind or another.

49 It may be that the EGMs at Perth Casino are, today, generally understood to be poker machines. This was recognised, for example, in the briefing notes prepared by the then Department of Racing, Gaming and Liquor for the incoming Minister for Racing and Gaming in 2013. The notes include the observation that 'the general perception of video gaming machines at Crown Perth is that they are "pokies"'.³⁵

50 Similarly, in other Australian jurisdictions where gaming machines are permitted in pubs and clubs, the terms 'poker machine', 'pokies', 'EGMs' and 'electronic gaming machines' appear to be used interchangeably to describe any electronic machine that has the features referred to above.³⁶

51 This indicates a community perception as to common essential attributes between 'traditional' poker machines, and contemporary poker machines and EGMs, which the PCRC considers to be relevant to the construction exercise having regard to the principle that statutes are always speaking, as explained above. In saying this, the PCRC does not suggest that it is appropriate to rely on contemporary vernacular to, in effect, retrospectively alter the operation of a statute. The significance of contemporary usage of a term is that it tends to confirm what aspects of that term are understood by a populace to be essential: a term is unlikely to be applied to new developments where they do not share those essential attributes.

52 The point can be illustrated by reference to High Court authority applying the common law analogue of s 8 of the *Interpretation Act 1984* (WA).³⁷ The relevant issue was whether a reference to 'gas' in a proclamation should be understood as meaning only coal gas. It was argued that at the time of the proclamation the word gas had consistently been used in earlier statutes to mean only coal gas. Barwick CJ agreed, but went on to say:³⁸

Nonetheless the connotation of the word 'gas' may not be so described. The Act here speaks of 'gas', not of coal gas. In my opinion, it thus selects the genus, and not any particular species of gas. I can see no reason why, whilst the connotation of the word 'gas' will be fixed, its denotation cannot change with changing technologies.

53 That the denotation of poker machines has changed with changing technologies is clear.

54 The **Crown entities**, the GWC and the **Department** all urged upon the PCRC the definition of poker machines found in the Macquarie and Oxford English dictionaries, to the exclusion of the definition in the Cambridge and Collins dictionaries. The Macquarie and Oxford English definitions refer to spinning reels. However, both dictionaries also specify that a poker machine is 'coin-operated'. The Oxford English definition also requires that a poker machine is operated by a lever. The Macquarie definition requires that it is operated by a button or lever. None of the interested parties suggest that an essential attribute of a modern poker machine is that it be coin-operated or operated by a lever. It is not readily apparent why one aspect of a selected dictionary definition should be regarded as essential but another aspect not.

55 Having regard to the fact that in Australia in 1985 video machines without spinning reels were, though not common, known about and apparently regarded as the inevitable next step in the evolution of poker machines, the PCRC concludes that, as a matter of ordinary usage in Australia in 1985, the existence of spinning reels may not have been an essential attribute of a poker machine.

- 56 However, having regard to the dictionary definitions, and ordinary understanding and usage as at 1985, it appears to be a necessary feature of a poker machine that it is a freestanding device of proportions that permit the player to stand or sit 'at' the device to play a game and that the machine is designed and made purely for that purpose (that is, to play a game). On that basis, and by way of illustration, if a game that could be played on such a machine were instead played on a computer or mobile phone through an online gambling website, the computer or mobile phone would not be understood in any ordinary sense to be (or to become by reason of that use) a poker machine.

Language of the statute as a whole

- 57 Although the term poker machine is not defined in the CC Act, other words relevant to the prohibition of poker machines are. As noted above, s 22(1) refers to 'a game played with poker machines', rather than to poker machines themselves.
- 58 The word 'game' is defined in s 3 of the CC Act to mean:
- (a) game of chance or pretended game of chance; or
 - (b) game or pretended game which includes a degree of chance, whether or not combined with a skill or degree of skill and whether or not played manually or by means of –
 - (c) any electrical, electronic or mechanical contrivance or machine that is constructed or adapted for use in a game or pretended game referred to in paragraph (a) or (b); or
 - (d) any other instrument of gaming.
- 59 Thus, for the purpose of the CC Act, a game played on either an electronic or a mechanical machine or device could potentially fall within the descriptor of a 'game played with poker machines'.
- 60 Section 23(1)(b) of the CC Act provides that certain provisions of the GWC Act (which create offences in respect of 'common gaming houses' and prohibited gaming) do not apply on casino premises to the use of equipment 'not being poker machines capable of manual operation'. The legislative intent underlying the qualifier 'capable of manual operation' is not clear. The qualifier may be intended to emphasise the distinction between poker machines themselves, and the games played on poker machines: if the poker machine is manually driven (that is, mechanical) the machine itself is played, while if the poker machine is electronic a game program into a microprocessor is played on the machine. By the time the CC Act was passed all modern poker machines had long been electronic (although there were still electromechanical poker machines in operation in the clubs of NSW and the ACT).³⁹

Context, purpose and policy considerations

Historical prohibition on poker machines in Western Australia

- 61 From the time of its enactment, Part VI of the *Police Act 1892 (WA)* (**Police Act**) contained prohibitions against the establishment and operation of common gaming houses, and the playing of games of chance in any public place or place to which the public had access.⁴⁰
- 62 In 1961, s 89A was inserted into the Police Act.⁴¹ That section empowered the Governor to specifically prohibit the use or possession of 'slot machines', which were defined as being, in essence, machines operated by the insertion of a coin or valuable token, or upon payment of valuable consideration.

- 63 By way of proclamation first made in 1962, and made again in the same terms in 1963, the Governor prohibited the use or possession of, amongst other things, machines 'of the kind generally known and described as a poker machine, fruit machine or roulette machine or [which] is a mechanical device in the nature of, or similar to, any of them'.⁴² The term poker machine was not defined in the proclamation.
- 64 In 1987, s 89A and other provisions of the Police Act concerned with gaming were repealed after the introduction of the then *Gaming Commission Act 1987 (WA) (GC Act)* (now the GWC Act).⁴³ Pursuant to s 85(1) and (4) of the GC Act the prohibition of poker machines was continued.
- 65 The prohibition on the approval of games played with poker machines did not appear in s 22(1)(a) of the CC Act as enacted. Instead, it was inserted some nine months later.⁴⁴ The amending bill by which it was inserted also amended the definition of 'game' in accordance with that set out above from the original definition of 'game of chance'. The amending bill was introduced to Parliament immediately after the bill which became the *Casino (Burswood Island) Agreement Act 1985 (CBIA Act)*.⁴⁵
- 66 The PCRC infers that the amendments to the definition were intended to make plain that the term poker machine was not to be limited to mechanical devices such as the 'traditional' poker machine epitomised by the Liberty Bell.
- 67 A 1996 review of the then GC Act recommended that, amongst other things, the term poker machine be defined in that Act and reference to the definition be made in the CC Act.⁴⁶ The review did not propose a definition. The recommendation was endorsed,⁴⁷ but no definition was inserted.

Interaction between the CC Act and the GWC Act

- 68 Section 85(1) of the GWC Act has, since it was enacted as the GC Act, prohibited the conduct of gaming or the playing of games with 'unlawful gaming machines', while s 85(4) has prohibited the possession of such machines.
- 69 The term 'gaming machine' is defined in s 84(1) of the GWC Act in terms similar to those that had been used to define poker machine in other jurisdictions,⁴⁸ namely:
- gaming machine** means a machine which –
- (a) is constructed, adapted or used for playing a game of chance by means of that gaming machine;
 - (b) a player pays (except where he has an opportunity to play without payment as the result of having previously played successfully) to play –
 - (i) by inserting money, or money's worth in the form of a token; or
 - (ii) in some other way; and
 - (c) by the chances inherent in the action of the machine, determines the outcome of the game,
- whether or not provision is made for the manipulation of the machine by a player;
- 70 The essential attributes of a gaming machine for the purposes of the GWC Act thus appear to be that it is a game of chance where the outcome of that game is determined by the 'action of the machine' and which a player must pay to use.
- 71 The term 'unlawful gaming machine' is defined in s 84(1) of the GWC Act as meaning a machine of a kind referred to in s 85(1)(a) or (b).
- 72 Section 85(1) as passed in 1987 (as part of the GC Act) provided as follows:
- (1) The conduct of gaming by means of, or the playing of games using or the making of bets by reference to –

- (a) any machine (not being a video machine authorized for use in the Burswood Casino pursuant to the Casino Control Act 1984) of the kind generally known or described as a poker machine, fruit machine or roulette machine or any machine in the nature of or similar to a machine of that kind;
- (b) any other gaming machine, not being a machine used-
 - (i) as a slot machine; or
 - (ii) in accordance with a permit or written law; or
- (c) gaming equipment of a kind which contravenes, or in the circumstances in which it is found contravenes, a prohibition proclaimed under subsection (2),

is prohibited and constitutes unlawful gaming, and a game played with that gaming equipment or in relation to which it is used shall for the purposes of section 42(2) be deemed to be an unlawful game.

- 73** Section 85(1)(a) has subsequently been amended. The section as it currently exists includes, in essence, video machines that reproduce ‘any kind of game’: (a) declared to be an authorised game under s 22(1)(a) of the CC Act; (b) commonly played in casinos in Australia or elsewhere; or (c) variations of such games. The amendment to s 85(1)(a) could be regarded either as an indication that the section originally did not extend to such video reproductions, or otherwise as confirming the wide scope of the term ‘a machine of that kind’ as it originally appeared in s 85(1)(a). However, whichever possibility is the correct one, in the PCRC’s view, does not bear relevantly on the proper construction of the term poker machine.
- 74** The PCRC considers that the ‘machine’ that is being referred to in s 85(1)(a) is a ‘gaming machine’ as defined in the GWC Act (which definition is referred to above). This is because subsection (b) refers to ‘any other gaming machine’. Consequently, a ‘poker machine’ for the purposes of the GWC Act and, therefore, the CC Act, is a ‘gaming machine’, as defined.
- 75** When considered in the context of the above dictionary definitions, this indicates that a poker machine within the meaning of the relevant legislation does not require money or a token to be inserted into the machine to play the game, as long as the player pays in some way to play.
- 76** That s 85(1)(a) of the GWC Act excludes authorised ‘video machines’ from the category of unlawful gaming machines that are poker machines, fruit machines or roulette machines (or machines in the nature of or similar to machines of that kind) is also relevant to the construction exercise.
- 77** The term ‘video machine’ is not defined in either the GWC Act or the CC Act.
- 78** The language of s 85 as enacted indicates that a video machine may also be a poker machine (or a fruit machine or roulette machine) or may otherwise also be in the nature of or similar to a poker machine. That indication confirms that the statutory meaning of poker machine is not limited to mechanical machines, a conclusion already indicated by the definition of ‘game’ in the CC Act.
- 79** Section 85(1)(a), in effect, makes tolerably clear that the term poker machine extends to purely video devices with no mechanical operation, both for the purposes of the GWC Act and for the purposes of the CC Act to which s 85(1)(a) expressly refers.
- 80** As is discussed in further detail below, when the GWC Act was first enacted (as the GC Act), the only video machines that had been authorised for use at Perth Casino were electronic versions of conventional table games already offered at the casino.⁴⁹ The PCRC understands that none of those video machines made use of physical or virtual spinning reels. Further, the PCRC understands that none of these video machines made use of symbols other than symbols found on playing cards.⁵⁰

81 With respect to subsection 85(1)(b) of the GWC Act, a ‘slot machine’ was (and remains) defined in s 84(1) as:

a machine that is constructed or adapted and used –

- (a) for the playing of music or of games designed primarily for amusement, relaxation or education; or
- (b) for the playing of games of skill; or
- (c) so that although a game of chance may be played, section 39(2)(e) applies; or
- (d) to yield with certainty previously ascertained goods of which the sale, or exposure for sale, is not prohibited by any written law; or
- (e) to dispense tickets, having a previously ascertained face value, in a lottery conducted under and in accordance with the requirements of a written law, without affording any other consideration, advantage or reward and not for the purposes of betting. (emphasis added)

82 Section 39(2)(e) of the GWC Act has not been amended since the Act was first passed. It provides:

a machine shall be taken not to be used for gaming if it is used in premises of a prescribed kind or class and if it is constructed or adapted or used in such a way that —

- (i) a person playing it once and successfully receives nothing except an opportunity, afforded by the automatic action of the machine, to play again (once or more often) without paying; or
- (ii) where a person plays it once and successfully, that which he receives is determined by the automatic action of the machine and is either a money prize not greater than the amount payable to play the machine once or a token which is, or tokens which in the aggregate are, exchangeable only for such a money prize.

83 The indication is that a ‘slot machine’ for the purposes of the GWC Act is not a poker machine. The statute here therefore departs from the ordinary meaning of the term slot machine which, according to the above dictionary definitions, is the same as poker machine. Under the Act, a slot machine that is used to play a game of chance is distinguished from a poker machine by the feature that the player does not win money; a win or prize consists only of the opportunity to continue to play, or the return of the money spent to play the game.

The protective purpose of s 22(1) of the CC Act

84 The CC Act does not have an express objects clause. However, a number of provisions in the Act are evidently protective in nature, such as s 27 which prohibits a casino licensee and any other person concerned in the organisation or management of the gaming operations of a licensed casino from permitting a person under the age of 18 to enter or remain in the casino.

85 Section 22(1) of the CC Act imposes a prohibition on the GWC’s capacity to declare as an authorised game any game played with poker machines and, consequentially, a prohibition on the capacity of persons to play games on poker machines within a licensed casino or anywhere else in the State.

86 The PCRC considers that the prohibition was imposed for some protective purpose. However, it is not apparent from the statute itself whether the specific protective purpose was to remove the risk of problem gambling or social harm from playing games on poker machines, or some other protective purpose, such as to remove the risk that the games played on such machines would be unfair to the player.

Extrinsic materials

- 87 During the second reading debate for the *Casino Control Bill 1984 (WA)*, a number of members made reference to poker machines, also variously described as one-armed bandits and pokies,⁵¹ and expressed concern that in the absence of an express prohibition against poker machines they might ultimately be installed in the casino.⁵²
- 88 These concerns were raised notwithstanding repeated references to a bipartisan consensus that poker machines should not be introduced into Western Australia.⁵³ In the course of the debate, the basis of that bipartisan consensus was explained by reference to a concern that 'Eastern States experience had shown they could become addictive'.⁵⁴ The debate also suggested that members understood that poker machines were designed to guarantee losses over time, with reference being made to prior reports which had concluded there was no doubt that poker machines would provide substantial revenues.⁵⁵
- 89 As mentioned earlier, the prohibition on the approval of poker machines did not appear in the *Casino Control Bill 1984* or s 22(1)(a) of the CC Act as enacted. An attempt to amend the Bill, to require that rules or directions relating to machines 'commonly known as poker machines' be laid before each house of Parliament, failed.⁵⁶ Amending legislation introduced a few months later and which included the prohibition of poker machines, was passed without any substantive debate as to the nature of poker machines or why it was appropriate that they be prohibited.
- 90 The PCRC's search of Hansard has failed to identify any occasion during debates in which any member suggested that an essential attribute of a poker machine was its use of or reliance on spinning reels. By contrast, in a 1982 debate 'scratchies' were said to be a form of poker machine, with precisely the same principle of playing.⁵⁷ In the same speech it was noted that 'these days' poker machines were 'electronic ones that flash up and down'. In 1985, a notional beer ticket dispensing machine which offered cash prizes was said to be 'pretty close to' or 'akin to' a poker machine.⁵⁸
- 91 **The 1974 Royal Commission Report** noted submissions that poker machines, through the sophisticated use of 'intermittent reinforcement' (offering rewards or wins in such a way as to most effectively encourage a player to continue trying to win even when they are suffering considerable loss), were claimed to be addictive to certain individuals and that treatment of such addiction was generally unsuccessful.⁵⁹ There was also a general recognition that losses while playing poker machines were inevitable. This was the basis on which it was suggested that poker machines might provide fundraising for clubs in which they were installed, or State revenue by way of taxes.⁶⁰ Similar observations were made in the *Poker Machines Report*. There, the author discussed the concept of 'house hold' as being the proportion of the money with which a gambler commences play that the house expects to keep. The evidence suggested that the house hold for poker machines in NSW approached 100%.⁶¹
- 92 The 1974 Report recommended against the legalisation of poker machines in Western Australia. The authors explained the basis of that recommendation by reference to the addictive and anti-social features of poker machines.⁶²
- 93 The **Gaming Inquiry Committee** made the same recommendation in 1983.⁶³ The chair's individual report referred in detail to the reasoning of the 1974 Royal Commission Report as explaining this recommendation.⁶⁴ The chair also noted that there was 'no doubt' that the revenue benefits from poker machines were substantial,⁶⁵ thus apparently recognising that losses were inevitable over time when playing on poker machines.
- 94 Neither the 1974 Royal Commission Report nor the Gaming Inquiry Committee were poker machines characterised by spinning reels. Instead, the essential attributes of the machines to which the reports drew attention were their lack of interaction, repetitive game play,

addictiveness, and certainty of losses. That is the mischief at which the Parliamentary debates suggest the prohibition in s 22(1) was aimed.

Consideration

- 95 Modern dictionary definitions of the term poker machine that include as features coin operation, a combination of symbols displayed on reels or wheels and the use of levers (the Macquarie and Oxford English definitions) would appear to reference machines that were common before the introduction of electromechanical and subsequently video gaming machines. The PCRC considers that exclusive reliance upon those dictionary definitions is not appropriate where the definition of 'game' in the CC Act extends to games played on electronic machines, and s 85(1)(a) of the GWC Act expressly contemplates that a video machine may be a gaming machine that is a poker machine or in the nature of or similar to a poker machine. This is particularly so because not all dictionary definitions identify spinning reels as being an essential attribute of a poker machine.
- 96 To the limited extent that previous Parliamentary debates cast any light on the meaning of the term, they suggest that the significant feature of poker machines fixed upon was the opportunity for immediate cash reward and the impact of non-interactive and repetitive play. The debates confirm parliamentarians were aware of electronic poker machines that 'flash up and down'.
- 97 Professor Matthew Rockloff (**Rockloff**) gave evidence to the PCRC about the structural characteristics of electronic gaming machines that are relatively more harmful than other characteristics. His report did not identify the use of a mechanical or simulated reel or wheel to display a combination of symbols as a relatively more harmful characteristic.⁶⁶
- 98 If a purpose of the prohibition of poker machines is to minimise harms that might result from their use, such as addiction and significant losses, then limiting the meaning to machines that use mechanical or simulated reels or wheels would not be a sufficiently beneficial construction to achieve that purpose.
- 99 The absence of a definition of poker machines in the statutes and changes in technology and style of equipment over time render the situation unclear. The PCRC observes that the true meaning of the phrase in its regulatory context is not beyond doubt. However, there is a tenable argument that the proper construction of the term 'poker machine' for the purposes of s 22(1)(a) of the CC Act is a free-standing device at which a player stands or sits, which is used exclusively for the playing of games of chance and which has the following features:
- a. a player pays to play a game on the device (except where they have had an opportunity to play without payment as the result of the outcome of a previous game):
 - i. by inserting money or a substitute which can be exchanged for money; or
 - ii. in some other way;
 - b. the outcome of the game is determined by the chances inherent in the device, and cannot be affected by player interaction once the game (or any discrete aspect or component of the game) has commenced;
 - c. the outcome of the game is represented by the combination of symbols displayed on the device at the conclusion of the game; and
 - d. depending on the outcome of the game, the player may:
 - i. receive money or a substitute which can be exchanged for money; or
 - ii. be paid in some other way,
 potentially in excess of the amount paid to commence a game.

Part Two: The EGMs at Perth Casino

A brief history

- 100** On 20 December 1985, a notice was published in the Western Australian Government Gazette (**Government Gazette**) giving notice that the then Control Committee had declared as authorised games for the purposes of the CC Act, amongst other games, 'Video Blackjack (Sneaky Peek)'; 'Video Blackjack (Winning Streak)'; 'Video Keno'; and 'Video Draw Poker'.⁶⁷ These were the first electronic games authorised at Perth Casino.
- 101** During an Estimates Committee hearing in 1996, Barry Sargeant, former Executive Director of the Office of Racing, Gaming and Liquor (**Sargeant**), explained that all EGM games then available at Perth Casino were representations of table games.⁶⁸ The PCRC consequently infers that in 1996 all authorised video games were Table Game EGM games (drawcard games) or Keno Game EGM games.⁶⁹
- 102** During the 1990s, additional Table Game EGM games were declared to be authorised games for the purposes of the CC Act.⁷⁰
- 103** On 18 June 2003, the State Agreement was amended by the Eighth Supplementary Agreement to introduce the term 'Electronic Gaming Machine'.⁷¹ Provisions dealing with the tax to be levied in respect of EGMs were also introduced. As is discussed below, New Style EGM games began to be introduced at Perth Casino from 2003. The PCRC therefore infers that the introduction of a specific taxation regime in respect of EGMs may have been in response to the introduction of these new games.

The introduction and approval of New Style EGM games

- 104** The first New Style EGM game introduced to Perth Casino was Arishinko, which was demonstrated to the GWC in September 2002.⁷² The GWC resolved to approve it 'as an authorised game' in principle in October 2002,⁷³ before granting final approval in December 2002.⁷⁴ A notice declaring Arishinko to be an authorised game was published that month in the Government Gazette in accordance with s 22(1) of the CC Act.⁷⁵
- 105** Arishinko was based upon the Japanese game pachinko. The game involved balls rolling from the top of the screen downward, where they could be deflected by pins, after which they might (or might not) be caught in buckets at the bottom of the screen. The only player interaction consisted of choosing one to five of the available buckets and determining how much to bet on each bucket.⁷⁶
- 106** The next New Style EGM game introduced to Perth Casino was Video Bingo, which was demonstrated to the GWC in February 2002 and again in February 2004.⁷⁷ The GWC resolved to approve the game in principle at both meetings, before resolving to authorise it under s 22 of the CC Act in August 2004.⁷⁸ A notice declaring Video Bingo to be an authorised game was published the same month in the Government Gazette in accordance with s 22(1) of the CC Act.⁷⁹
- 107** Video Bingo was said to be based on the traditional game of bingo and the licensee claimed that video bingo was played in casinos in South America, Spain and the Netherlands.⁸⁰ The first version of video bingo approved by the GWC was known as Fireball Bingo. The game showed a representation of a bingo wheel spinning and selecting 40 numbers from a pool of 90. The only player interaction consisted of choosing the number of bingo cards to play (from one to nine cards) and how much to bet on each card. Players could change the initially displayed set of cards for another random set of cards before commencing a game. The cards showed a 3x5 grid of 15 numbers, and prizes were awarded if rows or columns on the cards matched the numbers selected by the EGM in the course of a game.⁸¹

- 108 Crown provided to the PCRC videos demonstrating the original Arishinko and Video Bingo EGM games, screenshots from which are set out below.⁸²



Arishinko



Fireball Bingo

- 109 Subsequently, the GWC has approved hundreds of EGM games as variations of either Arishinko or Video Bingo. In doing so, the GWC has not declared the new games to be authorised games pursuant to s 22(1) CC Act or caused a notice to be published in the Government Gazette. Instead, the GWC has approved amendments to the rules of the authorised games of Arishinko and Video Bingo so as to include the new game as a variation of the original.
- 110 The most recent version of the approved rules of Arishinko and Video Bingo available to the PCRC show that over 30 games have been approved as variations of Arishinko,⁸³ and over 110 games have been approved as variations of Video Bingo.⁸⁴
- 111 When Perth Casino wishes to seek approval for a new Arishinko or Video Bingo game, it provides to the GWC a series of slides showing the visual appearance, features and operation of the proposed new game and identifying the previously approved game on which the new game is said to be based. A recently approved Arishinko game, being 'Lock it Link – Cats Hats & More Bats', was said to be a derivative of the previously approved game 'Lock it Link – Huff n Puff'.⁸⁵ Recently approved Video Bingo games, being 'Welcome to Fantastic Jackpots – Fantastic Rewards' and 'Welcome to Fantastic Jackpots – Fantastic Hits', were said to be a derivative of the previously approved game of Lightning Cash.⁸⁶
- 112 The GWC grants in principle approval of the new EGM game once it is satisfied that the game is not a poker machine. The criteria by which the GWC assesses new games is discussed below.
- 113 The approval of incremental modifications to previously approved games has, over time, resulted in a significant evolution of the Arishinko and Video Bingo games, the most recent of which look nothing like the original. Set out below are excerpts of the slides for the most recently approved Arishinko and Video Bingo games.



**Lock it Link – Cats Hats & More Bats
(Derived from Arishinko)**



**Fantastic Jackpots – Fantastic Hits
(Derived from Video Bingo)**

- 114** While players of the original Arishinko game could win money if balls were caught by buckets, and players of the original Video Bingo game could win money if the numbers drawn matched numbers on the player’s cards, in modern versions of Arishinko and Video Bingo games, players can win when a specified number of like symbols are displayed.⁸⁷

The GWC’s approval of Arishinko and Video Bingo variations

- 115** Clause 22(1) of the State Agreement sets out those games which are authorised games for the purposes of the agreement, and which the predecessor of the GWC was obliged to authorise pursuant to s 22(2a) CC Act.
- 116** Clause 22(2) then goes on to provide that:
- The Trustee or the Manager may apply to the Commission at any time for approval of the rules of any Game played in a Casino (whether in Australia or elsewhere) or any variation or derivative thereof no matter how played and subject to approval by the Commission of the rules in respect of any such game the Commission shall declare any such game to be an Authorised Game.
- 117** On its face, cl 22(2) appears to: first, authorise BNL (the Trustee of the Burswood Property Trust) to apply for the GWC to approve the rules of games played in any casino; and, secondly, subject to the GWC approving the rules, oblige the GWC to declare that game to be an authorised game. The GWC has historically considered that it is bound to comply with cl 22(2).
- 118** However, the powers and responsibilities of the GWC in relation to the approval of the rules of games and declaring a game to be authorised are dealt with in s 22 of the CC Act and a question arises as to how that section sits with cl 22 of the State Agreement. The words of s 22 of the CC Act do not impose such an obligation on the GWC. Section 22(1) provides that the GWC may (not, shall) declare games to be authorised.⁸⁸ While s 22(2) impliedly confers on the GWC the power to approve the rules of casino games, it does not, on its face, oblige the GWC to do so. The GWC’s power under s 22(3) to unilaterally require changes to rules suggests there is no such obligation. This can be contrasted to s 22(2a) which expressly obliged the predecessor to the GWC to approve the rules of all games specified in the State Agreement and declare those games to be authorised.

The GWC's understanding of its obligations under the State Agreement

- 119** The GWC appears to have, at times, considered that it was effectively obliged by the State Agreement to declare as authorised any game once acceptable rules and proof that the game was played in other casinos were provided.
- 120** For example, the February 2002 GWC minutes which record the initial demonstration of Video Bingo to the GWC show that at the same meeting an extract from the State Agreement was tabled and 'the effect of the agreement in relation to introducing video bingo' was explained.⁸⁹ As already noted, the GWC was provided with a demonstration of Arishinko later that same year. In September 2002, the GWC considered a paper discussing its obligations under cl 22(2) of the State Agreement. The paper stated that, as the GWC had not yet been provided with rules for the game, it was not 'obligated to authorise the game *at this time*' (emphasis added).⁹⁰
- 121** In February 2004, the GWC again considered the game of Video Bingo. The minutes of the GWC meeting show it was advised that, since the game was played in casinos in Europe and South America, the GWC was 'obliged under clause 22(2) ... to approve the game subject to the rules being acceptable'.⁹¹ Similarly, in December 2004, the GWC was presented with a paper by the then Director of Operations which stated that cl 22(2) of the State Agreement 'puts an onus on the Commission to approve a game' if the game is played in other casinos and the rules are acceptable to the GWC.⁹²
- 122** On 16 July 2021, the PCRC issued notices under s 8A of the *Royal Commissions Act 1968* (WA) to the Department and the GWC. The notices required the GWC and the Department to state their present understanding as to whether the GWC was obliged to approve the rules of a game (and thereafter declare the game to be authorised) if Perth Casino applies for authorisation and demonstrates that the game is played in other casinos.
- 123** The Department said that it understood the GWC to have a discretion to approve the rules of the game and, once it did so, an obligation pursuant to cl 22(2) of the State Agreement to declare the game to be authorised under s 22(1) of the CC Act.⁹³ The GWC indicated that it shares this view.⁹⁴
- 124** Significantly, the Department also stated that it understands the GWC is '*required to approve variations of Video Bingo or Arishinko*' (emphasis added), once it ascertains that the game play of the proposed variation is the same as the previously approved game.⁹⁵ The GWC indicated that it shares this view.⁹⁶ Neither the Department nor the GWC explained what clause of the State Agreement or section of the CC Act it regards as imposing this requirement. It is not clear why, if this view is correct, the GWC has (for example) declared as an authorised game 11 different versions of poker rather than simply amending the rules of the authorised game of poker to include those different versions in the rules as variations.⁹⁷ Further, this stated understanding is inconsistent with other papers presented by the Department to the GWC suggesting that the GWC retains a discretion to approve new EGMs and may take into account matters including 'the potential for negative impact on the community or gaming integrity'.⁹⁸
- 125** Finally, having regard to the GWC's approach to identifying poker machines examined later in this chapter, the PCRC infers that both the Department and the GWC understand their perceived obligation to approve variations of Video Bingo or Arishinko to be subject to the statutory prohibition of poker machines.

Is the GWC obliged to authorise EGM games or approve variations?

- 126** As the law currently stands in Western Australia, while state agreements are ratified by an enabling Act, they remain a contract rather than a law and are to be interpreted as such.⁹⁹ In particular, the terms of the State Agreement operate contractually and only bind the parties to the agreement.¹⁰⁰ The GWC is not a party to the State Agreement.

- 127** Recently, Edelman J in the High Court decision of *Mineralogy Pty Ltd v State of Western Australia* [2021] HCA 30 has called into question the previously accepted understanding of the nature of state agreements. His Honour agreed that state agreements have the character of a private agreement the undertakings of which may be enforced pursuant only to contract law.¹⁰¹ However, he noted that s 3(b) of the *Government Agreements Act 1979* (WA) (**GAA**) gives effect to a provision of a state agreement as a statutory provision to the extent it modifies another Act or law. Edelman J concluded that could only be possible if the provision 'had the force of statutory law'.¹⁰² His Honour stated that, to the extent earlier authorities had held otherwise, those earlier authorities should be overruled.¹⁰³
- 128** The plurality did not engage with this issue, although their comments might, on one view, be regarded as inconsistent with Edelman J's reasoning.¹⁰⁴
- 129** Edelman J went on to say that whether a state agreement was intended to modify existing statute law was ultimately a question of statutory construction.¹⁰⁵
- 130** Unlike the agreement the subject of the *Mineralogy* decision, the State Agreement does not contain numerous provisions that cannot operate and take effect merely by removal of statutory obstacles. It appears that only a single provision of the State Agreement contemplated amendments to existing legislation, being cl 24. This clause, and particularly cl 24(3), expressly provided for changes in the operation of the then *Liquor Control Act 1970*. The language in cl 22(2) was of a markedly different character. Similarly, provisions of the State Agreement, such as cl 21, make clear that it is subject to the operation of the CC Act. This tells against an intention that it amend that Act. Additionally, it is significant that, at the same time as it ratified the State Agreement, Parliament made various amendments to the CC Act, including modifications to s 22(1) to prohibit poker machines and the insertion of s 22(2a) and other subsections, but chose not to amend s 22(1) so as to oblige the GWC's predecessor to declare any games to be authorised.¹⁰⁶ That Parliament did not convert the discretionary power conferred on the GWC by s 22(1) of the CC Act into an obligation, while it was otherwise expressly amending that section, tells strongly against a suggestion that it intended to achieve such a conversion by indirect amendment.
- 131** While it is not entirely clear, a tenable construction of cl 22(2) of the State Agreement is that it should not, in the words of s 3(b) of the GAA, be construed as containing 'any purported modification of any other Act or law'.
- 132** In that event, the only obligations to which the GWC is subject are those found in the CC Act. As already noted above, the CC Act confers on the GWC a discretion to approve (or not) the rules of a casino game as well as a discretion to declare such a game to be authorised. In the absence of statutory guidance as to the matters relevant to this discretion it would ordinarily be open to the GWC to take into account any consideration not excluded by the subject matter, scope and purpose of the legislation in its exercise.¹⁰⁷ The matters set out in the State Agreement may be relevant to the GWC's exercise of discretion but would not be decisive.
- 133** In summary, the PCRC questions the correctness of the shared view of the Department and the GWC to the effect that cl 22 of the State Agreement operates to remove the discretion the GWC has pursuant to s 22 of the CC Act to authorise (or not) a game.
- 134** It is not satisfactory that there be any doubt as to the GWC's obligations in respect of approving rules or declaring games to be authorised. The absence of any statutory guidance as to the manner in which the GWC's discretion under s 22 of the CC Act should be exercised is likewise unhelpful. The PCRC considers that these uncertainties should be addressed.
- 135** Finally, it is appropriate that the PCRC record its view that it is unlikely that the prohibition of poker machines set out in s 22(1)(a) of the CC Act is affected by cl 22(2) of the State

Agreement. The prohibition was inserted by the *Acts Amendment and Validation (Casino Control) Act 1985*, which was enacted in the same Parliamentary session in which the **CBIA Act** was enacted and the State Agreement thereby ratified. Accordingly, at the time the State Agreement was ratified there was not any relevant prohibition which it could have modified. In any event, it is unlikely that the same Parliament simultaneously enacted a prohibition on poker machines and repealed that prohibition.

The effect of the GWC's understanding

- 136** The result of the above analysis is that it is possible the GWC may have exercised its discretion pursuant to a misconception of its statutory function on occasions when it approved the amendment of the rules of the authorised games of Arishinko and Video Bingo in order to approve a variation of those games.
- 137** While ToR 9 requires the PCRC to consider the manner in which the GWC has exercised its powers, it would not be appropriate for the PCRC to opine on the legal validity of individual decisions and it does not do so.

The GWC's approach to identifying poker machines

- 138** The GWC has always been aware that it is prohibited from declaring as authorised any game played with poker machines. From the time that New Style EGM games were first introduced, however, the GWC has had difficulty in determining whether they should properly be considered games played with poker machines.
- 139** For example, when the original Arishinko was demonstrated to the GWC in September 2002, members expressed concern that the fruit symbol graphics in the game 'may be in contravention of the *Gaming Commission Act 1987* with regard to poker machines'.¹⁰⁸
- 140** In May 2004, the GWC resolved not to approve a game called 'Deal Twenty One' because it was 'similar in visual appearance to the poker machine concept, and the betting patterns and payout lines of the game were not dissimilar to that of a poker machine'.¹⁰⁹ In November 2004, when considering early Video Bingo variations (Caesar's Empire and King of Gold Bingo), the GWC was again concerned that symbols depicted in the game were similar to that displayed on a poker machine.¹¹⁰
- 141** In May 2011, the GWC initially resolved not to approve an Arishinko variation called 'Cats, Hats and Bats' because it appeared to be 'similar in operation to a poker machine'.¹¹¹ Although not expressly stated in the minutes, the PCRC infers that this was because members were concerned that the means by which symbols were displayed, being barrels rolling down the screen, too closely resembled spinning reels; a modified version of the game using rolling balls was subsequently approved.¹¹²
- 142** The GWC's records show that there were many other occasions on which it considered that EGMs in respect of which approval was sought might be poker machines.¹¹³ The difficulty, as the GWC understood it, was summarised in December 2004 as follows:¹¹⁴
- [P]oker machines of today are sophisticated electronic machines which look very similar to other gaming machines and, therefore, makes it most difficult to differentiate between. In 1985, poker machines were mechanical in nature and have progressively changed to an electronic medium moving closer to conventional gaming machines. The technological change has made the interpretation of legislation designed to control gaming machines more onerous.
- 143** Over time, the GWC has devised increasingly detailed policies to guide its assessment of whether new EGM games should be considered to be games played with poker machines. The evolution of those policies is summarised below. The GWC and its predecessor, the

GC, also received legal advice on gaming machines in casinos in 1992 and advice on the operation of s 22(1) of the CC Act in 2016.¹¹⁵ The GWC does not appear to have ever sought specific, comprehensive advice on the statutory meaning of the term poker machine.

EGM policies and guidelines

- 144** There are two sources of policy governing EGM standards which the GWC has adopted over time. The first is an appendix (**WA Appendix**) to the Australian/New Zealand Gaming Machine National Standards as amended from time to time (**National Standards**). The second is the GWC's EGM policy as amended from time to time (**EGM Policy**). Those documents are discussed separately below to provide a summary of their amendments over time, but they have evolved together and their content overlaps to a significant extent. The content of the EGM Policy has been said to form part of the WA Appendix.¹¹⁶
- 145** None of the National Standards, the WA Appendix or the EGM Policy are in and of themselves binding upon the GWC or Perth Casino. However, they have all voluntarily been adopted by the GWC. By doing so the GWC has, in essence, indicated the standards that it will apply when determining whether to approve a new EGM game by approving amendments to the rules of the authorised games of Arishinko and Video Bingo.
- 146** As discussed below, some of the requirements in the WA Appendix and EGM Policy are unique to Western Australia. The result is that EGM developers of games used in other Australian jurisdictions have had to either develop bespoke games for Perth Casino or otherwise modify games developed for the eastern states. The relevant requirements of the WA Appendix and EGM Policy, which are further discussed below, can be broken into two broad categories, being requirements as to how game symbols are randomly selected by the game (the internal mathematics of the game) and as to how the selected symbols are then presented to the player (its visual appearance). It is easier for game developers to make changes to the appearance of an EGM game than it is to make changes to its internal mathematics.¹¹⁷

WA Appendix to the National Gaming Machine Standard

- 147** The National Standards stipulate hardware and software standards to be observed by EGM manufacturers. Regulatory agencies throughout Australia have voluntarily adopted the National Standards and require that EGMs observe those standards as a pre-requisite for their approval.¹¹⁸ Some jurisdictions have promulgated regulations which specify the National Standards as technical standards that must be observed.¹¹⁹
- 148** The National Standards appear to have first been drafted in about 1995; GWC agenda papers from that time show that Western Australia (along with Queensland and South Australia) was responsible for developing the initial software specification.¹²⁰ The National Standards are regularly updated. The version most recently adopted by the GWC was finalised in 2016.¹²¹
- 149** The National Standards contemplate that regulators will develop local appendices setting out additional or differing requirements for their specific jurisdiction.¹²² The WA Appendix is the appendix adopted by the GWC for Western Australia. The first WA Appendix included requirements such as a 90% minimum return to player. It also stated that 'poker machines' and 'fruit machines' were prohibited but did not specify any criteria to determine whether EGMs were poker machines.¹²³
- 150** The documents provided to the PCRC appear not to capture all of the amendments to the WA Appendix over time. The next available version is from December 2005, being the WA Appendix to version 8.01 of the National Standards.¹²⁴ Clause WA4.7 to the WA Appendix at that time was titled 'Determination of a Poker Machine' and set out a series of thirteen factors said to be relevant to assessing whether an EGM was a poker machine.¹²⁵ A number

of the factors were concerned with fairness and required (for example) that players should be able to determine how to play the game and that the game should not be misleading. The first three factors were appearance (EGMs should not appear to be a 'spinning reel slot machine'); speed of play (being the minimum length of time after commencing a game before the next game could be commenced. The WA Appendix stipulated that speed of play should exceed five seconds and that EGMs should not have 'autoplay', whereby subsequent games could start without the need for the player to hit a button); and player interaction (the player must interact to choose a play strategy, which interaction could include selecting the number of active balls, buckets or pay lines). The ninth factor was evidence from other jurisdictions (being evidence that the game was not declared as a 'spinning reel slot machine' in other jurisdictions). Finally, two factors (being 11 and 1(4)) specified that each symbol should individually be drawn at random, rather than by way of randomly choosing the stopping position of a (virtual) reel with symbols in a fixed order on that (virtual) reel.

- 151** It is reasonably clear from a consideration of all of the factors in the WA Appendix at this time that they were informed by the underlying assumption that poker machines were (and only were) spinning reel slot machines.
- 152** Subsequent revisions to the WA Appendix after 2005 did not result in any substantial changes to the factors stipulated as determining whether or not an EGM was a poker machine (although the ninth factor was deleted by 2010).¹²⁶ However, as is discussed below, the WA Appendix was substantially amended in 2019.

The GWC's EGM policy

- 153** The genesis of the EGM Policy can be traced back to the GWC's consideration of the original game of Arishinko. At the GWC's 18 October 2002 meeting, a departmental officer demonstrated to members a spinning reel slot machine (identified as a poker machine); the most recently approved derivative of Video Draw Poker; the authorised game of Video Keno; and the proposed game of Arishinko. The minutes record that the GWC members agreed in principle to adopt the following criteria to determine whether EGMs were poker machines:¹²⁷

Not a Poker Machine	Gaming Machine
— Appearance	— Return to Player
— Speed	— Fairness
— Player interaction	— Not misleading
— Evidence from other jurisdictions (for example, it is not a "pokie" in NSW)	— Harm minimisation

- 154** In 2004, in response to the GWC's concerns regarding the EGM games Caesar's Empire and King of Gold Bingo discussed above, the GWC carried out a review of the principles by which it determined whether machines were poker machines or permissible EGMs. The then Director of Operations drafted a paper suggesting that the GWC might identify poker machines on the basis of appearance; player interaction; speed of play; winning combinations and displayed symbols.¹²⁸ The paper stated that 'the general perception of video gaming machines at Burswood is that they are 'pokies'.¹²⁹ The minutes record that members discussed the following possible criteria:¹³⁰

- a. Appearance
 - (i) The game shall not use a spinning reel display.
 - (ii) Symbols shall not be used in fixed positions.
 - (iii) Symbols shall not rotate in their own plane.

- b. Player Interaction
 - (i) The player must interact to choose a strategy.
 - (ii) The game shall commence by depressing a “start” button.
- c. Speed of Play
 - (i) Each game shall be a minimum of 5 seconds.
 - (ii) The game shall not have autoplay.
- d. Winning Combinations.
 - (i) Winning combinations that are horizontal or vertical combinations are acceptable.
 - (ii) Winning combinations that represent conventional games are acceptable.
 - (iii) Multi line, multi directional winning combinations are not acceptable.
- e. Symbols
- f. Symbols that gave the perception to the general public that such machines are indeed poker machines would not be permitted.

155 In 2005, the GWC considered a paper the purpose of which was stated to be to advise the Government of the difficulty being experienced ‘in differentiating between video gaming machines permitted at Burswood Entertainment Complex and video poker machines that are permitted in other States and Territories’.¹³¹ The paper noted that video gaming machines and video poker machines ‘use the same process for selecting winning combinations’ (a random number generator), and that ‘both types of machine use the same hardware’ and similar software.¹³² It repeated the five criteria specified in the 2004 minutes but added further detail in relation to permissible symbols. It stated that card, dice and ball symbols were acceptable, as were symbols that do not appear on poker machines in other Australian States. It also noted that ‘the general public perceive video gaming machines at Burswood to be “pokies”’.¹³³

156 The GWC resolved to refer the 2005 paper to the then Minister for Racing and Gaming.¹³⁴ It appears that the Minister was provided with a copy of the paper in December 2005, under cover of a memorandum noting the difficulty being experienced by the GWC in differentiating between permissible EGMs and poker machines.¹³⁵ The following year, in answer to a question as to differences between poker machines and the gaming machines authorised for use at Perth Casino, the then Minister identified the criteria set out in the 2005 paper.¹³⁶

157 Although the criteria in the 2005 paper were subsequently considered by the GWC in the years that followed,¹³⁷ it was not until 2011 that the paper was formally and explicitly adopted as a policy of the GWC (the EGM Policy).¹³⁸ Aside from immaterial changes to expression,¹³⁹ the EGM Policy then remained in essentially the same form until it was amended in 2019.

The effectiveness of the WA Appendix and EGM Policy prior to the 2019 amendments

158 The WA Appendix and EGM Policy were referred to by some GWC members in their evidence,¹⁴⁰ but the existence of these policies does not seem to have obviated the confusion or uncertainty as to whether New Style EGM games presented to the GWC by Perth Casino were poker machines.

159 A number of individual GWC members who gave evidence to the PCRC indicated that they found it difficult to determine whether EGMs were poker machines.¹⁴¹ This task was

particularly difficult for members who had never played a poker machine.¹⁴² However, at least some members indicated that they considered they did know the difference.¹⁴³

- 160** One GWC member indicated that they placed significant store in whether EGM games made use of spinning reels.¹⁴⁴ Some members identified speed of play as a significant consideration.¹⁴⁵ Another suggested that the GWC's in-principle approval turned largely on appearances: that there was an awareness 'things ... can't look like poker machines'.¹⁴⁶ The latter member also acknowledged that 'the degree to which there is actually a difference is something that would be an interesting unpicking'.¹⁴⁷ A similar comment was made by another member who said there were machines at Perth Casino 'which are almost identical to poker machines'.¹⁴⁸
- 161** None of the GWC members indicated that, when considering applications for the approval of new EGM games, they took into account functional aspects of those games, such as the extent to which game design might pose a risk of addiction because of their use of intermittent reinforcement.
- 162** Perth Casino provided the PCRC with a number of videos showing the operation of a number of New Style EGMs currently and previously available on the casino floor.¹⁴⁹ The PCRC has examined numerous applications for New Style EGM game approval in the GWC agenda papers and was also able to observe many New Style EGMs firsthand in the course of its site visit to Perth Casino.
- 163** If the term poker machine is understood in the way set out at paragraph [99] above and having regard to the nature of the EGM games previously and currently offered for play at Perth Casino, the WA Appendix and EGM Policy may not have been effective in ensuring that EGM games approved by the GWC are not games with the characteristics of games played with poker machines. The New Style EGM games at Perth Casino are games which have some of those characteristics.
- 164** For the sake of completeness, the PCRC notes that it is also possible for patrons to obtain credits for New Style EGM games by way of points accrued through Crown's loyalty program, using a process which Perth Casino refers to as 'Point Play'.¹⁵⁰ There is scope for debate as to whether the use of reward points to play a New Style EGM game constitutes 'paying' for the game, on the basis that reward points are not themselves redeemable for money. However, rewards points can also be used to pay for hotel rooms, restaurant bills and some retail items.¹⁵¹ The PCRC consider they have economic value such that their use to pay for EGM games is equivalent to the use of money. In any event, the PCRC considers that if a machine is otherwise a poker machine, it does not cease to be such simply because, in addition to accepting money as payment, it also accepts loyalty points (particularly where it will pay out money for winning combinations on games commenced through use of loyalty points).

The 2019 changes to the WA Appendix and EGM Policy

- 165** By letter to the GWC dated 7 March 2019, Perth Casino requested that the GWC amend the requirements for EGMs in the WA Appendix to:¹⁵²
- a. reduce the minimum speed of play from five seconds to three seconds;
 - b. reduce the return to player rate from 90% to 87.5%; and
 - c. remove the requirement that each symbol displayed by the EGM be individually randomly selected. This would allow EGM games to select symbols by way of stopping a (virtual) spinning reel with symbols in fixed positions.
- 166** Perth Casino explained that the change requested at (c) above was sought in order to increase the range of games available to the casino and to decrease development costs.¹⁵³

The letter made various assertions: no other jurisdictions required that each symbol be individually randomly selected; as a result, EGM developers were obliged to develop bespoke games for Perth Casino or modify existing games; the costs of such modification were in some instances prohibitive, with the result that fewer new games were available to Perth Casino than to other casinos; and even where games were modified, there were significant delays before those games were available to Perth Casino.¹⁵⁴ The letter also suggested that a change to the speed of play was necessary to ensure that modern EGMs continued to have the same average speed of play as had historically been the case. Perth Casino claimed that modern games included elements not found on earlier games (such as free games and bonus features) which had lengthened the average length of each game to approximately 9.5 seconds.¹⁵⁵

- 167** Perth Casino argued that, even if the requested changes were made, there would still be clear distinctions between the EGMs at Perth Casino and poker machines because, among other things, the former would not have a spinning reel display.¹⁵⁶
- 168** Michael Connolly (**Connolly**), Chief Casino Officer and Deputy Director General, prepared a late agenda item dealing with Perth Casino's request for the GWC's meeting in July 2019.¹⁵⁷ Although Perth Casino's letter did not expressly request any amendments to the EGM Policy, Connolly's agenda item attached marked-up versions of both the WA Appendix and the EGM Policy which had been modified to remove all requirements that symbols be individually randomly selected. Additionally, the EGM Policy had been marked up to remove the prohibition on multi-line and multi-directional winning combinations.
- 169** The GWC resolved to amend the WA Appendix and 'relevant policies' to reduce the minimum speed of play to three seconds for EGM games that made use of bonus features. The speed of play remained five seconds for games that did not. The GWC also resolved to remove the requirement that each symbol be individually randomly selected.¹⁵⁸
- 170** Notwithstanding that the GWC resolution did not mention multi-line and multi-directional winning combinations, the EGM Policy was subsequently amended by Connolly under delegated authority in order to remove the prohibition on their use.¹⁵⁹ The circumstances of this change are further examined in Chapter Five: Regulation of Perth Casino.
- 171** Approximately 15 EGM game titles have been approved in accordance with the WA Appendix and EGM Policy as amended by the 2019 changes.¹⁶⁰ As at June 2021, some 670 EGMs at Perth Casino offered games operating in accordance with the 2019 changes.¹⁶¹ Over time that number will increase. Conversely, the number of EGMs offering games approved in accordance with the WA Appendix and EGM Policy as they existed before 2019 will decrease.¹⁶²

The effect of the 2019 changes to the WA Appendix and EGM Policy

- 172** A GWC member gave evidence that they were comforted by a report, from an accredited testing facility,¹⁶³ which indicated that the proposed changes would not result in EGMs in Western Australia becoming more like poker machines.¹⁶⁴
- 173** Notwithstanding that assurance, it is clear that the 2019 changes to the WA Appendix and EGM Policy have lessened the distinctions between EGMs at Perth Casino and those found elsewhere. As is noted above, this is by design. Perth Casino wished to make use of the same EGM games that are developed for the remainder of Australia without the need to re-engineer those games.
- 174** In the course of his evidence, Lonnie Bossi (**Bossi**), former CEO of the Crown Perth Resort, explained that the EGM games at Perth Casino already used the same hardware as did EGMs in other jurisdictions.¹⁶⁵
- 175** The 2019 changes mean that the EGMs at Perth Casino can now also use largely the same

software as is used by EGMs in other jurisdictions such as the Melbourne Casino. Sullivan indicated that he considered the EGMs at the Melbourne Casino to be poker machines.¹⁶⁶ He also accepted that as a result of the changes it is now possible for Perth Casino to obtain existing spinning reel poker machine games, change their visual appearance so they no longer showed spinning reels, and then offer them at Perth Casino.¹⁶⁷ Such EGM games would continue to make use of the same random number generator, the same internal maths and pay tables: all operational aspects of the game would essentially be unchanged.¹⁶⁸

- 176** It is not possible for the PCRC to say with certainty what effect the change to speed of play has had or will have in the future. This is because the evidence provided to the PCRC is not sufficient to determine the average historical EGM speed of play. Perth Casino did not obtain empirical data as to changes in EGM speed of play over time.¹⁶⁹ It only analysed EGM speed of play from January to December 2018.¹⁷⁰ Accordingly, it is not possible to determine the accuracy of Perth Casino's assertion to the effect that reducing speed of play would only return EGM game speeds to (generally) their historical average.
- 177** However, it can be concluded that there is nothing in the change to speed of play requirements in the WA Appendix and EGM Policy that might result in EGMs approved under those policies no longer exhibiting the factors discussed above, each of which factors are relevant to an understanding of the term poker machine. Similarly, the changes which have allowed Perth Casino to make use of (visually modified) EGM game software from other jurisdictions do not have any impact in respect of those factors.
- 178** In short, regardless of whether New Style EGM games at Perth Casino were approved pursuant to the WA Appendix and EGM Policy as they existed before or after 2019, those EGM games are likely to exhibit many of the features which the PCRC has identified as being elements of the understanding of 'poker machine'.

Conclusion

- 179** Properly construing the term 'poker machine' as it exists in s 22(1) of the CC Act is not a simple task. It is understandable therefore that members and officers of the GWC struggled to devise guidelines that observed the prohibition to assist in their assessment of the EGM games which Perth Casino wished to offer to patrons. It is regrettable that, in light of those difficulties, the GWC did not seek formal and comprehensive legal advice as to the meaning of the term. Similarly, it is regrettable that the GWC did not seek legal advice as to its obligation (or lack thereof) to authorise games, or approve amendments to the rules of authorised games, under the State Agreement.
- 180** The PCRC concludes that the policies devised by the GWC may not be effective to ensure that the EGMs approved for use in Perth Casino are not poker machines.
- 181** The PCRC concludes that a tenable construction of s 22(1) of the CC Act is that a poker machine is one that exhibits the features set out in paragraph [99].
- 182** The PCRC also concludes that the New Style EGM games at Perth Casino, in broad terms, exhibit many of the features set out in paragraph [99].
- 183** Notwithstanding that New Style EGM games at Perth Casino exhibit many of the features set out in paragraph [99], it would not be appropriate for the PCRC to conclude that the New Style EGMs at Perth Casino are poker machines. This is for a number of reasons.
- 184** First, the PCRC does not exercise judicial power. Even if it had formed a concluded view as to the construction of the term poker machine, it would not be binding on the interested parties or any other person.
- 185** Secondly, although the PCRC has looked closely at a number of New Style EGM games offered for use by Perth Casino it has not examined all such games. Accordingly, it is at

least possible that some of those games might not exhibit all of the features set out above. Similarly, although Bossi gave evidence that the EGM games at Perth Casino use the same hardware as in other jurisdictions (jurisdictions where spinning reel games are offered) the PCRC has not undertaken any comparison of the devices in (for example) Perth and Melbourne Casinos.

- 186** Thirdly, the evidence before the PCRC suggests that in recent times manufacturers have begun to develop EGMs which allow for player interaction to influence the game outcome. These games, referred to as 'skill-based EGMs' by Rockloff, are said to 'include some element of real or perceived skill that alters gambling outcomes' and 'often mimic features of video games to draw players of these games into gambling'.¹⁷¹ It is an open question whether machines offering such games would be caught by the prohibition on poker machines. The PCRC has not received specific evidence about any such game and is not aware of whether any (and, if so, how many) such games are offered for use at Perth Casino. It would not be appropriate to make statements as to the nature of all New Style EGMs at Perth Casino in the absence of comprehensive evidence of their characteristics.
- 187** Fourthly, there is a question whether the GWC's declaration of Arishinko and Video Bingo as authorised games under s 22(1) of the CC Act has the effect that those games (and others approved as variations of those games) are, as a matter of law, effectively deemed not to be poker machines. It might be argued that this would be the result if the notices contemplated by s 22(1) have legislative effect and are therefore subsidiary legislation.¹⁷² There is no need to resolve that argument here.

Recommendations

- 188** The PCRC recommends that the apparent tension between s 22 of the CC Act and cl 22 of the State Agreement be resolved so there is clarity as to whether the GWC is under any obligation to declare games to be authorised (including after approving their rules) and is similarly under an obligation to approve variations to currently authorised games by approving amendments to the rules of those games.
- 189** The PCRC recommends that consideration be given to whether or not the statutory prohibition of poker machines should be maintained.
- 190** If it is determined that the prohibition should be maintained, or that it should be replaced with a prohibition of some other type(s) of games or gaming machines, the PCRC recommends that consideration be given to defining the term poker machine or providing statutory guidance on its meaning so that what is prohibited can be readily ascertained. The PCRC further recommends that, in defining a poker machine or providing guidance on its meaning, regard be had to likely future technological advancements in games and gaming machines.
- 191** If it is determined that the prohibition should be changed, such that New Style EGMs (or spinning reel machines) are or are to be permitted at Perth Casino, the PCRC recommends that consideration be given to the imposition of controls to minimise the risk of gambling-related harm that New Style EGMs pose. In this regard, in Chapter Twelve: Harm Minimisation the PCRC has listed for the GWCs consideration a number of possible amendments to the structural features of EGMs and EGM games which might be enforced through the requirements of the WA Appendix and EGM Policy.

Endnotes

- 1 Gaming Technologies Association, submission to fifth Social and Economic Impact Study of Gambling in Tasmania (2 November 2020) [PUB.0033.0012.0001] 1.
- 2 GWC, Differentiating Between Electronic Gaming Machines and Poker Machines [GWC.0003.0007.0014] 2.
- 3 Wikipedia, slot machine (18 June 2021) [PUB.0018.0002.0071]; Wikipedia, Charles Fey (6 January 2022) [PUB.0029.0004.0001].
- 4 GWC, Differentiating Between Electronic Gaming Machines and Poker Machines [GWC.0003.0007.0014] 3.
- 5 Wikipedia, Bally Manufacturing (6 January 2022) [PUB.0029.0004.0004]; Wikipedia, slot machine (18 June 2021) [PUB.0018.0002.0071].
- 6 Wikipedia, slot machine (18 June 2021) [PUB.0018.0002.0071].
- 7 Wikipedia, slot machine (18 June 2021) [PUB.0018.0002.0071].
- 8 Wikipedia, slot machine (18 June 2021) [PUB.0018.0002.0071].
- 9 Aristocrat Our History (9 February 2022) [PUB.0036.0003.0001].
- 10 Victoria, Board of Inquiry into Poker Machines, report (1983) [PUB.0036.0001.0001] 71.
- 11 Wikipedia, slot machine (18 June 2021) [PUB.0018.0002.0071].
- 12 Sullivan, transcript [TRA.0001.0001.0001] 2229; Sargeant, transcript [TRA.0001.0001.0001] 3818.
- 13 Gaming Technologies Association, submission to fifth Social and Economic Impact Study of Gambling in Tasmania (2 November 2020) [PUB.0033.0012.0001] 1.
- 14 GWC, agenda papers (27 September 2016 meeting) [GWC.0002.0016.0186_R] 54.
- 15 Australian Institute for Gambling Research, 'Australian Gambling Comparative History and Analysis' (October 1999), report [PUB.0004.0020.0001]; Victoria, Board of Inquiry into Poker Machines, report (1983) [PUB.0036.0001.0001] 69 – 70.
- 16 Sullivan, witness statement [CRW.998.002.0289_R] [133].
- 17 Sullivan, transcript [TRA.0001.0001.0001] 2229.
- 18 *Paula Susan Chappell as Executor of the Estate of Robert Hastings Hitchcock v Goldspan Investments Pty Ltd* [2021] WASCA 205 [PUB.0033.0001.0615] [31] – [35] (Buss P and Mitchell JA); *Mohammadi v Bethune* [2018] WASCA 98 [PUB.0033.0001.0495] [31] – [36] (Martin CJ, Mazza and Beech JJA).
- 19 *Graham v Western Australian Planning Commission* [2014] WASCA 243 [PUB.0033.0001.0301] [43].
- 20 *Certain Lloyd's Underwriters v Cross* [2012] HCA 56 [PUB.0033.0001.0141] [26].
- 21 *Interpretation Act 1984* (WA) [PUB.0033.0001.0416] s 18.
- 22 *Interpretation Act 1984* (WA) [PUB.0033.0001.0416] s 19(1).
- 23 *Interpretation Act 1984* (WA) [PUB.0033.0001.0416] s 19(2)(b).
- 24 *Certain Lloyd's Underwriters v Cross* [2012] HCA 56 [PUB.0033.0001.0141] [89].
- 25 *Nilant v Macchia* [2000] FCA 1528 [PUB.0033.0001.0591] [42].
- 26 *Bull v Attorney-General* (NSW) [1930] HCA 60 [PUB.0033.0001.0114] 384.
- 27 *New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act* [2016] HCA 50 [PUB.0033.0001.0520] [92] (Gageler J), [32] – [33] (French CJ, Kiefel, Bell and Keane JJ).
- 28 *Harrison v Melhem* [2008] NSWCA 67 [PUB.0033.0001.0343] [131] (Mason P); *Lennon v Gibson and Howes Ltd* [1919] UKPCHCA 2 [PUB.0033.0001.0488] 287.
- 29 *Commissioner of Police v Eaton* [2013] HCA 2 [PUB.0033.0001.0246] [98].
- 30 *Chubb Insurance Co of Australia Ltd v Moore* [2013] NSWCA 212 [PUB.0033.0001.0186] [82] (Emmett JJA and Ball J, with whom Bathurst CJ, Beazley P and Macfarlan agreed).
- 31 Western Australia, Parliamentary Debates, Legislative Assembly, 26 May 1987, 1377 (Mrs Beggs, Minister for Racing and Gaming) [PUB.0016.0013.0223] 1379; Western Australia, Parliamentary Debates, Legislative Council, 15 September 1987, 3581 (Hon Edwards, Minister for Sport and Recreation) [PUB.0033.0002.0003] 3599; Western Australia, Parliamentary Debates, Legislative Council, 29 April 1998, 2105 (Hon Evans, Minister for Sport and Recreation) [PUB.0016.0013.0271] 2107; Western Australia, Parliamentary Debates, Legislative Assembly, 21 May 1998, 3041 (Mr Cowan, Member for Merredin) [PUB.0016.0013.0219] 3046.
- 32 A Gentleman, 'Roulette Machines: the crack cocaine of gambling', *The Guardian*, (27 May 2013) [PUB.0033.0001.0291].

- 33 Victoria, Board of Inquiry into Poker Machines, report (1983) [PUB.0036.0001.0001] 70.
- 34 Victoria, Board of Inquiry into Poker Machines, report (1983) [PUB.0036.0001.0001] 71.
- 35 Department of Racing Gaming and Liquor, Briefing Notes: For the Minister for Racing and Gaming (March 2013) [DLG.8001.0033.5138_R] 71. The same point had previously been made in a 2005 paper discussing suggested criteria by which the GWC might determine whether an EGM was a poker machine. It was repeated in a 2007 letter dealing with the same issue: see en 136 below.
- 36 See, for example, M Walker, K Matarese, A Blaszczynski, L Sharpe, 'Explaining the attraction of poker machines: cognition or conditioning?' (2004) [PUB.0033.0001.0869].
- 37 *Hewit v Benale Pty Ltd* (2002) 27 WAR 91 [PUB.0036.0002.0159] [35].
- 38 *Lake Macquarie Shire Council v Aberdare County Council* (1970) 123 CLR 327 [PUB.0036.0002.0155] 331 (Barwick CJ, with whom Menzies J agreed).
- 39 Victoria, Board of Inquiry into Poker Machines, report (1983) [PUB.0036.0001.0001] 64.
- 40 *Police Act 1892* (WA) [PUB.0033.0001.0756] s 66(6), 86.
- 41 *Police Act Amendment Act 1961* (WA) [PUB.0033.0001.0866] s 2.
- 42 Western Australia, Government Gazette, No 15 (16 February 1962) 477 [PUB.0032.0017.0008] 59; Western Australia, Government Gazette, No 70 (6 September 1963) 2710 [PUB.0004.0002.0261] 59.
- 43 *Acts Amendment and Repeal (Gaming) Act 1987* (WA) [PUB.0033.0001.0001] s 59.
- 44 *Acts Amendment and Validation (Casino Control) Act 1985* (WA). [PUB.0033.0006.0001].
- 45 Western Australia, Parliamentary Debates, Legislative Council, 21 February 1985,166 (Hon DK Dans, Leader of the House) [PUB.0016.0013.0262] 166 – 170; Western Australia, Parliamentary Debates, Legislative Assembly, 12 March 1985,795 (Mr Pearce, Minister for Education) [PUB.0016.0013.0182] 795. Both bills were dealt with in a cognate debate in the Legislative Assembly.
- 46 Hon M Evans, Review of the *Gaming Commission Act 1987*, report (1996) [PUB.0004.0002.0129] 71 – 72. The review explained that such changes were needed in order to prevent the proliferation of machines which courts had ruled were not captured by section 85(1)(a) of the GC Act because they did not offer a prize worth more than the cost of playing the game. Games of this kind were held to come within an exception provided by section 39(2)(e) of the *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107].
- 47 Hon M Evans, Review of the Gaming Commission Act 1987, report (1996) [PUB.0004.0002.0129] 9.
- 48 Victoria, Board of Inquiry into Poker Machines, report (1983) [PUB.0036.0001.0001] 76, 77, 79 – 80.
- 49 This was subsequently confirmed during an Estimates Committee meeting: Western Australia, Parliamentary Debates, Legislative Assembly, 23 May 1996, 356 [PUB.0033.0001.0894] 367 – 368.
- 50 GWC, agenda papers (20 December 2005 meeting) [GWC.0007.0011.0231] 177-184; GWC, agenda papers (10 December 2004 meeting) [GWC.0007.0011.0216] 12.
- 51 Western Australia, Parliamentary Debates, Legislative Council, 9 May 1984, 8084 (Hon Gayfer, Member for Central), (Hon Oliver, Member for West), (Hon MacKinnon, Member for South-West) [PUB.0016.0013.0277] 8091, 8105, 8108.
- 52 Western Australia, Parliamentary Debates, Legislative Council, 9 May 1984,8084 (Hon Gayfer, Member for Central), (Hon Masters, Member for West), (Hon Oliver, Member for West) [PUB.0016.0013.0277] 8091 – 8092, 8094, 8097, 8105; Western Australia, Parliamentary Debates, Legislative Council, 15 May 1984, 8362 (Hon MacKinnon, Member for South-West) [PUB.0016.0013.0258] 8364; Western Australia, Parliamentary Debates, Legislative Assembly, 29 May 1984, 8585 (Mr Hassell, Leader of the Opposition), (Mr Watt, Member for Albany) [PUB.0016.0014.0001] 8603, 8606 – 8608, 8623, 8636.
- 53 Western Australia, Parliamentary Debates, Legislative Assembly, 8 May 1984, 8012 (Mr Parker, Minister for Minerals and Energy) [PUB.0016.0013.0237] 8016 – 8017; Western Australia, Parliamentary Debates, Legislative Council, 10 May 1984, 8231 (Hon Dans, Leader of the House) [PUB.0016.0013.0243] 8243; Western Australia, Parliamentary Debates, Legislative Assembly, 29 May 1984, 8585 (Mr Hassell, Leader of the Opposition), (Mr Parker, Minister for Minerals and Energy) [PUB.0016.0014.0001] 8606 – 8607, 8636.
- 54 Western Australia, Parliamentary Debates, Legislative Assembly, 29 May 1984, 8585 (Mr Hassell, Leader of the Opposition), (Mr Coyne, Member for Murchison-Eyre), (Mr Watt, Member for Albany), (Mr Parker, Minister for Minerals and Energy) [PUB.0016.0014.0001] 8608, 8620, 8623, 8636.
- 55 Western Australia, Parliamentary Debates, Legislative Council, 9 May 1984, 8084 (Hon Gayfer, Member for Central) [PUB.0016.0013.0277] 8091, 8092.
- 56 Western Australia, Parliamentary Debates, Legislative Council, 10 May 1984, 8231 [PUB.0016.0013.0243] 8240.

- 57 Western Australia, Parliamentary Debates, Legislative Assembly, 28 September 1982, 3237 (Mr Parker) [PUB.0036.0004.0001] 3237, 3241. Similar statements were also made in 1983: Western Australia, Parliamentary Debates, Legislative Council, 15 November 1983, 4532 (Hon Dans, Leader of the House) [PUB.0036.0002.0084] 4532; Western Australia, Parliamentary Debates, Legislative Council, 15 May 1984, 8364 (Hon Dans, Leader of the House) [PUB.0036.0002.0154] 8364.
- 58 Western Australia, Parliamentary Debates, Legislative Council, 2 April 1985, 1639 (Hon Dans, Leader of the House) [PUB.0036.0002.0210] 1639 – 1640.
- 59 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 28.
- 60 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 44, 72 – 73, 75 – 76, 121.
- 61 Victoria, Board of Inquiry into Poker Machines, report (1983) [PUB.0036.0001.0001] 59, 61 – 62.
- 62 Western Australia, Royal Commission into Gambling, report (1974) [PUB.0004.0002.0320] 76 – 77.
- 63 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee (1983) [PUB.0004.0002.0010] 6.
- 64 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee (1983) [PUB.0004.0002.0010] 31.
- 65 Government Casino Advisory Committee, Reports of Chairman and Members to the Cabinet Sub Committee (1983) [PUB.0004.0002.0010] 30.
- 66 M Rockloff, N Hing, M Browne, A Russell, H Thorne, P Newall, T Visintin, 'Gambling Harm and Harm Minimisation in Western Australia', expert report (October 2021) [PCRC.0100.0001.0001] 20.
- 67 Western Australia, Government Gazette, No 130 (20 December 1985) [PUB.0008.0006.0001] 4825.
- 68 Western Australia, Parliamentary Debates, Legislative Assembly, 23 May 1996, 356 [PUB.0033.0001.0894] 367 – 368.
- 69 This is also the tenor of the commentary in early GWC papers dealing with the history of video games at Perth Casino and their differences from poker machines: GWC, agenda papers (10 December 2004 meeting) [GWC.0007.0011.0216] 12 – 17; GWC, agenda papers (20 December 2005 meeting) [GWC.0007.0011.0231] 177 – 184.
- 70 For example, 'Video Sic Bo' was authorised by Western Australia, Government Gazette, No 213 (28 November 1997) [PUB.0016.0008.0001] 7028; 'Video Blackjack', 'Video Money Wheel' and 'Video Roulette' were authorised by Western Australia, Government Gazette, No 108 (2 June 1998) [PUB.0016.0003.0001] 3019.
- 71 The amendment was later ratified by the *Casino (Burswood Island) Agreement Amendment Act 2003* (WA) [PUB.0033.0009.0001].
- 72 GWC, minutes (17 September 2002 meeting) [GWC.0007.0011.0192_R] 56.
- 73 GWC, minutes (15 October 2002 meeting) [GWC.0007.0011.0192_R] 62.
- 74 GWC, agenda papers (18 February 2003 meeting) [GWC.0007.0011.0193] 4 – 5.
- 75 Government Gazette (20 December 2002) [PUB.0016.0007.0001] 12 – 13.
- 76 GWC, agenda papers (17 December 2002 meeting) [GWC.0007.0011.0191] 60 – 61.
- 77 GWC, agenda papers (19 February 2002 meeting) [GWC.0007.0011.0181] 282; GWC, minutes (19 and 26 February 2002 meetings) [GWC.0007.0011.0192_R] 6; GWC, agenda papers (24 February 2004 meeting) [GWC.0007.0011.0205] 83; GWC, minutes (24 February 2004 meeting) [GWC.0007.0011.0218] 9.
- 78 GWC, agenda papers (24 August 2004 meeting) [GWC.0007.0011.0212] 117,148; GWC, minutes (24 August 2004 meeting) [GWC.0007.0011.0218] 63.
- 79 Western Australia, Government Gazette, No 151 (27 August 2004) [PUB.0016.0006.0001] 3.
- 80 GWC, agenda papers (19 February 2002 meeting) [GWC.0007.0011.0181] 282.
- 81 GWC, agenda papers (24 February 2004 meeting) [GWC.0007.0011.0205] 83 – 84.
- 82 Crown, Arishinko video (6 August 2021) [CRW.700.062.1032]; Crown, Fireball Bingo video (6 August 2021) [CRW.700.062.1030].
- 83 GWC, The Rules for the Authorised Game Arishinko (21 August 2019) [GWC.0001.0007.0068] 3 – 7.
- 84 GWC, The Approved Rules of the Authorised Game Video Bingo (21 April 2021) [DLG.0008.0018.4582] 3 – 12.
- 85 GWC, agenda papers (25 June 2019 meeting) [GWC.0002.0016.0277_R] 56 – 69.
- 86 GWC, agenda papers (28 April 2020 meeting) [GWC.0002.0016.0298_R] 269 – 286.

- 87 GWC, agenda papers (25 June 2019 meeting) [GWC.0002.0016.0277_R] 61; GWC, agenda papers (28 April 2020 meeting) [GWC.0002.0016.0298_R] 75.
- 88 *Interpretation Act 1984* (WA) [PUB.0033.0001.0416] s 56(1).
- 89 GWC, minutes (19 and 26 February 2002 meetings) [GWC.0007.0011.0192_R] 6.
- 90 GWC, agenda papers (17 September 2002 meeting) [GWC.0007.0011.0188] 211.
- 91 GWC, agenda papers (8 March 2004 meeting) [GWC.0007.0011.0206] 5.
- 92 GWC, agenda papers (10 December 2004 meeting) [GWC.0007.0011.0216] 14.
- 93 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (30 July 2021) [PCRC.0002.0014.0001] 3 – 4.
- 94 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (4 August 2021) [PCRC.0002.0016.0001] 5.
- 95 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (30 July 2021) [PCRC.0002.0014.0001] 3.
- 96 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (4 August 2021) [PCRC.0002.0016.0001] 5.
- 97 Western Australia, Government Gazette, No 154 (26 August 2016) [PUB.0033.0018.1398] 3664 – 3667.
- 98 GWC, agenda item (8 December 2017) [GWC.0004.0017.0003] 2.
- 99 *Re Michael; Ex parte WMC Resources Ltd* [2003] WASCA 288 [PUB.0033.0018.0815] [26] (Parker J, with whom Templeman and Miller JJ agreed); *Hancock Prospecting Pty Ltd v BHP Minerals Pty Ltd* [2003] WASCA 259 [PUB.0016.0013.0078] [65] – [67] (Hasluck J, with whom Murray J agreed); *Commissioner of State Revenue v Oz Minerals Ltd* [2013] WASCA 239 [PUB.0016.0013.0001] [179] (Buss JA, with whom Newnes and Murphy JJA agreed).
- 100 *Re Michael; Ex parte WMC Resources Ltd* [2003] WASCA 288 [PUB.0033.0018.0815] [26] (Parker J, with whom Templeman and Miller JJ agreed); *Kidd v Western Australia* [2014] WASC 99 [DLG.8001.0036.7777] [113].
- 101 *Mineralogy Pty Ltd v State of Western Australia* [2021] HCA 30 [PUB.0033.0018.0714] [121] – [124].
- 102 *Mineralogy Pty Ltd v State of Western Australia* [2021] HCA 30 [PUB.0033.0018.0714] [134].
- 103 *Mineralogy Pty Ltd v State of Western Australia* [2021] HCA 30 [PUB.0033.0018.0714] [136].
- 104 *Mineralogy Pty Ltd v State of Western Australia* [2021] HCA 30 [PUB.0033.0018.0714] [79] – [80].
- 105 *Mineralogy Pty Ltd v State of Western Australia* [2021] HCA 30 [PUB.0033.0018.0714] [79] – [80] [138].
- 106 Western Australia, Parliamentary Debates, Legislative Council, 21 February 1985, 166 (Hon Dans, Leader of the House) [PUB.0016.0013.0262] 166 – 170; Western Australia, Parliamentary Debates, Legislative Assembly, 12 March 1985, 795 (Mr Pearce, Minister for Education) [PUB.0016.0013.0182] 795. Both bills were dealt with in a cognate debate in the Legislative Assembly.
- 107 *Australian Leisure and Hospitality Group Pty Ltd v Commissioner of Police* [2020] WASCA 157 [PUB.0033.0018.0001] [43] (Quinlan CJ & Vaughan JA) citing *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* [1986] HCA 40 [PUB.0033.0018.0783] 31.
- 108 GWC, minutes (17 September 2002 meeting) [GWC.0007.0011.0192_R] 56.
- 109 GWC, minutes (25 May 2004 meeting) [GWC.0007.0011.0218] 42. The GWC had also previously expressed concern that there was insufficient distinction in the level of player interaction of the proposed game compared to a spinning reel slot machine style of game: GWC, minutes (27 April 2004 meeting) [GWC.0007.0011.0218] 34.
- 110 GWC, agenda papers (10 December 2004 meeting) [GWC.0007.0011.0216] 10.
- 111 GWC, agenda papers (22 November 2011 meeting) [GWC.0002.0016.0047_R] 3.
- 112 GWC, agenda papers (28 February 2012 meeting) [GWC.0002.0016.0054] 2.
- 113 A non-exhaustive list of additional examples includes GWC, minutes (22 February 2011 meeting) [GWC.0002.0016.0039] 4; GWC, agenda papers (28 August 2012 meeting) [GWC.0002.0016.0070] 3; GWC, agenda papers (24 September 2013 meeting) [GWC.0002.0016.0087_R] 5; GWC, agenda papers (25 February 2014 meeting) [GWC.0002.0016.0125] 2; GWC, minutes (28 July 2020 meeting) [GWC.0002.0016.0309] 4 – 5.
- 114 GWC, minutes (10 December 2004 meeting) [GWC.0007.0011.0218] 91.
- 115 Department statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (30 July 2021) [PCRC.0002.0014.0001] 1.
- 116 GWC, agenda item (8 December 2017) [GWC.0004.0017.0003] 2.
- 117 Sullivan, transcript [TRA.0001.0001.0001] 2231.

- 118 Victorian Commission for Gambling and Liquor Regulation, Victorian Appendix to the Australian/New Zealand Gaming Machine National Standard [PUB.0018.0002.0001]; NSW, New South Wales Appendix to the Australian/New Zealand Gaming Machine National Standard 2016 [PUB.0018.0002.0021]; Queensland Government, Gaming technical services [PUB.0018.0002.0033]; Tasmanian Liquor and Gaming Commission, Australian and New Zealand Gaming Machine National Standard - Tasmanian Appendix [PUB.0018.0002.0038]; South Australia, South Australian Appendix to the Australian/New Zealand Gaming Machine National Standard 2016 [PUB.0018.0002.0046]; Northern Territory Government, Northern Territory Gaming Equipment Approval Process & Appendix to the Australian/New Zealand Gaming Machine National Standards [PUB.0018.0002.0057].
- 119 *Gaming Machines Regulations 2020* (SA) [PUB.0033.0018.0280] reg 23; *Casino Regulations 2013* (SA) [PUB.0033.0018.0097] reg 5; *Gaming Machine Regulations 1995* (NT) [PUB.0033.0018.0236] sch 3 cl 7.
- 120 GWC, agenda papers (28 November 1995 meeting) [GWC.0007.0011.0104] 16.
- 121 Australian/New Zealand Gaming Machine National Standard 2016 [GWC.0001.0007.0185]. The GWC adopted the National Standard in September 2016: GWC, agenda papers (27 September 2016 meeting) [GWC.0002.0016.0186_R] 49; GWC, minutes (27 September 2016 meeting) [GWC.0002.0016.0191_R] 3.
- 122 Australian/New Zealand Gaming Machine National Standard 2016 [GWC.0001.0007.0185] cl 1.2.
- 123 GWC, agenda papers (27 May 1997 meeting) [GWC.0007.0011.0123] 104-110, particularly 109.
- 124 GWC, agenda papers (27 March 2007 meeting) [GWC.0007.0011.0016] 231 – 246.
- 125 GWC, agenda papers (27 March 2007 meeting) [GWC.0007.0011.0016] 245 – 246.
- 126 For example, GWC, agenda paper (23 June 2015 meeting) [GWC.0002.0016.0150_R] 153 – 165; GWC, agenda paper (23 June 2015 meeting) [GWC.0002.0016.0150_R] 150 – 152.
- 127 GWC, agenda papers (19 November 2002 meeting) [GWC.0007.0011.0190] 6.
- 128 GWC, agenda papers (10 December 2004 meeting) [GWC.0007.0011.0216] 16 – 17.
- 129 GWC, agenda papers (10 December 2004 meeting) [GWC.0007.0011.0216] 17.
- 130 GWC, agenda papers (21 December 2004 meeting) [GWC.0007.0011.0217] 1 – 3.
- 131 GWC, agenda papers (20 December 2005 meeting) [GWC.0007.0011.0231] 177 – 184.
- 132 GWC, agenda papers (20 December 2005 meeting) [GWC.0007.0011.0231] 181.
- 133 GWC, agenda papers (20 December 2005 meeting) [GWC.0007.0011.0231] 177.
- 134 GWC, agenda papers (31 January 2006 meeting) [GWC.0007.0011.0231] 181.
- 135 GWC, Memorandum to Minister for Racing and Gaming (28 December 2005) [DLG.0008.0005.0001].
- 136 Western Australia, Parliamentary Debates, Legislative Assembly, 2 May 2006, 1960 (Mr McGowan, Minister for Racing and Gaming) [PUB.0016.0017.0001] 1960.
- 137 GWC, agenda papers (27 March 2007 meeting) [GWC.0007.0011.0016] 228 – 230. It should be noted that this document again identifies that ‘the general perception of video gaming machines at Burswood is that they are “pokies”’.
- 138 GWC, agenda papers (27 September 2011 meeting) [GWC.0002.0016.0035_R] 407; GWC, minutes (27 September 2011 meeting) [GWC.0002.0016.0046] 9; GWC, EGM Policy (30 September 2011) [DLG.8001.0025.8859].
- 139 GWC, EGM Policy (July 2016) [DLG.8001.0025.5846]; GWC, EGM Policy (5 September 2016) [CRW.708.001.3226].
- 140 Fiorentino, transcript [TRA.0001.0001.0001] 3068; Meadows, transcript [TRA.0001.0001.0001] 2973.
- 141 Sargeant, witness statement [GWC.0003.0019.0039_R] [82]; Ord, transcript [TRA.0001.0001.0001] 3441; Hayward, transcript [TRA.0001.0001.0001] 2909; Carr, transcript [TRA.0001.0001.0001] 968 – 969.
- 142 Hayward, transcript [TRA.0001.0001.0001] 2909.
- 143 Meadows, transcript [TRA.0001.0001.0001] 2973.
- 144 Sargeant, transcript [TRA.0001.0001.0001] 3811. This is consistent with Sullivan’s understanding: Sullivan, transcript [TRA.0001.0001.0001] 2267.
- 145 Carr, transcript [TRA.0001.0001.0001] 968; Duckworth, transcript [TRA.0001.0001.0001] 3022; Harrison, transcript [TRA.0001.0001.0001] 3185.
- 146 Hayward, transcript [TRA.0001.0001.0001] 2946. See also Harrison, transcript [TRA.0001.0001.0001] 686, 3185.
- 147 Hayward, transcript [TRA.0001.0001.0001] 2946.
- 148 Carr, transcript [TRA.0001.0001.0001] 969.

- 149 Crown, Ghostbusters video (6 August 2021) [CRW.700.062.1034]; Crown, 5 Dragons video (6 August 2021) [CRW.700.062.1035]; Crown, The Flintstones video (6 August 2021) [CRW.700.062.1033]; Crown, Cats, Hats n More Bats video (6 August 2021) [CRW.700.062.1036]; Crown, Stacks of Magic – Quick Strike Triple video (6 August 2021) [CRW.700.062.1031]; Crown, All Aboard Dynamite Dollars video (6 August 2021) [CRW.700.062.1037].
- 150 Crown, Crown Rewards Program Brochure April 2021 [CRW.700.041.0164] 8.
- 151 Crown, Crown Rewards Program Brochure April 2021 [CRW.700.041.0164] 6.
- 152 GWC, agenda papers (26 March 2019 meeting) [GWC.0002.0016.0268_R] 77 – 83.
- 153 GWC, agenda papers (26 March 2019 meeting) [GWC.0002.0016.0268_R] 78 – 79.
- 154 GWC, agenda papers (26 March 2019 meeting) [GWC.0002.0016.0268_R] 79.
- 155 GWC, agenda papers (26 March 2019 meeting) [GWC.0002.0016.0268_R] 81; Sullivan, transcript [TRA.0001.0001.0001] 2291 – 2292.
- 156 GWC, agenda papers (26 March 2019 meeting) [GWC.0002.0016.0268_R] 79.
- 157 GWC, agenda item 5.3 (23 July 2019 meeting) [GWC.0002.0016.0281_R] 1 – 34.
- 158 GWC, minutes (23 July 2019 meeting) [GWC.0002.0016.0285_R] 2.
- 159 GWC, 'Policy – Electronic Gaming Machines' (23 September 2019) [GWC.0001.0007.0192].
- 160 Sullivan, transcript [TRA.0001.0001.0001] 2307.
- 161 Crown, New Regulation EGM Game Performance Report [CRW.700.060.1578_R] 1.
- 162 Sullivan, transcript [TRA.0001.0001.0001] 2308.
- 163 Letter from Felstead to Ord (7 March 2019) [CRW.709.145.4880_R] 4, 8 – 11.
- 164 Meadows, transcript [TRA.0001.0001.0001] 2972.
- 165 Bossi, transcript [TRA.0001.0001.0001] 1913.
- 166 Sullivan, transcript [TRA.0001.0001.0001] 2224.
- 167 Sullivan, transcript [TRA.0001.0001.0001] 2303.
- 168 Sullivan, transcript [TRA.0001.0001.0001] 2303.
- 169 Sullivan, transcript [TRA.0001.0001.0001] 2292.
- 170 Crown, EGM game speed comparison (31 January 2019) [CRW.709.110.3995_R]; Sullivan, transcript [TRA.0001.0001.0001] 2292 – 2295.
- 171 M Rockloff, N Hing, M Browne, A Russell, H Thorne, P Newall, T Visintin, 'Gambling Harm and Harm Minimisation in Western Australia', expert report (October 2021) [PCRC.0100.0001.0001] 40.
- 172 The *Interpretation Act 1984* (WA) [PUB.0033.0001.0416] defines 'subsidiary legislation' in s 5 to mean, amongst other things, a notice made under a written law and having legislative effect. What is meant by legislative effect is discussed by Edelman J, as his Honour then was, in *Sea Shepherd Australia Ltd v Western Australia* [2014] WASC 66 [PUB.0033.0031.0230] [38] – [81]. It is difficult to see why the notice contemplated by s 22(1) of the CC Act would constitute a 'rule of conduct' as discussed in that case.

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CHAPTER 14

Evaluation of Regulation of Perth Casino

CHAPTER FOURTEEN

Evaluation of Regulation of Perth Casino

Purpose of Chapter

- 1 The purpose of this chapter is to draw together the inquiries made by the PCRC for the purposes of terms of reference (**ToR**) 8, 9 and 10 which direct the PCRC to inquire into the regulatory framework in Western Australia that is relevant to the affairs of Perth Casino and related matters.
- 2 ToR 8, 9 and 10 direct that there should be specific inquiries into the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia, the appropriateness, capability and effectiveness of the Gaming and Wagering Commission (**GWC**) and the capability and effectiveness of the Department in supporting the GWC.¹ The conclusions that the PCRC has reached in relation to these matters are the context for its recommendations for enhancements to that regulatory framework and for measures to enhance the future capability and effectiveness of the GWC and the Department, as required by ToR 11.
- 3 The PCRC's assessment of the deficiencies in the regulatory framework and the GWC's processes is not a reflection on the personal commitment or integrity of current and past GWC members. The same can be said about most of the Departmental officers who have been involved over the years in supporting the work of the GWC.
- 4 Part One of this chapter gives an overview of the PCRC's evaluation of regulation of Perth Casino. Part Two identifies and discusses particular areas of deficiency in the existing regulatory framework. Part Three evaluates the GWC's manner of operation. Part Four evaluates the Department's support of the GWC in the performance of its duties as the casino regulator.

Part One: Overview

- 5 There are some strengths in the existing regulatory framework for casinos and casino gaming. Also, the GWC, supported by the Department, has appropriately exercised a number of its powers and discharged a number of its responsibilities under the framework.
- 6 However, the PCRC has identified numerous instances of regulatory failure since the Perth Casino commenced operation. In many cases, the PCRC has been able to identify the cause of those failures. Some of the failures were due to the approach or conduct of individuals and were not significantly influenced by the regulatory framework. Other failures were due to or contributed to by weaknesses in the existing regulatory framework for casino and casino gaming. The PCRC has also identified many instances where regulatory failure has been caused by or contributed to deficiencies in the capability and effectiveness of the GWC and the Department in supporting it.
- 7 Some of the weaknesses in the regulatory framework and the way in which they have caused regulatory failure are obvious. For example, the requirement that the Director General (**DG**) of the Department administering the *Gaming and Wagering Commission Act 1987* (WA) (**GWC Act**) also be the *ex officio* chair of the GWC has led directly to a lack of independence of the GWC from the Department. The causes of other failures in regulation

have only become apparent after careful analysis of the regulatory framework and a consideration of all the evidence.

- 8 The work of the PCRC in this regard has been assisted by its consideration of regulatory theory. Regulatory theory and the identification of the model of regulation which is most likely to achieve particular regulatory objectives is an academic subject of some complexity. However, an evaluation of the regulatory framework and the GWC's and the Department's modes of operation requires a basic understanding of that theory.
- 9 Now that the PCRC has had the opportunity to evaluate the GWC's manner of operation and the Department's support of the GWC in the context of the existing regulatory framework and theories about best practice in casino regulation, it has become clear to the PCRC that the current regulatory framework for casinos and casino gaming in Western Australia is compromised in material respects by a number of factors. Some, but not all, of the factors are:
 - a. the regulatory framework is anachronistic in that it is nearly 40 years old and was built on earlier forms of the same framework which were developed without the experience or understanding of modern casino gaming operations and the risks which they pose to the public;
 - b. the legislative framework was flawed from conception in that it failed to identify the legislative objectives of casino regulation and to clearly express the associated duties and powers of the regulator to meet those objectives;
 - c. over time, the GWC and its predecessors were given more duties and functions without a corresponding or sufficient increase in expertise, numbers and funding;
 - d. the legislative framework fails to establish with clarity the relationship between the GWC and the Department which has resulted in neither organisation having an adequate or accurate understanding of its role in casino regulation;
 - e. the legislative framework fails to establish with clarity the relationship between the GWC and the departmental officers who perform duties on behalf of the GWC which has resulted in the GWC not having sufficient oversight or control of the work that is done by departmental officers on its behalf or over the way in which its funds are expended;
 - f. the legislative framework, in particular the *Casino (Burswood Island) Agreement Act 1985 (WA)* (CBIA Act) and the State Agreement which it ratified, was designed to regulate a casino licensee with a particular corporate and governance structure. The framework has not been changed sufficiently to accommodate alterations to the Perth Casino licensee's corporate and governance structure that have occurred over the life of Perth Casino; and
 - g. as a consequence of the way in which the GWC is constituted and the often inadequate support it receives from the Department, the GWC has failed to identify its strategic objectives, organise itself to be a vigilant and modern casino regulator and garner resources to ensure that it meets its strategic objectives.
- 10 The deficiencies in the regulatory framework, the GWC's operational deficiencies and the Department's failures to support the GWC have manifested themselves in regulatory failures. This chapter summarises deficiencies in the regulatory framework but more detail about the deficiencies is found elsewhere in this Final Report.
- 11 The deficiencies in the regulatory framework, the GWC's operational deficiencies and the Department's failures to support the GWC have also been contributing factors to the way in which risks associated with the organisation and conduct of the gaming operations of Perth Casino have manifested themselves at the casino. Three examples are given below.

- 12 First, the inadequate regulation of the risks posed by junkets allowed Perth Casino to effectively determine, with little or no regulatory supervision, which junket operators were approved to operate at Perth Casino. This freedom contributed to junket operators, some of whom the Bergin Inquiry found had links to Triad and other criminal groups, being approved to operate at Perth Casino.
- 13 Secondly, the inadequate regulation of Perth Casino's bank accounts and its anti-money laundering/counter terrorism financing (AML/CTF) program contributed to the Riverbank accounts being used to launder money without the Perth Casino having adequate processes in place to identify suspect transactions, prevent and (or) reverse such transactions and report them to AUSTRAC.
- 14 Thirdly, the GWC's and the Department's manner of regulating gambling-related harm caused by casino operations was essentially limited to attempts to enforce the prohibition of poker machines at Perth Casino. This focus means that inadequate attention was, and still is, paid to regulating gambling-related harm by other measures. The obvious measure which has not been used in twenty years is by directing Perth Casino to have a responsible service of gambling code and ensuring that the code contains appropriate harm minimisation measures.
- 15 The PCRC concludes that the regulatory framework is not fit for the purpose of licensed casino regulation in the 21st century. Consequently, there is an urgent need for changes to the regulatory framework to address its deficiencies.
- 16 Because of the fundamental flaws in the framework, it is doubtful that making small and incremental changes to it will be effective to remedy its defects. There is a need for a broad reassessment of the statutory model of casino regulation, as well as reassessment of some of the methods of the delivery of regulation and reconsideration of the roles of regulators and officers who should be administering the model and delivering the regulatory services. This will enable the Western Australian public to have confidence that the three broad objectives of casino regulation will be met in a sustainable manner.²

Part Two: Particular deficiencies in the regulatory framework

Outdated legislative model

- 17 The legislative framework for casinos and casino gaming in Western Australia is in need of reform in order to ensure it is fit for the purpose of regulating the modern casino industry. The identification of two broad areas of deficiency in the regulatory framework are sufficient to demonstrate how the current legislative framework has become outdated.
- 18 First, the framework does not contain a clear and consistent approach to casino regulation that can inform and guide a regulator, the regulated and the public as to what is the standard and method of casino regulation in Western Australia.
- 19 The existing legislative framework for casino regulation identifies appropriately the subject matter of regulation, licensed casinos, and identifies the regulator, the GWC. It also contains provisions that deal with many important aspects of the regulatory framework such as the constituency of the GWC, its independence and its proceedings. However, it should also identify and communicate the regulator's objectives for casino regulation, the regulator's duties in respect of casino regulation, the regulator's powers to discharge its duties, the resources available to discharge the duties (and how the regulator can obtain further resources), any risks that the regulator must regulate (alternatively a duty to identify the risks itself) and any manner of regulation as required by Parliament.

- 20 Secondly, the regulatory framework does not contain a clear and consistent regime for the licensing of a casino operator. A legislative framework of casino licensing should include the:
- a. length of and conditions on a licence;³
 - b. standard required of a suitable person to hold a casino licence;
 - c. method for identifying a licensee's close associates;
 - d. standard required of a close associate to be suitable to be a close associate of a casino licensee;
 - e. regulatory regime for ensuring that the licensee and its close associates maintain suitability over the length of the licence; and
 - f. process for disciplining a licensee for breaches of the licence, including the process for applying the ultimate sanction of cancellation of the licence.
- 21 Many of these fundamentals of a regulatory framework are missing, poorly expressed or outmoded in the regulatory framework for licensed casinos in Western Australia.
- 22 For example, the *Casino Control Act 1984 (WA) (CC Act)* and the GWC Act do not contain lists of regulatory objectives or a coherent list of duties of the casino regulator. Neither do they impose on the GWC a requirement to determine its regulatory objectives and formulate a strategic plan to achieve them.
- 23 While the PCRC has been able to discern the regulatory responsibilities assigned to the GWC by the legislative framework through a consideration of that framework in the context of its history, there is no reason a clear statement of those responsibilities and duties should not be included in express terms.
- 24 The GWC has not developed a set of regulatory objectives or developed a strategic plan to meet its objectives. The failure to identify the objectives and duties has contributed to the GWC perceiving its regulatory responsibilities to be narrower than was intended by the legislation and what the public is entitled to expect of a casino regulator.
- 25 Another example is the failure of the regulatory framework to address well recognised risks of casino regulation. Long before the CC Act was enacted it had been identified that a particular risk of casino gaming was criminal infiltration of gaming by patrons laundering money at a casino. The regulation of this risk is not mentioned in the CC Act so the GWC came to believe that it had a limited, if any, role in regulating what is an established risk of casino gaming.
- 26 Similarly, the fundamental duty to regulate gambling to minimise harm is not expressed at all in the CC Act (other than in relation to the prohibition on poker machines) and is not expressed clearly in the GWC Act in relation to casino gaming.
- 27 Details of these broad areas of deficiency are outlined below.

Outdated legislative provisions

- 28 In addition to the legislative model being obsolete, there are provisions in it which are particularly anachronistic or which are absent, even though they are regarded by many other jurisdictions as essential to modern casino regulation.
- 29 If these individual deficiencies were the cause of the regulatory failures identified by the PCRC they could be rectified individually. However, in the PCRC's view that is not possible because they are only parts of the broad areas of deficiency in the regulatory framework.
- 30 The first example of a particular deficiency is that the maximum penalties for contravention by the casino licensee of offence provisions that are central to casino regulation by the GWC

are manifestly inadequate to provide a deterrent to the breach of those provisions. The Directions⁴ are at the very heart of the practice of casino regulation in Western Australia and yet a maximum penalty of \$5,000 for a breach of the Directions is low when considered in the context of the likely level of turnover and profit of a casino.⁵

- 31** Appropriate regulatory offences and penalties and the resourcing of the regulator to investigate and prosecute regulatory offences are essential components of an effective regulatory regime. Prosecution should not be the first regulatory tool to be used by a regulator to solve a regulatory issue but there are occasions where that sanction must be available and an effective deterrent.
- 32** A second example is that the regulatory framework does not contain a provision requiring the casino licensee to adopt a code for the responsible service of gaming or any provisions about its content. Such provisions have become the norm in modern casino legislation. In Victoria, the requirement to have such a code is a condition of the grant of a casino licence. The absence from Western Australia's legislation of a requirement for the casino licensee to have such a code is a deficiency in the regulatory framework's response to the risk of harm associated with casino gaming.

Prohibition on poker machines

- 33** There is lack of clarity in what is meant and what is sought to be achieved by the legislative prohibition of games played on poker machines at Perth Casino. The PCRC has no criticism of the prohibition on electronic gaming machines (**EGM**) outside of a licensed casino. That is a strength of the current regulatory framework. However, it seems that the prohibition on poker machines at Perth Casino has been the principal mechanism by which the legislative framework has sought to address the risk of harm from casino gaming. With the advent of New Style EGMs⁶ and their increasing sophistication and similarity to poker machines, the implementation of that ban has become problematic. Arguably, the ban based on the undefined concept of a poker machine may not be (and perhaps never was) an effective way to address gambling-related harm. If the prohibition is to remain, legislative guidance is required to assist the regulator, the regulated and the public, to identify the characteristics of the prohibited machines.

Legislative framework fails to regulate suitability issues

- 34** One of the most significant matters that is not adequately addressed by the current legislation is a requirement for the GWC to monitor the ongoing suitability of the casino licensee and its associates. Under the legislative regime the Perth Casino licensee was given a licence for an unlimited period of time without any requirement to submit itself to periodic reviews of its suitability.
- 35** The Victorian legislation is an example of a different regulatory regime that provides for a five yearly inquiry into suitability.⁷ The absence of such a requirement in the Western Australian legislative framework appears to have created uncertainty for the GWC about the extent of its responsibility to monitor suitability and how to respond to events that may call the casino licensee's suitability into question. It can be inferred that this legislative deficiency has contributed to a failure by the GWC to engage sufficiently with matters that should have raised suitability concerns, such as media reports alleging criminal associations of junket operators at Perth Casino and the China Arrests.

Mismatch between regulator and regulatory task

- 36** The GWC is a statutory board constituted by five to seven members who, prior to the publication of the Bergin Report, worked anywhere between two hours to two days a month preparing for meetings, and two to six hours a month attending meetings to fulfil their GWC duties.⁸ It ordinarily meets 11 times in a year and does not have its own staff. None of the members who gave evidence to the PCRC indicated that they were appointed on the basis that they would work full time or near full time on GWC duties. Neither are they remunerated on that basis. That is despite the fact that the regulation of Perth Casino in the public interest is an important and complex responsibility and only one of the regulatory tasks assigned to the GWC.
- 37** This mismatch between the regulator and the regulatory task is, in part, a product of growth in the breadth of duties and functions of the GWC and its predecessors, which has not been accompanied by an adequate reshaping of the regulator to ensure it is fit to perform the regulatory tasks that it is assigned. It is also a product of the expansion of Perth Casino over time and the increasing sophistication of the modern casino industry and, in particular, the rapid development of EGM technology.
- 38** The PCRC's inquiry has revealed that whilst the legislative framework gives the GWC the obligation to regulate casino gaming in Western Australia, the GWC is reliant on the Department to enable it to discharge its duties. The Department, which is to support the GWC, employs officers whose duties include acting on behalf of the GWC, and the Department provides the premises in and the equipment with which they work. On the other hand, the GWC has the obligations of casino regulation but has no employees and no premises. It is reliant on the Department for regulatory advice, financial management and resources. The result is that the legislative system for administering and resourcing the GWC does not facilitate the GWC meeting its legislative obligations as an independent casino regulator.

Perceived lack of financial capacity

- 39** There are problems with the legislative provisions regarding the financial arrangements of the GWC, including the calculation and application of the casino gaming licence fee, the requirement under s 7(2) of the GWC Act that the GWC ensures that its revenue is sufficient to provide for the operating, administrative and other costs of the GWC, the role of the CFO and the service fee charged by the Department to the GWC.
- 40** For example, the GWC has submitted to the PCRC that it was financially constrained in the discharge of its functions. There is a tension between the GWC's understanding of the operation of s 7(2) of the GWC Act and the PCRC's conclusions about the meaning of the provision. The lack of clarity in the provision is undesirable.
- 41** Further, there has not been a revision of the casino gaming licence fee, which was set in 1990 and has only been adjusted by CPI since that time. The casino gaming licence fee is the principal means by which the regulation of Perth Casino is funded. It is important that the casino gaming licence fee is adequate to fund that regulation. If the casino gaming licence fee is insufficient to do so, then the GWC needs to seek 'moneys from time to time appropriated by Parliament'.⁹ It should not see itself as constrained by s 7(2) of the GWC Act from so doing.

Lack of structural independence from the Department

- 42** The GWC is constituted by legislation which provides that its chair is *ex officio* the DG of the Department that provides services to it. That structure may have been adopted with a view to ensuring efficient communication between the GWC and the Department, but

it has become evident through the course of this inquiry that it is a structural flaw in the regulatory framework.

- 43 Having a board chair who is not independent of management is inconsistent with modern governance practices. It is likely to have inhibited the ability of the GWC to oversee the Department. It is also inconsistent with the notion that there should be an arm's length negotiation process between the Department and GWC setting terms for the cost, nature, quantity and quality of the services being provided to the GWC by the Department.
- 44 The structural dependence of the GWC on the Department, by having a chair, deputy chair and Chief Casino Officer (**CCO**) who are officers of the Department, is a significant aspect of the operation of the GWC. The structural dependence, and resulting practical dependence, risks compromising the discharge by the GWC of its responsibilities, by making it less able to make independent assessments of the actions required to regulate extant and emerging strategic risks in casino gaming and to set its own strategic direction. Also, it is not consistent with the relationship between the GWC as regulator and the Department as service provider which requires the GWC to hold the Department to account in the performance of its functions on behalf of the GWC.

Complexities in the trust and corporate structure and regulatory framework

- 45 The Perth Casino was established with a complex trust structure that was ratified by Parliament in the CBIA Act. The trust structure has changed over the years but it has never been dismantled. Changes were made in 1997 when the trust structure was corporatised and in 2003 and 2004 when Publishing and Broadcasting Limited (**PBL**) acquired all the shares in Burswood Limited (**BL**). In 2007, when BL became a wholly owned subsidiary of Crown Resorts Limited (**CRL**), the accretion of another corporate structure onto the existing Burswood Property Trust (**BPT**) structure was complete. The result is that it is necessary to understand three complex pieces of legislation, two complex legal documents and the CRL corporate structure in order to understand the corporate structure of and the regulation of Perth Casino.¹⁰
- 46 It is also necessary for the GWC and the Department to understand how these documents work together. There is no evidence before the PCRC to indicate that the GWC and the Department have in the past considered how or if the trust and corporate structures of the Perth Casino licensee and the other Burswood entities can or do meet the requirements of the regulatory framework.
- 47 For example, the GWC issues the Directions to the licensee, Burswood Nominees Ltd (**BNL**), but it is not apparent how BNL ensures compliance with the Directions as it has no employees. Burswood Resort (Management) Limited (**BRML**) supplies labour to operate Perth Casino but it does not have any income or any agreement with BNL under which the labour is supplied. On the other hand, it is BL that governs the gaming operations at Perth Casino even though it is neither the licensee nor the supplier of labour. There are provisions of the State Agreement and the BPT Trust Deed that complicate these arrangements even further. To add a further complication, CRL has become more involved in the management of Perth Casino over recent years. It has centralised many management functions that used to be performed by officers employed by BRML, thereby raising further issues as to whether the licensee has control of the gaming operations at Perth Casino.
- 48 This web of relationships only works from a regulatory perspective because GWC and the Department are prepared to accept that the Burswood entities work together to operate, manage and govern Perth Casino, along with their parent company CRL. The lack of clarity as to which entity is responsible for doing what at Perth Casino and the lack of overall control of Perth Casino by the licensee is not conducive to the effective regulation of Perth Casino.

Part Three: Deficiencies in the Gaming and Wagering Commission's manner of operating

- 49 The particular deficiencies that have been discussed above are in the regulatory framework itself. Those deficiencies have led to other deficiencies in the GWC's manner of operating. These deficiencies are evaluated in this part.
- 50 There are some aspects of the GWC's processes and manner of operating that have been appropriate. The GWC is constituted as required under the regulatory framework and its proceedings are orderly. Its members have been cognisant of their duties and responsibilities.
- 51 The PCRC has identified two strategic risks which the GWC, with the Department's support, has regulated effectively. First, the risk of a lack of integrity in casino gaming. Through the Directions, the GWC established a framework of binding procedures in the Casino Manual (Games) (**CM(Games)**) to ensure casino games are played fairly and in accordance with the rules. That framework is then appropriately supported by the audit and inspection program conducted by departmental inspectors.
- 52 Secondly, the risk of criminal infiltration of casino operations by casino employees. Through the *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) (**CCBILE Regs**), and the delegation of the GWC's power to departmental officers and the CCO, the GWC and the Department have developed and established an efficient licensing system for employees. While there are some modifications which should be made to clarify the use and limits of some powers, the PCRC is satisfied that the approach to licensing has been undertaken appropriately and the GWC has remained engaged with the process. In particular, in monitoring the process, the GWC identified and appropriately responded to concerns in respect of licence holders' non-compliance with self-reporting conditions.
- 53 The PCRC also notes that over 2021 the GWC has shown an increasing understanding of the need for it to change and improve its manner of operating and its processes to regulate the organisation and conduct of the gaming operations of Perth Casino. It has embarked on that process. It is a positive development that its current members are committed to improving the standard of casino regulation in Western Australia.
- 54 However, it will be difficult for the GWC to discharge its duties as the independent Western Australian casino regulator whilst there are structural imbalances and dependencies between it and the Department. A striking example of the outworking of that imbalance occurred at the beginning of the PCRC's work. The GWC responded to the PCRC's requests for information and documents by saying that the GWC did not have the documents or the resources to provide the information and that the Department would supply them.¹¹ This displayed a fundamental misunderstanding by the GWC of the relationship between itself and the Department. That is, that the documents held by the Department are the GWC's documents and information which departmental officers could provide about the discharge of the GWC's duties and casino regulation were not provided as departmental officers but as representatives or agents of the GWC.

Lack of input into membership of the Gaming and Wagering Commission

- 55 The PCRC's inquiry disclosed that even before the members of the GWC approach the task of regulating Perth Casino, their capability as a group is impeded by their lack of expertise in vital areas, in particular, because of the process of appointment and the approach taken to induction and training.

- 56 The impediment caused by the appointment process is not obvious from considering the legislation. The GWC Act bestows the responsibility for appointments on the Minister and identifies the desired attributes of integrity, good repute and relevant experience.¹² Whilst those criteria could be considered to be too broad and inexact for the particular task of regulating casino gaming in Western Australia, there is nothing wrong with them.
- 57 The GWC Act does not impose a requirement for the GWC to provide advice to the Minister prior to any appointment. In practice, there has been no consultation and whilst the GWC could have provided the Minister with information about the skills required for a new member, it has not done so. The GWC has not provided feedback or guidance on the types of skills or attributes of a candidate which might be considered necessary to enhance its capability as a regulator or to fill a particular skill gap on the board. The provision by the GWC of feedback and guidance on appointments, whether through a nominations sub-committee or otherwise is, in the PCRC's view, critical to enhancing the capability of the GWC.

Training and induction of Gaming and Wagering Commission members

- 58 The PCRC considers that, to date, the Department's induction process has been inadequate and inconsistent. It does not meet the best practice guidance regarding induction that has been issued by the Public Sector Commission. An inadequate induction program does not set the right tone and is likely to cause it to take longer for new members to contribute effectively to the GWC as they are left to 'learn on the job'.
- 59 There is no uniform training or induction regarding the regulatory philosophy of the GWC, the strategic risks inherent in casino gaming, the GWC's regulatory objectives, harm minimisation or any other matter relevant to the discharge of the GWC's functions. The lack of an appropriate induction and training program means that members without prior expertise in casino regulation are not adequately assisted to perform their role on the GWC.
- 60 Ultimately, the lack of adequate induction and training in casino regulation has made the GWC more dependent on the Department for its advice. This has compounded the effects of a lack of structural independence between the GWC and the Department.

Inadequate financial processes

- 61 A matter that is likely to have contributed to a perceived lack of financial capability is a lack of clarity regarding the nature, quality and quantity of services to be provided by the Department, including audit and inspection of Perth Casino, and the cost of those services. There has not been a formal written agreement between the Department and the GWC setting out the terms on which the Department provides services to GWC. The services that have been provided have not been costed in accordance with Treasury's guidance on costing.

Dependence on the Department for advice

- 62 The lack of prior expertise and adequate training in casino regulation has made the GWC dependent on the Department for its advice. Instead of bringing independent subject matter expertise to decisions such as speed of play on EGMs, removal of the requirement to approve junket operators, and increases to the number of EGMs at Perth Casino, GWC members would instead, refer to and rely upon information provided to it in agenda papers drafted by the Department.
- 63 Prior to 2017, the DG as GWC chair would settle the agenda papers. From 2017 until 2020, it was the Deputy Director General (**DDG**), who was also the CCO, who had effective control of the agenda, and he regularly contributed to GWC meetings by providing briefing papers on specific issues. As a result, the Department's views about how to regulate Perth Casino and,

in particular, the views of the DG (also GWC chair), and the DDG (also CCO and deputy chair), have come to dominate the GWC. That is, in practice, it has operated in accordance with the Department's views about how to regulate Perth Casino rather than bringing the independence that was presumably intended by creating a statutory authority to oversee Perth Casino.

Governance deficiencies

- 64 Various matters concerning the governance of the GWC have not met the best practice standards established by the Public Sector Commission's governance guidance which has been published and revised regularly since 2009.¹³ These include matters related to the adoption of a skills matrix, the appointment process, the induction process, the need for ongoing training programs specific to gaming regulation, delegations, the adoption of a board charter and a strategic plan and the setting of key performance indicators.
- 65 Since 2018, newer GWC members have sought to review key performance indicators and set a clear strategic direction for the GWC. At the time, these efforts were impeded by a lack of resources from the Department to assist with such governance improvements. More recently, there have been very significant reforms to governance including in respect of the identification and management of conflicts of interest.

Narrow understanding of responsibilities of the casino regulator

- 66 The GWC originally took a very active role in the regulation of junkets by approving junket operators and representatives who intended to bring junkets to Perth Casino. In so doing, the GWC liaised with the Western Australian Police Force (**WAPOL**) to obtain criminal intelligence. This active involvement in regulating junkets diminished over time until it was eventually abandoned.
- 67 The erosion of the GWC's perception of its regulatory responsibility for junkets occurred under the influence and guidance of the Department. In 2009, the Burswood entities advocated for the removal of the requirement in Part 3 of the *Casino Control Regulations 1999 (WA) (CC Regs)* for junket operators and representatives to be approved by the GWC. The departmental agenda paper prepared in relation to the proposal recommended the removal of the requirement on the basis of the reasons propounded by the Burswood entities, including that the necessary integrity checks of persons entering Australia, including junket participants and junket operators, were being carried out by Commonwealth agencies such as Border Force. In effect, the Department conveyed a narrow view of the GWC's regulatory responsibilities as part of the justification for recommending the diminishment of its powers and ultimately, from that point, the GWC felt comfortable that the risks posed by junkets were sufficiently 'taken care of' by other agencies because of the assurances provided to it by the Department.
- 68 Following the publication of the Bergin Report, the GWC has now re-engaged with its responsibility to regulate junkets by imposing a complete ban on junket operations at Perth Casino. This was done at a time when Perth Casino and its associates in other states had announced that they would no longer be involved in junket arrangements.
- 69 It appears likely that a confluence of factors has contributed to the GWC's narrow understanding of its regulatory responsibilities. One factor is the views expressed by departmental officers giving advice to the GWC including that certain regulatory responsibilities were assigned to other regulators. Another factor is the perceived financial constraints on the GWC, which may have led to an acceptance of the need to focus on a narrower range of risks. In addition, the lack of a clear statement of regulatory objectives in the legislative framework meant that the drift towards a narrower understanding of regulatory responsibilities went unchecked.

Reliance on other agencies

- 70** It has already been observed above that, in certain respects, the GWC adopted the approach that certain regulatory responsibilities were not its responsibilities because they were assigned to other regulators. A related issue is that the GWC was sometimes encouraged to rely upon, and did rely upon, other casino regulators who were perceived to be better resourced for the regulation of matters including the suitability of the Perth Casino licensee. In particular, the GWC relied upon the investigations of the then Victorian casino regulator, the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) and to a lesser extent, the New South Wales casino regulator, the Independent Liquor and Gaming Authority (**ILGA**).
- 71** The PCRC recognises that cooperation between casino regulators in various jurisdictions is necessary and desirable. This is particularly so where, as in the case of Perth Casino, there is a corporate group with gaming operations in several States. However, the question is how the cooperative arrangements are managed and how they impact on local responsibilities.
- 72** With the exception of probity checks completed when ownership of the Perth Casino changed in 2004, there has been no investigation of the continuing suitability of the existing licensee or its close associates since the casino licence was granted in 1985.
- 73** Generally, the GWC had an understanding that probity and suitability was a matter about which they should be concerned. Specifically, in June 2015, it endorsed the Casino Compliance Strategy which included as an objective to ensure the ongoing suitability of the Perth Casino licensee and licensed casino employees. Despite this, there was no policy or procedure in place for the GWC to assess the Perth Casino licensee's suitability, periodically or otherwise. As noted above, this can be explained in part by reference to the deficient manner in which the legislative framework deals with suitability assessment.
- 74** As regards ongoing suitability, the GWC's approach was to have regard to the outcomes of the VCGLR's suitability assessments with the intention of applying the findings and outcomes of those assessments to the Perth Casino.
- 75** When specific matters concerning suitability arose, such as media reports alleging criminal associations of junket operators coming to Perth Casino and concerning the China Arrests, the GWC on occasions required the Perth Casino licensee to give presentations about those matters. However, even in respect of specific matters regarding suitability, the GWC would sometimes defer taking action on the basis that it should wait until other regulators had inquired into those specific matters. This approach is evident in the GWC's decision to await the outcome of the VCGLR's inquiry into the China Arrests and the Bergin Inquiry called by ILGA.
- 76** It is acknowledged that, once the Bergin Report was published, the GWC took decisive action to address suitability concerns.
- 77** The approach of relying on the outcome of the VCGLR's suitability reviews is inadequate to ensure the ongoing suitability of the Perth casino licensee. The responsibility for ensuring that the Perth Casino licensee is suitable lies with the Western Australian regulator and it should not be assumed that identical suitability concerns arise with the Melbourne Casino licensee such that specific regard is not needed in respect of the Perth Casino licensee's conduct and operations. While there are some matters of commonality between Melbourne Casino and Perth Casino, particularly since the centralisation of casino governance by CRL, the GWC retained a responsibility to independently assess the suitability of the Perth Casino licensee.
- 78** Other examples of over-reliance on other agencies to address regulatory risks are set out above. That is, the GWC understood AUSTRAC to be responsible for the regulation of money laundering and so did not take responsibility for regulating the risk of money laundering at Perth Casino. Further, the GWC was told by the Department that Border Force

was responsible for ensuring that visas were not granted to people with a criminal history or criminal associations and so the GWC did not engage with the regulation of junket operators and representatives. Perth Casino did not ensure that they did not have a criminal history or criminal associations.

- 79 As to the risk of gambling-related harm, as set out above, the poker machine prohibition was a regulatory measure utilised by the GWC, but the GWC has, since about 1995, also voluntarily contributed funds annually¹⁴ to the work of the Problem Gambling Support Services Committee (**PGSSC**). Those contributions were made without proper (or arguably any) consideration as to the adequacy of the activities of the PGSSC in addressing gambling-related harm in Western Australia.
- 80 The proper approach to the regulation of Perth Casino will involve the GWC regulating all of the risks for which it is responsible and, where appropriate, working with other regulators or agencies who have some degree of commonality in regulatory responsibilities.

Part Four: Department's support of the Gaming and Wagering Commission

- 81 This part evaluates the Department's support of the GWC in casino regulation. Although the PCRC finds after assessing all of the evidence that the Department's support has been inadequate, there are some aspects of the GWC's processes and manner of operating that have been appropriate.
- 82 In particular as discussed in Part Three, the Department has adequately supported the GWC to regulate the risk of a lack of integrity in casino gaming and the risk of criminal infiltration of casino operations by casino employees. It has also provided the GWC with administrative assistance and provided regulatory officers to enable the GWC to exercise its powers. Without the Department's support in these matters, the GWC would not have been able to operate.
- 83 During 2021, the Department showed an increasing understanding of the need for it to improve its support of the GWC in order to facilitate the GWC operating as an independent and effective casino regulator. Lanie Chopping (**Chopping**) has been an important leader in the process to ensure that departmental officers performing duties on behalf of the GWC have an appropriate professional and independent regulatory posture when dealing with officers of Perth Casino. At least whilst Germaine Larcombe (**Larcombe**) was acting CCO there was an understanding that the Department needed to support the GWC to develop a coherent regulatory model and processes. The PCRC has not had the opportunity to assess whether the new CCO has the same understanding.
- 84 The other aspect of the Department's support is the administrative and policy support it provides to the GWC. The PCRC also notes improvements in this area. For example, the Department has provided training opportunities to GWC members and improved the standard of GWC agenda papers prepared by departmental officers. However, as discussed in the previous part, much more needs to be done in this area.
- 85 Some of the matters referred to in Part Three have a relationship to Part Four in that a problem in GWC's manner of operating is often caused by or compounded by the Department's failure to adequately support the GWC. The following matters are particular issues in relation to the Department's support of the GWC.

Management of conflicts of interest

- 86 The Department has provided inadequate support to the GWC by its failure to identify and manage personal relationships between departmental employees and Perth Casino employees since as early as 2001.
- 87 Additionally, the deficiencies in the systems and processes of the Department have also ultimately not supported the GWC in its duty to mitigate the risk of regulatory capture of the GWC. In particular, the Department should not have permitted or encouraged departmental events at Crown Perth Resort and, more generally, the Department should have provided formal written guidance as to how departmental officers should conduct themselves in their dealings with the Perth Casino licensee.
- 88 Michael Connolly's (**Connolly**) personal relationships with officers of Perth Casino have been a particular area of inquiry. Both Connolly and the Department must take responsibility for their roles in failing to manage the conflicts of interest that Connolly had between his duties as the CCO and his personal relationships with officers of Perth Casino. This section focuses on the Department's role.
- 89 At different points in time, Barry Sargeant (**Sargeant**) and Duncan Ord (**Ord**) when they were each the Director General of the Department and *ex officio* chair of the GWC, became aware that Connolly had friendships with officers of Perth Casino. Those relationships were not managed in a way which supported the GWC to operate as an independent regulator. The Department should have:
- a. required Connolly to fully declare and explain the nature of those friendships;
 - b. ensured that they were declared to the GWC so that the GWC could exercise independent judgement over whether they required management; and
 - c. managed the conflicts appropriately at a departmental level in accordance with the Conflicts of Interests: Guidelines for the Western Australian Public Sector.¹⁵
- 90 Sargeant's and Ord's duties in regard to informing the GWC of the CCO's conflicts were particularly important given that they were each the *ex officio* chair of the GWC.
- 91 The failure of the Department to appropriately manage Connolly's conflicts of interest had a series of consequences, all of which could have been avoided had appropriate action been taken at an early point in time. Most relevant to the issue of the appropriateness of the Department's support of the GWC, the failure meant that the GWC was unaware that it was receiving advice from a CCO who had a conflict of interest between his duty to the GWC and his personal relationships with casino officers. Further the GWC was unaware that it was being represented in dealings with Perth Casino by a CCO with these conflicts. Both of these matters undermined the independence of the GWC.
- 92 The PCRC has not reached a conclusion that Connolly in fact favoured Perth Casino because of his social relationships. Nevertheless, in respect of a number of recommendations made by Connolly to the GWC, there was a potential for his personal relationships to affect the recommendations. There remains a potential that they did so.
- 93 Once the GWC was informed of the conflicts, the conflicts had the capacity to affect the confidence that the GWC should have in the objective and independent support it receives from the Department. Further, once the public were informed of the conflicts, they also had the capacity to affect the confidence that Western Australians should have in the standard of GWC's casino regulation.

Control of the flow of information

- 94** The Department assumed control over the provision of information to the GWC as the GWC was dependent on the Department for advice. The provision of information was most commonly through agenda papers. It is the adequacy of the provision of information in this way which has impaired the GWC's capability to effectively regulate certain strategic risks.
- 95** The PCRC observed a general failure of the Department to provide the GWC with arguments against an author's recommendation, as well as arguments in favour of it. As explored in Chapter Six: Junkets, in certain instances, material information was not disclosed to the GWC by departmental employees, nor were Perth Casino's submissions properly investigated prior to a recommendation being made to the GWC. Similarly, in attempts to assist the GWC in regulating gambling-related harm, the Department did not independently interrogate propositions advanced by Perth Casino in its submission to increase the number of EGMs on the casino footprint and change the minimum speed of EGM play. Each of these issues were the subject of submissions from Perth Casino on two separate occasions since 2010.
- 96** Information in respect of the monthly Operations Division meetings between Perth Casino officers and officers of the Department (which occurred after GWC meetings), was not ever formally reported to the GWC as a matter of course. Whilst the failure to do so has not been directly linked to the poor regulation of any particular strategic risk, it was unsatisfactory as it had the potential to compromise the GWC's capability more generally as the GWC did not always know what occurred at those officer level meetings.

Gaming and Wagering Commission's delegations

- 97** The Department assumed control over a number of the GWC's processes as a result of the GWC's dependence on the Department as it did not have its own staff. The Department maintains all of the GWC's records, including in respect of delegated power. While the Department retains the instruments of delegation and has records so that it can identify when delegated powers have been utilised by departmental staff, these instruments and records have not been aggregated and made accessible to the GWC.
- 98** The result is that when the PCRC examined all the delegations of power from the GWC to departmental officers, there were many instances of conflicting delegations and delegations not having been revoked at appropriate times.
- 99** Further, not all uses of delegated power had been consistently and adequately reported to the GWC. This has resulted in the GWC not being fully informed as to how it has regulated particular risks, including gambling-related harm and junkets. The GWC were not fully informed of the extent of changes made to its EGM policy and a portion of the Casino Manual (Operations) respectively.
- 100** A well-maintained schedule of delegations and register of decisions would have enabled the GWC (and the Department) to keep track of the power delegated and its use.

Induction of Gaming and Wagering Commission members

- 101** While it is the role of the chair of the GWC to ensure that new members are adequately inducted and trained, the Department, on behalf of the chair of the GWC, has the resources to ensure that this is done to an appropriate standard. That standard requires that there be a program of induction that equips new members with a base line level of knowledge about regulatory theory, the regulatory model used by the GWC for casino regulation, the regulatory framework and risks in the organisation and conduct of casino gaming operations.
- 102** The Department assumed responsibility for inducting and training new GWC members. The

process has been inadequate and inconsistent. This has led to members of the GWC being reliant on advice from the Department in relation to casino regulation. The Department has not supported the GWC by ensuring that the above standard was met.

Appointment and training of key regulatory officers

- 103** The Department appoints and employs the CCO and a number of departmental officers who frequently carry out casino regulation and exercise powers and discharge responsibilities of the GWC related to casino regulation. There is no consultation process with the GWC in respect of the recruitment of the CCO and other key regulatory officers. This is particularly inappropriate in respect of the CCO as they are the GWC's statutory officer.
- 104** This situation, and lack of instruction to the relevant officers about their obligations to the GWC and the Department, means that those officers tend to be accountable to the Department rather than the GWC. It should be made clear that any exercise of a GWC regulatory function is overseen by the GWC and the officers are accountable to the GWC for the manner in which they exercise a GWC regulatory function, whether under delegated power or under statute.
- 105** A related issue is the Department's lack of support to the GWC by not inducting the CCO and ensuring they undergo professional education and training in models of casino regulation and the risks in the organisation and conduct of casino gaming operations. The capability of the GWC has been hindered on a number of occasions and across a myriad of issues as a result of the CCO's guidance of the GWC, who, partly for reasons outside of their control, did not appreciate their proper role as the GWC's statutory officer or have the knowledge required of a senior casino regulatory officer.

Regulatory model and method of delivery of regulation

- 106** The Department has inadequately supported the GWC to advise it on the regulatory model that it should adopt to effectively regulate Perth Casino and to advise it on the appropriate delivery of that model of regulation.
- 107** In 2015, the Department told the GWC that it was adopting a risk-based method of casino regulation.¹⁶ Inadequate information was given to the GWC so that it could not exercise independent judgment as to whether this was an effective model of regulation and whether the delivery program proposed by the Department was appropriate.
- 108** In any event, the implementation of that model was flawed. It was not preceded by a comprehensive assessment of the risks of the organisation and control of casino operations. There was no determination of the primacy of the risks so that priority could be given in a logical way to the regulation of the risks. Consequently, the investigation and audit program that was produced was not focussed on some risks of casino gaming, including the regulations of junkets, money laundering and gambling-related harm.

Financial arrangements

- 109** There is no agreement between the Department and the GWC which establishes the method for determining the costs of casino regulation performed by departmental officers and how the Department will recoup those costs from the GWC. Consequently, it has been left to the Department to determine these matters. There have been occasions since at least 2009 when the GWC has not been satisfied as to the detail the Department has provided to substantiate its service fee charge. As the GWC has no independent Chief Finance Officer and the chair is also the DG of the Department, the GWC does not appear to have understood that it had the capacity to negotiate with the Department about these matters.

- 110** The PCRC has also identified that the Department failed to properly support the GWC by not separately determining the cost of regulating Perth Casino and providing that information to the GWC so that it could determine the adequacy or otherwise of the casino gaming licence fee and (or) GWC's income more generally. The flow on effect is that the GWC has been unable to ascertain whether it was appropriate for it to seek an appropriation from Parliament in order for it to discharge its casino regulation duties to an appropriate standard.

Problem Gambling Support Services Committee

- 111** The status of the PGSSC, and particularly that it is not a committee of the GWC, was unclear until late in the PCRC's inquiry. The PGSSC, is, nevertheless, an important committee because it is the only committee constituted by either the Department or the GWC that provides problem gambling support services.
- 112** The GWC has the power to appoint committees to advise it but the proper statutory process to do so was not carried out in respect of the PGSSC. Despite this, the Department permitted its work to be detailed in the GWC's annual reports, as if it was a committee of the GWC.¹⁷ Some members of the GWC did not know that the PGSSC existed and others thought that it was a committee of the GWC.
- 113** The Department failed to support the GWC by not ensuring that the status of the PGSSC was free from ambiguity and that the GWC understood the role, if any, that it had in directing or supervising the PGSSC's work and managing its finances.

Assessment of tax

- 114** The Department correctly understood the GWC's responsibility for ensuring the proper assessment of casino tax and implemented procedures by way of an inspection and audit program for the purpose of discharging that responsibility. However, there were some deficiencies in the Department's support of the GWC's discharge of its duty to ensure the proper assessment of casino tax.
- 115** In 2007, the Department articulated to Perth Casino, in a formal communication, that the Department considered that tournament fees and prizes were to be included in the calculation of Casino Taxable Revenue. However, the Department did not take steps to ensure that BNL calculated and paid casino taxes on that basis.
- 116** As of 2009 and thereafter, an inconsistency in the tax treatment of non-cashable credits between EGMs and table games does not appear to have been identified or, if identified, acted upon by any person in the Department.
- 117** The Department failed to adequately support the GWC by not informing the GWC in 2015 that the capability to independently verify the calculation of casino tax would be lost when the Department changed its software system to Navigate and, from 2015, by not implementing a system to independently verify the licensee's reporting of Casino Taxable Revenue by reference to source information.
- 118** Further, the Department did not organise annual audits of the casino licensee's revenue and tax systems by an accredited testing facility in accordance with Casino Compliance Strategy 2015/2016,¹⁸ which had been adopted by the GWC.¹⁹ Between 2015 and 2021, there were only two audits of this kind.
- 119** The Department has now decided to establish a casino tax working group comprising senior officers from the Department and the Office of State Revenue to address the issues concerning casino tax identified through the PCRC. The PCRC acknowledges that this is a positive step towards rectifying these past failings.

Endnotes

- 1 Western Australia, Government Gazette, 'Commission Terms of Reference' No 45 (12 March 2021) 1080 [PCRC.0026.0001.0001] 2.
- 2 See Chapter 1 and Chapter 5 of this Final Report for discussion of the three broad objectives of casino regulation.
- 3 BNL's casino gaming licence was issued for an indeterminate period. The proposition in a. relates to the grant of future licences.
- 4 *Burswood Casino – Directions* (23 February 2021) [GWC.0001.0006.0020_R].
- 5 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 33.
- 6 New Style electronic gaming machines are described in Chapter Thirteen: Electronic Gaming Machines.
- 7 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 25.
- 8 The work of the GWC increased substantially after the Bergin Report was published.
- 9 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 14(1)(a).
- 10 These are the GWC Act, the CC Act, the CBIA Act, the State Agreement and the Trust Deed.
- 11 GWC, letter to the PCRC (15 April 2021) [PCRC.0002.0036.0069] [3].
- 12 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 12(1) – (2).
- 13 PSC, *Good Governance for Western Australian Public Sector Boards and Committees* (2009) [PSC.0001.0001.0002] 4; PSC, *Board Essentials* (2014) [PUB.0032.0008.0003]; PSC, *Board Essentials* (2015) [PUB.0032.0008.0044] 14; *Board Essentials – Good Governance for Public Sector Boards and Committees* (2016) [PUB.0032.0008.0087]; PSC, *Board Essentials – Good Governance for Public Sector Boards and Committees* (2018) [PUB.0032.0008.0139]; PSC, *Governance Manual for Western Australian Boards and Committees* (2021) [PUB.0032.0008.0191].
- 14 Except in 2019 when there were no contributors by stakeholders.
- 15 Integrity Coordinating Group, *Conflicts of Interest: Guidelines for the Western Australian Public Sector* (June 2011) [PUB.0007.0011.0001].
- 16 GWC, agenda papers (23 June 2015 meeting) [GWC.0002.0016.0150_R] 58.
- 17 See for example: GWC, annual report 2019/20 [PUB.0002.0001.0658] 25 – 27.
- 18 GWC, agenda papers (23 June 2015 meeting) [GWC.0002.0016.0150_R] 57.
- 19 GWC, minutes (23 June 2015 meeting) [GWC.0002.0016.0151_R] 3.

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CHAPTER 15

Enhancements to the Regulatory Framework

CHAPTER FIFTEEN

Enhancements to the Regulatory Framework

Purpose of Chapter

- 1 ToR 11 requires the PCRC to report on matters which might enhance the existing regulatory framework in relation to casinos and casino gaming in Western Australia and the future capability and effectiveness of the GWC and the Department including any policy, legislative, administrative or structural reforms or changes.
- 2 Chapter Fourteen: Evaluation of Regulation of Perth Casino identifies, amongst other things, some legislative and operational deficiencies that have diminished the capability and effectiveness of the GWC, and the Department's support of the GWC, in discharging its regulatory functions and responsibilities.
- 3 Part One of this chapter draws on conclusions about deficiencies in the legislative framework and its application, makes recommendations for a change to the model of regulatory service delivery in Western Australia and structural reform of the regulator. Part Two outlines other reforms to the legislative framework for casino regulation that the PCRC recommends. Part Three makes recommendations about operational reforms to the regulator and the Department.
- 4 This chapter does not repeat recommendations that have been made elsewhere in this Final Report.

Part One: Structural regulatory reform

Structure of Gaming and Wagering Commission

- 5 The current structure of the GWC is outlined in Chapter Five: Regulation of Perth Casino. The PCRC takes the view that structural reform of the regulatory service model is required.
- 6 The result to which structural reform is directed is a regulator that is independent, appropriately skilled and resourced, has a clear understanding of its regulatory objectives and has powers to achieve them.
- 7 To that end, the PCRC has considered the relative merits of four alternative regulatory service delivery models that were summarised in the PCRC's Regulatory Theory discussion paper dated 12 November 2021 and published for comment. A summary of responses to that paper is annexed to this report at Appendix S: Summary of Responses to Regulatory Models.

Model One: Retain current model, with or without alterations

- 8 Model One suggested the current legislative framework be retained as is, or with some modifications. The modifications suggested included:
 - a. clarification of the purpose of the regulatory framework by the inclusion of an objects clause in the *Gaming and Wagering Commission Act 1987 (WA)* (**GWC Act**) and *Casino Control Act 1984 (WA)* (**CC Act**);

- b. the powers of the GWC be consolidated into one legislative instrument;
- c. the *ex officio* position currently held by the Director General (**DG**) of the Department be removed and a chair be a government appointee, independent of the Department;
- d. the deputy chair be elected by the board members from among their number;
- e. there be a clear regime for delegating the powers of the GWC and a register of delegations maintained;
- f. members of the GWC be appointed according to legislated criteria to ensure that it is representative of the Western Australian community and covers appropriate fields of expertise;
- g. there be a formalised service level agreement between the GWC and the Department for the provision of administrative and investigative staff;
- h. the Chief Casino Officer (**CCO**) be engaged full-time on GWC matters (that is, does not hold another role within the Department); attend and report to the GWC at each monthly meeting on all matters within the GWC's remit; and be a point of contact for the public in the case of concerns about casino and other gaming;
- i. the regulator be financially resourced from levies such as the casino tax and licence fee, supplemented by government if necessary;
- j. the funds of the GWC be administered separately to those of the Department; and
- k. there be external oversight of the operations of the GWC (for example, a role similar to that played by the Parliamentary Inspector of the Western Australia Corruption and Crime Commission).

9 The suggested modifications posited by Model One emphasise the independence of the GWC's governance from the Department and the streamlining of the GWC's powers. However, unlike Models Two and Three considered below, most of the residual operational dependence of the regulator on the Department is retained.

Model Two: Independent statutory body within a new legislative framework

10 The second model posited was the formation of an independent statutory body (similar to that of the former Victorian Commission for Gaming, Liquor and Racing (**VCGLR**), without duties in respect of liquor regulation. The PCRC notes that, as at 1 January 2022, the VCGLR was replaced in name by the Victorian Gambling and Casino Control Commission (**VGCCC**).¹ At the time of writing, provisions regarding changing the model of regulatory service delivery for that body have been enacted but are not in force.

- 11 In the discussion paper, Model Two was described as having the following characteristics:
- a. the powers of the regulator are consolidated into one legislative instrument;
 - b. there is clarification of the purpose of the regulatory framework by the inclusion of an objects clause and (or) a principles clause;
 - c. the chair is experienced in regulatory and legal administration (for example, a retired judge, or senior barrister or legal practitioner with relevant experience) as an alternative to external oversight;
 - d. the deputy chair is elected by the board members from among their number;
 - e. members of the board of the regulator are appointed according to legislated criteria to ensure that it is representative of the Western Australian community and covers appropriate fields of expertise;
 - f. the regulator has, as a minimum, the following employees:

- i. a full time Chief Executive Officer (**CEO**) who is also the CCO, who shall attend and report to the regulator at each monthly meeting on all matters within the GWC's remit;
 - ii. a Chief Financial Officer (**CFO**) solely dedicated to the work of the regulator;
 - iii. an administrative/executive assistant with regulatory experience (such as a policy officer) to support the CEO, CFO, and regulator members, lessening any requirement for assistance from a government department; and
 - iv. any other necessary employees such as inspectors or experts for the provision of advice or training retained on a contract basis.
- g. there is a clear regime for delegating the powers of the regulator and a register of delegations maintained;
- h. the regulator is financially resourced from levies, such as the casino tax and licence fee, supplemented by direct funding from government appropriations if necessary; and
- i. the functions of the regulator are identified in legislation with the capacity for the regulator to identify and regulate emerging risks which may arise in future, as it sees fit. This feature of the model embraces a risk-based method and anticipates the regulator's need to be adaptable to new risks which may arise because of, for example, advancements in technology.

Model Three: Stand-alone casino regulator

- 12** The third model posited was the creation of an independent statutory body dedicated to the oversight and regulation of casino and other gambling activities regulation, excluding wagering.
- 13** Singapore (where there are only two casinos),² has a stand-alone casino regulator, the Casino Regulatory Authority established under the *Casino Control Act 2007* (Singapore).
- 14** The key difference between Models Two and Three is the scope of the regulator's responsibilities. In Model Two, the regulator would retain responsibility for all casino gaming, gambling and wagering regulation. In Model Three, the regulator would be dedicated exclusively to casino gaming regulation.
- 15** In the discussion paper, the characteristics of proposed Model Three were outlined as follows:
- a. the powers of the regulator are consolidated into one legislative instrument;
 - b. there is clarification of the purpose of the regulatory framework by the inclusion of an objects clause and (or) a principles clause;
 - c. the regulator focuses solely on regulating casino and gaming operations;
 - d. the chair is someone experienced in regulatory and legal administration (for example, a retired judge, or senior barrister or legal practitioner with relevant experience) as an alternative to external oversight;
 - e. the deputy chair is elected by the board members from among their number;
 - f. members of the board are appointed according to legislated criteria to ensure that it is representative of the Western Australian community and covers appropriate fields of expertise;
 - g. there is a full suite of staff, including:
 - i. a full time CEO who is also the CCO, who shall attend and report to the board of the regulator at each monthly meeting on all matters within the regulator's remit;

- ii. a CFO solely dedicated to the work of the regulator;
 - iii. administrative/executive assistants with regulatory experience (such as a policy officer) to support the CEO, CFO, and board members; and
 - iv. any other necessary employees such as inspectors or experts for the provision of advice or training retained on a contract basis;
- h. there is a clear regime for delegating the powers of the regulator and a register of delegations maintained;
 - i. the regulator is financially resourced from levies such as the casino tax and licence fee, supplemented by direct funding from government appropriations if necessary; and
 - j. the functions for the regulator are identified in legislation with the capacity for the regulator to identify and regulate emerging risks which may arise in future, as it sees fit. This feature of the model embraces a risk-based method and anticipates the regulator's need to be adaptable to new risks which may arise because of, for example, advancements in technology.

Model Four: Absorb casino regulation into the Department

- 16** The fourth model posited in the discussion paper was to abolish the GWC and have the casino industry and other gaming and wagering regulated directly by the Department. In this model the powers of the GWC would be transferred to the DG of the Department, who would be given the power to:
- a. delegate certain duties to departmental employees (with casino regulation experience) as they see fit; and
 - b. contract out services, for example audit and inspection, as they see fit.
- 17** The revamp of the legislative instruments would still see the inclusion of an objects clause and (or) a principles clause to clarify the purpose of the regime for the Department-regulator. There would also need to be a clear regime for delegating the powers of the GWC and a register of delegations maintained. These matters are discussed further below.
- 18** This model is similar to that currently operating in Queensland, where a dedicated Office of Liquor and Gaming Regulation sits within the Department of Justice and Attorney-General and administers the liquor and gaming legislation. It has an Executive Director and three divisions: compliance, licensing and organisational services.

Consideration and recommendation

Model One

- 19** Model One is, in essence, a proposal to retain the current legislative structure with amendments to the relevant Acts to ensure that key issues arising from the PCRC's Inquiry are addressed.
- 20** In this model, as has been the case historically, the GWC would be structurally dependent on the provision of services by the Department in the delivery of its core functions. Accordingly, the success of Model One may depend, in part, on the nature and terms of any service level agreement between the GWC and the Department.
- 21** The PCRC acknowledges that the Department and the GWC are, at the time of writing, undertaking a work programme that includes the development of a service level agreement. The PCRC is not privy to the terms of the service level agreement under consideration.

- 22** The evidence adduced during the PCRC’s Inquiry indicates an over-reliance on the Department by the GWC in the delivery of casino regulation. The PCRC considers that a service level agreement, alone, may not be sufficient to create an efficient and effective regulatory framework in the future. Instead, what is required is structural change. It is difficult for a regulatory body to maintain the required level of independence when it is a small, part time group of lay people entirely dependent on a large government department for administrative support, policy advice and service delivery personnel. The PCRC’s conclusion is that, under the current arrangements, the GWC has not achieved effective regulatory outcomes in casino regulation. The PCRC considers that the structural independence of the casino regulator, is integral to an effective regulatory framework.
- 23** The PCRC is also concerned that the Department does not have the resources to provide the level of support to the GWC that Model One requires. The Department’s closing submission to the PCRC was to the effect that it was inadequately resourced to meet the expectations of the GWC as to casino regulation.³ The GWC has labelled the Department as ‘resource-constrained’,⁴ and contends, in effect, that those constraints have affected the Department’s ability to support the GWC.⁵
- 24** There has been intense focus on casino regulation in Australia in recent years and it seems likely that the tasks of a regulator will become more onerous. The PCRC considers that the retention of the current model, even with the introduction of a service level agreement and refined funding arrangements, will demand more Departmental resources to support the GWC.
- 25** Finally, the PCRC considers it would be inappropriate to retain the current model even with modifications. As outlined in Chapter Fourteen: Evaluation of Regulation of Perth Casino, the current legislative framework is compromised in material respects by a number of factors. The PCRC considers that those deficiencies are so fundamental to the current legislative framework that, even though select amendments may be able to be grafted onto the current legislation, the result would not deliver the best practice model of modern casino regulation for the State.
- 26** In the PCRC’s view, the State would benefit from a new legislative regime which better reflects modern principles of regulation. For those reasons, the PCRC concludes that Model One is not an appropriate model for casino regulation in Western Australia.

Model Four

- 27** The PCRC notes the Department’s submission that Model Four is most closely aligned to the reforms introduced by the whole of government initiative known as ‘Streamline WA’, which is a State Government initiative principally to ‘drive approvals reform’ but also to improve regulatory efficiency within the Western Australian public sector.⁶
- 28** In general terms, all four models are consistent with the objectives of Streamline WA to the extent that each one seeks to improve the standard of casino regulation, in part by improving efficiency. The issue for the PCRC is which model is most likely to achieve the regulatory objectives.
- 29** The PCRC notes that there are advantages, in terms of ensuring the independence of the regulator, in having a clear demarcation between the policy making aspects of regulation and the administration of the regulatory framework. There are further advantages in casino and gaming regulation not having to compete for resources with the Department’s other regulatory responsibilities, principally liquor regulation.
- 30** Ultimately, the PCRC finds that Model Four is not appropriate given issues that have emerged during the Inquiry as to the Department’s available resources and its relationship with, and level and nature of the support to, the GWC.

Models Two and Three

- 31** In the PCRC's view, Models Two and Three are appropriate models for the restructure of the regulator.
- 32** Each of Models Two and Three accord most closely to a hybrid regulatory approach to regulation, where the regulator is guided by an objects clause and afforded flexibility in the method it deploys to identify and mitigate strategic risks, while retaining some prescriptive rules about certain issues.
- 33** Importantly, Models Two and Three afford the regulator a greater degree of independence. By giving the regulator power to employ its own staff, including a CEO, CFO and administrative or executive assistants, and to contract the roles of inspectors and other experts, Models Two and Three will reduce the degree of reliance of the regulator on others for the administration of its core duties. The regulator will retain its ability to contract with the Department for services as and when it requires.
- 34** The joint CEO and CCO role should be a full-time commitment, as this will best facilitate the independence of that role from other roles within government. However, it may not be necessary for all other employees to be engaged on a full-time basis. Much will depend on the nature of the roles and flexibility should be preserved.
- 35** Another advantage of Models Two and Three is that they enable the regulator to contract with inspectors and experts when required. For example, the regulator would have the ability to contract with a consultancy firm or forensic accountant when undertaking a review of the casino licensee's suitability.
- 36** The particular advantage of a standalone regulator such as that posited by Model Three, compared to Model Two, is that resources and expertise are dedicated exclusively to casino regulation. However, the PCRC doubts whether the current structure in this State, of one casino with a monopoly on electronic gaming machines (**EGM**) can justify the cost of a stand-alone casino regulator. There may also be issues with the capacity to attract officers with the requisite knowledge and experience. A standalone regulator may also be more vulnerable to regulatory capture.
- 37** In the PCRC's Regulatory Theory Discussion paper, the risk assessment approach to regulation is described as a 'risk-based method'. For reasons outlined in further detail below, the PCRC does not favour a risk-based method for the regulator to managing extant and emerging risks at the Perth Casino. The PCRC instead favours a less prescriptive method in which the regulator has the ability to regulate risk in the manner it chooses. Further, the PCRC is not of the view that the chair of the regulator must have senior legal experience. It is only necessary for the chair to have senior governance and (or) regulatory experience. The PCRC considers that Model Two, with modifications as to the preferred method of regulating risk and the required experience of the chair, is appropriate.
- 38** Against that background, the PCRC finds that Model Two (as modified) is the preferred option and recommends the adoption of that model.
- 39** The PCRC notes that the implementation of Model Two (as modified) will likely require the reconstitution of the regulator pursuant to new legislation. This should not be seen as a reflection on individuals who are currently involved in the regulation of Perth Casino at the Department or the GWC. They may have important roles to play in the regulation of Perth Casino during any transition period and into the future.

Timeframes for structural regulatory reform

- 40 The implementation of Model Two (as modified) in its entirety could take some time. Full implementation will require the reconstitution of the regulator and the consolidation of the regulator's powers into one legislative instrument.
- 41 As a matter of practical reality, the existing regulatory arrangements will have to remain in place during any transition period. However, there are some changes that could and should be implemented in the interim which the PCRC considers would enhance the functioning of the existing regulator.
- 42 The PCRC recommends that the following interim measures are taken while other suggested changes to the legislative framework are being implemented:
- a. the appointment of an independent chair in place of the DG as *ex officio* chair of the GWC (a change that has the support of most interested parties);
 - b. the election of a new deputy chair from among the GWC's members; and
 - c. the funds of the GWC be administered separately to those of the Department. In circumstances where the GWC does have an independent CFO, existing arrangements making use of Department staff should continue, but with an increased focus on transparency and accountability to the GWC.

Part Two: Legislative reforms

First principles – regulatory approach

- 43 The theoretical underpinning of different regulatory approaches is set out in Appendix F: Regulatory Theory to this report. The submissions of interested persons as to the merits of those different approaches is also set out in Appendix F. The PCRC draws from that analysis for the purpose of explaining its preferred approach to the reform of casino regulation in Western Australia.

Specifying regulatory obligations

- 44 There are broadly three approaches to the specification of regulatory obligations: rules-based, standards or performance-based, and principles-based. A combination of any two of those approaches is known as a hybrid regulatory approach.
- 45 A principles-based model for the specification of regulatory obligations has much to recommend it. This approach gives the regulator greater flexibility to adjust the delivery model for regulation as the nature of casino gaming and related operations evolve and change over time.
- 46 The PCRC has recommended the adoption of three levels of regulatory tools to enact a primarily principles-based approach to the new legislative framework: an objects clause; a duties clause; and the enhancement and clarification of the regulator's powers, including an expansion of the regulator's investigation, prosecution, and enforcement powers.
- 47 A model that is primarily principles-based can still accommodate some prescriptive regulatory rules. In particular, the PCRC considers that the following aspects of the regulatory framework will need to be prescribed in legislation:
- a. its role as a gaming and wagering regulator;
 - b. independence from government and the Department;

- c. adequate resourcing by those to be regulated with the ability to seek additional funding from government;
 - d. independence and appropriate skills of the chair;
 - e. appropriate skills and remuneration of the board;
 - f. the power to employ staff;
 - g. employment of a CEO, CFO and administrative staff members who are not officers of the Department;
 - h. the CCO (or similar chief gaming and wagering officer) to be the CEO of the regulator;
 - i. power to contract with government or private sector entities to provide staff and other services, with service agreements;
 - j. delegation powers to be clarified with requirement for a register of delegations and decision made under delegation to be maintained;
 - k. the power to regulate by direction casino gaming operations and matters related to them should be clarified and, if necessary, expanded; and
 - l. directions made by the regulator to the casino should be publicly available.
- 48** In view of the requirement for prescriptive legislation of some matters, the regulatory services model recommended by the PCRC most closely aligns with a hybrid regulatory approach.

Meeting the regulatory objectives

- 49** The PCRC considers that, apart from some limited exceptions, the regulator should generally not be limited in the manner in which it regulates the management of strategic risks associated with casino gaming operations.
- 50** One exception is the risk of harm from casino gaming. As discussed elsewhere in this report, it is commonplace in other jurisdictions for a responsible service of gaming code of conduct and its contents to be prescribed, either in legislation or as mandatory conditions on a casino licence.
- 51** Another exception is in relation to the risk of junkets. In view of the known risk junkets have posed to the integrity and lawfulness of casino gaming operations, the PCRC favours a statutory prohibition of all junkets that are not authorised by the regulator.
- 52** A further general prescription that the PCRC proposes is that the casino licensee be the subject of periodic review for suitability as a means of maintaining the continuing suitability of the licensee, the accountability of the licensee to the regulator and public confidence in the licensee and the casino operations.
- 53** In respect of other strategic risks from casino gaming, such as criminal activity and integrity of gaming, the PCRC's preference is that the regulator should be left to decide how to manage those risks. In the PCRC's preferred model, the new regulator will be equipped with a variety of regulatory tools, including broad information-gathering, investigative and prosecutorial powers, and an expanded directions-making power. In discharging its duty, the regulator could, for example, issue a direction to the casino that it must devise and comply with a risk management plan in respect of a particular risk, and submit it for review by the regulator. A failure by the casino to comply with the risk management plan would constitute a breach of direction which would, in turn, attract a regulatory penalty.
- 54** The risk of casino gaming operations being used to facilitate money laundering is already the subject of regulatory oversight through federal legislation, as explained in Chapter Eight:

Money Laundering. Given that, it is appropriate for the regulator to have some flexibility as to how it regulates that risk in respect of casino gaming operations, so that it may cooperate appropriately with other relevant regulatory bodies and law enforcement agencies.

- 55** The approach of limited statutory intervention in ensuring regulatory objectives are met aligns most closely with the 'Really Responsive' approach outlined in Appendix F: Regulatory Theory. This approach is characterised by its flexibility and empowers the regulator to not only respond to the compliance responses of the regulated entity, but to consider how best to deploy regulatory tools and strategies, the attitudinal settings of regulated entities, the broader institutional framework of the regulatory regime and changes in regulatory priorities, circumstances and objectives. In the PCRC's view, it is the most suitable approach to enforcing regulatory objectives.
- 56** Importantly, the PCRC considers that the current constitution of the GWC as a part-time, lay board with minimal resources independent of Departmental support, is not fit for purpose to administer the regulatory approach preferred by the PCRC. If the PCRC's recommendation as to the adoption of Model Two (with modifications) is not accepted, the PCRC would be in favour of a more prescriptive approach to both specifying the regulatory obligations and to meeting the regulatory objectives.

Objects, Duties and Powers of the regulator

- 57** The PCRC considers that there are three key regulatory tools that are necessary to realise the modern, hybrid regulatory model for casino regulation in Western Australia and to achieve the goals of an independent and well-resourced regulator. Those tools are:
- a. an objects clause;
 - b. a duties clause; and
 - c. expansion and consolidation of the powers of the regulator.

Objects clause

- 58** As already explained in Chapter Five: Regulation of Perth Casino, neither the CC Act nor the GWC Act contain a clause that explain the regulatory objectives of those Acts. The PCRC has concluded that the absence of an objects clause in each Act has impeded the GWC's ability properly to understand its role in casino regulation and the Department's role in supporting the GWC. This lack of understanding has, in turn, led to a narrow view of the GWC's regulatory responsibilities.
- 59** The purpose of an objects clause within a regulatory framework is to achieve a regulatory outcome by setting a general objective or a standard, or describing a general duty, but without specifying the means of achieving that outcome, leaving it to other bodies to interpret the meaning of the object in a particular context.⁷
- 60** An objects clause may relate to the general aspirations of the legislation or provide decision-makers with guidance as to how to apply the legislation.⁸ Objects clauses can give 'practical content' to abstract terms.⁹
- 61** There was universal agreement from the those who made submissions to the PCRC that an objects or principles clause should be adopted.
- 62** The PCRC favours the adoption of broadly expressed objectives, so as not to delimit or confine the regulator in future to be flexible in its approach to regulation in the face of changing circumstances.
- 63** The PCRC recommends that an objects clause be included as part of the new gaming and wagering legislation including the three objectives of casino regulation.

Duties clause

- 64** The PCRC takes the view that the inclusion of a duties clause in the legislation is necessary to complement the expressed regulatory objectives. The PCRC observes that the GWC's effectiveness in regulating some of the identified extant and emerging strategic risks may have been impeded by a failure properly to understand its regulatory responsibilities. The advantage of a duties clause is that it promotes an accurate and uniform understanding of what is expected and required of the regulator.
- 65** Given what has emerged in the Inquiry regarding the regulation of extant and emerging risks and its evaluation of the GWC and Departmental support, the PCRC considers the following duties should be included in a duties clause:
- a. the regulation of the identified extant and emerging risks in the Bergin Inquiry and PCRC;
 - b. the ongoing identification of strategic risks;
 - c. ensuring that the licensee is identifying and mitigating the extant and emerging risks of casino gaming;
 - d. ensuring that the licensee is mitigating gambling-related harm;
 - e. the investigation of suspected breaches and enforcement of breaches of the regulatory framework;
 - f. ensuring the integrity of casino gaming operations;
 - g. ensuring the probity and suitability of those engaged in casino gaming operations;
 - h. prevention of criminal infiltration including money laundering; and
 - i. collaboration with State and Territory authorities to mitigate the risk of criminal infiltration and criminal activity associated with casino operations.
- 66** From this Inquiry it has become apparent that the GWC has been overly reliant on other regulatory bodies such as AUSTRAC, Border Force or the VCGLR to discharge functions that are the responsibility of the GWC. Hence, the PCRC considers that the legislation should be clear that, while collaboration with other agencies is encouraged, it is the duty of the regulator, and not any other agency, to regulate casino operations and achieve the objectives of the legislation.
- 67** The PCRC recommends that a duties clause be included as part of the new gaming and wagering legislation including the duties as set out above.

Powers of the regulator

- 68** The independence and effectiveness of the regulator is, in part, reliant on there being a clear outline of its powers in the legislative framework. In the current legislative framework, the GWC's duties and powers are spread across three legislative instruments: the CC Act; the GWC Act; and *Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985 (WA)* (**CCBILE Regs**). This is a source of confusion and the PCRC considers the regulator's powers as to casino gaming should be consolidated into one legislative instrument.
- 69** As outlined above, the PCRC does not favour an approach which prescribes the manner in which the regulator is required to regulate risks. Instead, the PCRC favours equipping the regulator with broad powers to utilise to discharge its duties and achieve the regulatory objectives.

- 70** The PCRC considers that the GWC's powers under the current legislative framework are generally adequate for the new regulator. To the extent that any of the powers need specific refinement or clarification, for example the power to give directions, those refinements are discussed further below.
- 71** As to the powers of the regulator, the PCRC recommends the consolidation of the regulator's current powers and that the new legislation specify the powers available specifically for casino regulation.

Ministerial powers

- 72** The PCRC considers that the regulator, upon conducting a review as to suitability, is well placed to provide advice on the question of whether or not to grant, maintain, revoke or impose conditions on a casino licence. As advice that is given by a body that is intended to be independent of government, it is important to ensure that the government has appropriate regard to that advice. However, it is equally important that government is accountable to the people for a decision about a casino licence, which may have significant importance to the community and the economy of the State.
- 73** One of the main sources of power by which the Minister can be informed as to questions of suitability, and generally in relation to the control of casino licensing, is in s 21A and s 21B of the CC Act. These sections allow the Minister to call an inquiry and to take account of the resulting report. During this Inquiry, questions have been raised as to the reach of those sections and their interaction with inquiries such as the PCRC. The sections were introduced into the CC Act in 1987 and were last amended in 1998. Whether they remain the best means by which the apparent legislative intent can be fulfilled is open to debate. The effect of the PCRC's recommendations in this chapter call for a wide-ranging review of the CC Act and it would be appropriate to include a review of those sections in conjunction with other legislative provisions.
- 74** Section 21A(9) of the CC Act confers on an inquirer commissioned pursuant to s 21A(5) of the CC Act all the powers of a Royal Commission and a Royal Commission chair. The PCRC considers that it is a deficiency in s 21A(9) of the CC Act that an inquirer does not also enjoy the same protections, privileges and immunities of a Royal Commission and a Royal Commission chair.
- 75** The PCRC recommends that the Minister retain their current legislative powers (for example, in relation to approving foreign ownership) and the decisions to grant a casino licence, to revoke a casino licence, or to impose conditions on a casino licence.
- 76** The PCRC recommends that the regulator be required to submit its independent report to the Minister on any occasion that a decision to grant a casino licence, revoke a casino licence or impose a new condition on a casino licence is to be made by the Minister, that the report be required to be tabled in Parliament and that if the Minister does not accept its recommendation, they be required to table a written explanation for why they did not do so.
- 77** The PCRC recommends that there be a general review of the scope and operation of s 21A and s 21B of the CC Act.

Directions

- 78** The regulation of the casino by direction is an appropriate method of regulation. As noted in Chapter Two: History of Perth Casino, it has also, historically, been the primary means of regulation of Perth Casino. However, construed strictly, the power to make directions under s 24 of the CC Act only applies to directions made to the casino licensee. This presents a practical difficulty in that, arguably, s 24 directions only bind the casino licensee, Burswood

Nominees Ltd (**BNL**), and do not bind the balance of the Burswood entities or Crown's group operations. The same issue arises in respect of s 33 of the CC Act which prescribes an offence for a breach of a s 24 Direction.

- 79 The PCRC considers that, in order for the penalties provision for breach of direction to be an effective deterrent, the provision should be expanded so that a penalty for breach of direction by any person applies to both the person and the casino licensee. This amendment would overcome the difficulty with the arguably narrow application of the current s 33 of the CC Act and ensure the casino licensee was held responsible for breaches of directions made by its employees and associates.
- 80 A further complication in the use of the directions power as the primary means by which Perth Casino is regulated, is that the directions power only applies in respect of the casino licensee's gaming operations, including internal controls, administrative and accounting procedures. Arguably, the power to give directions only arises in respect of Perth Casino's controls or procedures. The PCRC considers that the statutory limitation to the scope of the directions power may have contributed to the GWC taking a narrow view of its regulatory responsibilities.
- 81 As an integral tool in the regulatory services delivery model envisaged by the PCRC, the directions power ought to be reviewed and expanded so the power can be used by the regulator in the furtherance of any of the regulatory objectives and the discharge of any of its duties. There should be no room for doubt that the regulator can, for example, give directions to those involved in conducting the Perth Casino operations for the purpose of regulating the risks of junket operations, money laundering risks, the risks of other criminal activity, risks to the integrity of gaming and harm minimisation.
- 82 The PCRC also considers that it would be appropriate to expand the directions power to include the power to engage a person approved by the regulator to inquire into and report on any matter relevant to the performance of the regulator's functions or in relation to the conduct of casino operations. That power should be exercisable, reasonably, at the casino's expense. An appropriate formulation of such a power is contained in s 23(3) of the Victorian *Casino Control Act 1991* (Vic).
- 83 As noted in Chapter Five: Regulation of Perth Casino, the GWC creates binding procedures for table games through the exercise of its power under s 24. The Directions require the Casino Manual (Games Procedures) (**CM(Games)**) to be maintained and there is clarity around the extent to which the CM(Games) is binding on the casino licensee. The relationship between the Directions and the Casino Manual (Operations) (**CM(Ops)**) is more complicated. The PCRC has concluded that the Directions and the CM(Ops) are unclear about the extent to which compliance with the CM(Ops) is required by the Directions.
- 84 The PCRC considers the ambiguity regarding the relationship between Directions and the CM(Ops) to be unsatisfactory, particularly when it is the GWC's primary means to regulate and oversee Perth Casino's operational procedures. The PCRC considers that the entirety of the CM(Ops) should be the subject of a binding direction. Any matter presently contained in the CM(Ops) that is not properly the subject of direction and regulation by the GWC should be removed.
- 85 The PCRC recommends:
- a. that the directions power under s 24 be reviewed and expanded, to include the power to make directions as to;
 - i. all operations of the Perth Casino, not just gaming operations;
 - ii. any reasonable regulatory measure or requirement;
 - iii. the Perth Casino's controls and procedures; and

- iv. the regulator’s power to engage at the casino licensee’s cost, on the terms and conditions approved by the regulator, a person approved by the regulator to inquire into and report to the regulator on any matter relevant to the performance of the regulator’s functions in relation to the casino licensees, its associates or the conduct and organisation of casino operations;
- b. that any direction given by the regulator bind the licensee and any person or entity concerned in the organisation and conduct of casino gaming operations; and
- c. that the licensee be strictly liable as a party to a breach of a direction by any person subject to that direction.

Compliance and enforcement – investigative powers, prosecutions and prescribed offences

- 86** Casino regulation in Western Australia is complicated by the regulator having its general powers, duties and functions under the GWC Act, while casino regulation specifically is provided for in the CC Act. This creates ambiguity as to whether certain powers under the GWC Act may be used by the GWC for the purposes of casino regulation under the CC Act. The GWC’s powers ought to be consolidated into one Act and the ambiguity removed as to which powers may be used for casino regulation.
- 87** The penalties for offences created by the CC Act and GWC Act are inadequate. To take two examples: a contravention of a direction issued under the CC Act attracts a fine of \$5,000 in the case of a body corporate;¹⁰ and, if the casino licensee allows the playing of a game other than an authorised game, that also attracts a fine of \$5,000. Penalties should be set at a level, relative to the profits earned from casino gaming that serve as a genuine deterrent to unauthorised conduct.
- 88** The *Casino and Gambling Legislation and Amendment Act 2021 (Vic)* makes an amendment to the *Casino Control Act 1991 (Vic)* in respect of the costs of disciplinary action.¹¹ The new s 20A will give the Victorian regulator the power to require the casino operator to pay to the regulator the reasonable costs and expenses in:
- a. investigating whether the grounds for disciplinary action are made out;
 - b. considering any submissions made by the casino operator; and
 - c. preparing for and taking the disciplinary action.
- 89** While the GWC does not have the power to take disciplinary action, the PCRC considers it appropriate that the new regulator have the power to recover the reasonable costs and expenses of investigation and enforcement action undertaken by the new regulator.
- 90** The PCRC recommends:
- a. that the investigative and enforcement powers of the regulator under the current GWC Act be replicated in any new legislation;
 - b. that there be a review of the penalties for regulatory offences, and that in most cases, those penalties should be increased. In respect of the penalties for offences relating to the conduct of casino gaming and casino operations by the casino licensee, those penalties should be increased very substantially; and
 - c. that the regulator be given the power to recover its reasonable costs and expenses of investigation and enforcement action taken against the licensee.

Framework for licensing

- 91** As noted earlier, the current framework does not, but should, require a periodic review of the suitability of a casino licensee or its close associates. There is also no legislative definition of 'suitability'. These are deficiencies which need to be addressed.
- 92** In Victoria, the former VCGLR was required to, at least every five years, investigate and form an opinion as to the following (which is provided to the Minister):¹²
- a. whether or not the casino operator is a suitable person to continue to hold the casino licence;
 - b. whether it is being compliant with various legislation and regulations and any other required documents or agreements; and
 - c. whether it is in the public interest that the casino licence should continue.
- 93** This obligation has remained in place for the new VGCCC.
- 94** Similar requirements are found in the New South Wales¹³ and Tasmania.¹⁴ The Northern Territory casino legislation has an objects clause which includes the maintenance of the probity and integrity of persons engaged in gaming in the Northern Territory.¹⁵
- 95** The PCRC considers there is merit in the Tasmanian model which assumes at the first review that the licensee will retain the licence, but not thereafter.
- 96** The PCRC considers that a definition of suitability or guidance as to what it means to be a suitable person should be included in the legislation. As a statement of general principle, issues of openness, honesty, competence and accountability should guide the process. In some jurisdictions the approach has been taken of listing factors that should be taken into account.¹⁶
- 97** The PCRC recommends that:
- a. there should be periodic reviews of a casino licence by the regulator at least every five years, with the review to be tabled in Parliament;
 - b. the matters which the regulator must take into account in reviewing the casino licence should be included in amending legislation; and
 - c. the legislation should define or give guidance as to what it means to be a suitable licensee and a suitable close associate of the licensee.

Junkets

- 98** On 23 February 2021, the GWC issued a Direction that: '[t]he Casino Operator shall not participate in the conduct of Junkets, Premium Player Activity or Privileged Player Activity'.¹⁷ While this Direction is in place, the casino operator is unable to permit junket operations at Perth Casino.
- 99** Different approaches can be taken to the regulation of junkets. Singapore imposes a legislative prohibition on such operations, with provision for licensing of junket operators by the Casino Regulatory Authority. Western Australia, Queensland and New South Wales contain no such legislative prohibition, but confer the power to make regulations, including for prohibiting or regulating junket operations. The Bergin Report's primary recommendation was an unconditional prohibition on New South Wales casino operators dealing with junket operators.¹⁸
- 100** The Singaporean approach of a general legislative prohibition, subject to the regulator's power to license junket operators, permits case-by-case evaluation of the risks associated with junket operations. Where those risks are sufficiently mitigated, the public interest

benefits are made available to the State.¹⁹ This regulatory model requires that the regulator is sufficiently resourced to carry out background and probity checks to the required standard. The regulator must also be astute to the risks of money laundering and criminal activity in junket operations.

- 101** It is possible that junkets may return to form part of the operations of Perth Casino in the future. Each of the Department, Crown and GWC considered that there should be no statutory prohibition on junket operations at Perth Casino.
- 102** The PCRC does not favour banning junkets entirely, given that there may be circumstances where it is appropriate to permit the casino to pursue business opportunities that might have some of the indicia of junkets but in relation to which the risks can properly be managed. What is important is that the legislation makes it clear that junkets and junket operators are prohibited by legislation unless they are authorised or licensed by the regulator, and that instances of illegal or suspicious activity are identified by the casino and (or) the regulator in respect of junket activity are reported to the relevant investigative agency.
- 103** Consequently, the PCRC concludes that the Singapore model is an appropriate model of junket regulation in Western Australia.
- 104** The PCRC recommends that junkets and junket operators be prohibited by legislation unless they are authorised or licensed by the regulator. Further provisions should be inserted in the legislation to ensure that the risks posed by junket operations are properly mitigated by the casino and regulated by the regulator.

Harm minimisation

- 105** The PCRC considers that the findings in Chapter Twelve: Harm Minimisation give rise to recommendations for enhancements to the regulatory framework in respect of harm minimisation.

Express duty to mitigate harm

- 106** The PCRC has already recommended that a duties clause be included in the new legislative regime and that one of the duties considered for inclusion is that the regulator prevent and minimise gambling-related harm.
- 107** Modern regulatory frameworks in other states include harm minimisation as an objective of regulation or as a duty of the regulator. In New South Wales, Victoria, and South Australia the object or function of the regulator includes to administer systems or develop strategies to minimise gambling-related harm.²⁰ In South Australia, it is a function of the regulator to assist with or coordinate research in relation to harm minimisation and approach harm minimisation proactively.
- 108** In line with contemporary frameworks for the regulation of casino gaming in Australia, the PCRC has made a recommendation for the inclusion of a harm mitigation duty.
- 109** Further, the PCRC considers that there should be a commensurate, statutory obligation placed on the casino licensee to mitigate gambling-related harm.
- 110** In Sweden and New Zealand there is a statutory duty imposed on the casino licensee in relation to harm. In Sweden, that duty is to ensure health protections are taken into account in order to protect players from excessive gambling or to assist with reducing gambling where necessary. In New Zealand, it is to ensure all reasonable steps are taken to assist patrons experiencing gambling related harm.²¹ The RCCOL Report recommended that casino operators should have 'a duty to take all reasonable steps to prevent and minimise harm from gambling, including by monitoring the welfare of players, discouraging intensive and

prolonged play and intervening when a person is displaying behaviour that is consistent with gambling harm'.²²

- 111** In Chapter Twelve: Harm Minimisation, the PCRC concludes that it is likely that when the GWC approves game rules or declares a game to be authorised, it is required, pursuant to its duty as to harm minimisation under the CC Act, to take into account the minimisation of gambling-related harm. However, it is not clear from evidence before the PCRC that the GWC took the minimisation of gambling-related harm into account when doing so. The new legislative regime should make this requirement explicit.
- 112** The PCRC recommends the inclusion of a legislative requirement the casino licensee has a duty to take all reasonable steps to mitigate gambling-related harm.
- 113** The PCRC recommends the legislation be amended to explicitly require that the regulator consider the need to minimise gambling-related harm when determining:
- a. whether to declare a game as authorised;
 - b. whether to approve rules; and
 - c. whether to amend those rules.

Mandatory Responsible Service of Gaming code of conduct

- 114** The PCRC has found that the regulatory framework in Western Australia does not adequately address the risk of gambling-related harm because it does not provide for a mandatory Responsible Service of Gaming code of conduct or deterrent penalties for breaching such a code. The PCRC considers it important that the code is referred to as a responsible *service* of gaming (**RSG**) code to emphasise the responsibility of Perth Casino to ensure that the gambling services it offers are provided in a manner that minimises the risk of harm to the extent reasonably possible.
- 115** There are two main approaches used by comparable jurisdictions to incorporate a mandatory RSG code of conduct into the regulatory framework. The first approach is that the operator is required to prepare and submit the code to the regulator for approval.²³ In that case, the regulator may have prescribed certain requirements for the code via a direction or by regulation. The second is that the regulator prescribes a mandatory RSG code itself via regulations that prescribe how a casino licensee must address gambling-related harm.²⁴
- 116** The PCRC considers that the casino licensee's knowledge of its own casino operations, procedures and systems, and ready access to RSG related data, render it best placed to devise an RSG code of conduct. This approach is consistent with the PCRC's general view as to the regulation of risks, which requires the casino licensee to develop standards of risk assessment and the regulator to devise how properly to oversee that plan.
- 117** In that context, the PCRC favours the following three accountability mechanisms:
- a. the requirement that the RSG code of conduct be reviewed by the regulator;
 - b. that the regulations prescribe the objectives of the RSG code of conduct; and
 - c. that strong enforcement mechanisms in respect of non-compliance with the RSG code of conduct be introduced.
- 118** The requirement for the regulator to review a proposed code necessarily entails that it may be rejected by the regulator if it is considered to be inadequate.
- 119** The theory or model of harm minimisation adopted in the regulatory framework will inform the rules or objectives in the RSG code of conduct. Under an informed choice model, the rules or objectives may focus on the provision of information and education. For example,

gambling signage, information brochures and the option for self-exclusion. Under a harm minimisation approach, the rules or objectives would focus on measures to prevent harm from occurring in the first place. Such measures may include processes for identification of potential harm. Under a consumer protection approach, the focus would be on prohibition, which may give rise to measures such as restrictions on certain types of gambling equipment, proof of financial capacity, and mandatory exclusion based on bet frequency.

- 120** The Singapore regulations prescribe that the responsible gambling programme must comprise of:²⁵
- a. the goals, targets, performance indicators of the responsible gambling programme and timelines to meet all responsible gambling requirements in the Responsible Gambling Code for Casinos;
 - b. the person or committee appointed by the casino operator to supervise the establishment, operation and implementation of the responsible gambling programme if approved, and details of the duties and responsibilities of such person or committee;
 - c. procedures and guidelines to identify any patron of its casino with any suspected or known problem gambling or gambling-related problem;
 - d. procedures and guidelines with respect to the availability of information, treatment, counselling services or intervention services to any patron of its casino regarding problem gambling, responsible gambling behaviour and the financial, social and other problems that may arise in connection with gambling behaviour;
 - e. details of the establishment, operation and implementation by the casino operator of a system to enable a patron of its casino to set limits on his gambling expenditure or period of continuous gambling;
 - f. details of the establishment, operation and implementation by the casino operator of a system to exclude specific patrons;
 - g. details of the establishment, operation and implementation by the casino operator of a system to determine and impose a maximum number of visits which a patron may make to its casino in each month;
 - h. details of a training programme for its casino employees in promoting or adopting responsible measures in the conduct of gambling within the casino, including details of the training curricula and plans for periodic refresher training;
 - i. procedures and guidelines for the keeping of records related to responsible gambling activities adopted under the responsible gambling programme;
 - j. details of the jurisdictions, casinos or responsible gambling bodies chosen by the casino operator for the purpose of comparing and improving the quality and standard of the responsible gambling measures adopted by the casino operator for its casino;
 - k. a statement by the person or committee appointed by the casino operator to supervise the responsible gambling programme for its casino, that the responsible gambling programme as and when implemented will satisfy the responsible gambling requirements applicable to the casino operator; and
 - l. such other details as the regulator may require to determine whether the responsible gambling programme satisfies the responsible gambling requirements applicable to it.
- 121** The PCRC considers the Singapore regulations prescribe the contents of an RSG code at an appropriate level of specificity that permits some flexibility to adapt to the particular circumstances of the operator and the locale to best meet the regulatory objectives.

- 122** Enforcement powers for breaches of RSG codes of conduct are common in other jurisdictions. In South Australia, the regulator can declare contraventions of specified provisions of the RSG code of conduct as an offence and may impose a fine of up to \$20,000.²⁶ In the UK, Singapore and Sweden, the regulator can take disciplinary action against the licensee for breach of RSG code of conduct including financial penalties and suspending or cancelling the operator's license.²⁷ In Sweden, those financial penalties may be up to \$15 million (AUD). In New Zealand, the regulator may suspend or cancel the operator's licence for breach of the harm minimisation requirements in the regulations.²⁸
- 123** The PCRC considers that the regulator should be empowered to issue fines for contraventions of the RSG code of conduct. The PCRC notes that the review of the adequacy of penalties is already the subject of a recommendation in this chapter and penalties for breach of the RSG code of conduct should also be sufficient to deter non-compliance.
- 124** To further encourage compliance, the extent to which the casino licensee complies with the RSG code of conduct should be a matter the regulator can and should expressly take into account when assessing the suitability of the licensee and making a recommendation to the Minister about whether the casino licence should be granted, retained or revoked.
- 125** Perth Casino's risk profile in respect of gambling related harm may change over time. The PCRC considers that the RSG code of conduct should, therefore, be the subject of regular reviews. In Singapore, the casino licensee must undertake an annual review of its harm minimisation measures to allow the regulator to compare the quality and standard of those measures and submit to the regulator a copy of the review report for approval.²⁹ In South Australia, the legislation provides that the regulator may at any time undertake a review of the responsible gambling codes of practice and when conducting such a review consider submissions from the Commissioner of Police, gambling providers, bodies representative of gambling providers and the public.³⁰ Victoria, by contrast, does not require periodic reviews.
- 126** The PCRC considers that the legislation should set out the requirements for a periodic review of the RSG code of conduct and Parliament should consider at what intervals that review should take place.
- 127** As to the method by which the RSG code of conduct is mandated, the PCRC recommends:
- a. the casino licensee be required by legislation to devise a RSG code of conduct;
 - b. the RSG code of conduct is submitted to the regulator for review;
 - c. the regulator has a power to issue directions that prescribe requirements or objectives for the casino operator's RSG code of conduct;
 - d. the regulator have the power to issue fines in respect of contraventions of the RSG code of conduct;
 - e. the regulator can have regard to the casino licensee's compliance with the RSG Code of Conduct in its review of the suitability of the licensee; and
 - f. the RSG code of conduct should be periodically reviewed by the casino licensee at an interval determined by Parliament.

Independent advisory body

- 128** The PGSSC is the only body that is, at least in theory, set up to advise on gambling-related harm in Western Australia. Chapter Twelve: Harm Minimisation has outlined the limitations of the PGSSC's operations and its ineffectiveness in minimising gambling-related harm in Western Australia. In practice, the focus of the PGSSC is to assist those already suffering at least moderate gambling-related harm by providing intervention services.

- 129** Chapter Twelve: Harm Minimisation has also identified the general lack of relevant research, information and advice available in Western Australia about the prevalence of gambling related harm and the effectiveness of the current harm minimisation measures to inform and guide the regulation and minimisation of gambling related harm risks.
- 130** The PCRC considers that Western Australia would benefit from a body, independent of both the gambling industry and the regulator, whose functions explicitly include the provision of independent advice, research and information as to harm minimisation.
- 131** There are differing approaches as to how such an independent body might be structured, funded and constituted. For example, Victoria has the Victorian Responsible Gaming Foundation (**VRGF**).³¹ Its objectives are to reduce the prevalence of problem gambling and the severity of gambling-related harm and to foster responsible gambling.³² The VRGF is primarily funded by the Victorian Government through various commitments, funds and grants.³³ The only funding the VRGF receives from the gambling industry is via legislated special jackpot prize pool funds.³⁴
- 132** In the United Kingdom, the regulator receives independent advice from the Advisory Board for Safer Gambling and the Lived Experience Advisory Panel. The regulator funds the safer gambling board and provides it with secretariat support.³⁵
- 133** In New Zealand, the Ministry of Health is responsible for gambling-related harm reduction and prevention and assists with regulation of gambling-related harm from a public health perspective. The Ministry of Health is funded to achieve these goals by a dedicated portion of the Ministry's budget as well as a levy collected from operators.³⁶
- 134** As described in Chapter Five: Regulation of Perth Casino, while the funds of the PGSSC are held in an agency special purpose account of the GWC,³⁷ the PGSSC is not a committee of the GWC. As such the PGSSC is not obliged to carry out any of the legislative responsibilities or functions of the GWC to minimise gambling-related harm, nor is it afforded any of the powers of the GWC.³⁸
- 135** The PCRC considers that a new, independent body should be funded by a mandatory levy collected from the gambling industry and should receive administrative support from an established government department such as the Department of Health. A good example of this model of administrative support in Western Australia is the interaction between Drug Aware and the Mental Health Commission. The advantage of receiving administrative support from the Department of Health is to ensure the body's independence from the regulator and the Department which supports it.
- 136** As to the functions or objectives of the body, the PCRC considers that the independent body should have similar objectives to the VGRF, which are:
- a. undertake preventative and other activities to address determinants of problem gambling;
 - b. conduct and facilitate education and information programs to promote responsible gambling behaviours, increase community awareness of the risks associated with gambling and encourage people to seek help in relation to problem gambling;
 - c. provide treatment, counselling services and intervention services in relation to problem gambling;
 - d. provide information and advice in relation issue or grant of licences, permits, approvals, authorisations, registration or allocations under gambling legislation and the regulation of gambling under gambling legislation;
 - e. provide information to enable persons to make submissions to and participate in inquiries and public consultations relating to gambling;

- f. undertake research and evaluation activities related to its functions and objectives;
 - g. advise the minister on any matter related to the VRGF's objectives; and
 - h. consult with the representatives of organisations, and other persons, whom the VGRF considers it desirable to consult in relation to the exercise of its other functions.
- 137** Another option for consideration, in the alternative to the establishment of an independent body, is that the regulator partner with a university in Western Australia to establish a gambling research centre. In 2002, the Australian National University (**ANU**) partnered with the ACT Racing and Gaming Commission to establish the ANU Centre for Gambling Research.³⁹ The centre seeks to produce significant research, promote and engage in rigorous academic debate, and inform policy and public discourse around gambling, harm and broader community impacts. It has a particular objective to provide gambling-related harm research to the ACT Racing and Gaming Commission to assist in policy development.⁴⁰ The centre receives grants and funding for specific research projects as well as funding and support from the ACT Racing and Gaming Commission.⁴¹ The PCRC is less attracted to this model as it does not ensure the independence of the body from the regulator.
- 138** The PCRC recommends:
- a. an independent gambling research and advisory body be established to replace the PGSSC;
 - b. the independent body be funded by the gambling industry by a levy;
 - c. the independent body receive administrative support from an established government agency or department, in a model similar to the support provided to Drug Aware by the Mental Health Commission; and
 - d. the appropriate functions of the independent body should include as a minimum, the independent body should be responsible for undertaking research into gambling prevalence and the effectiveness of harm reduction measures in Western Australia.
- 139** Alternatively, to the above, consideration should be given to establishing a partnership between the new regulator and a Western Australian university to establish a gambling research centre.

Advertising restrictions

- 140** Other jurisdictions take a variety of approaches in relation to gambling advertising. In South Australia under the *Gambling Codes of Practice Notice 2013 (SA)* a gambling provider will not be regarded as advertising when the gambling provider sends a direct patron communication⁴² and the restrictions on advertisement that induce gambling do not apply to direct patron communications.⁴³ In Singapore, no person can carry out any advertising or promotional activities relating to a casino except with the approval of the regulator and in accordance with the regulations.⁴⁴ The regulator cannot approve advertising that directly or indirectly encourages gambling.⁴⁵ In New Zealand, advertising must maintain a high standard of social responsibility and must not portray or represent anything which will (or likely will) condone or encourage harm from gambling.⁴⁶
- 141** Regulation 43 of the *Gaming and Wagering Commission Regulations 1988 (WA)* (**GWC Regs**) prohibits gambling operators from publishing gambling advertisements that, among other things, 'offer a benefit, consideration or reward' in return for a person participating in gambling or continuing to gamble.⁴⁷ That prohibition is subject to an exception, being that the gambling operator may publish such an advertisement 'only by sending it to persons who are existing patrons of the gambling operator'.⁴⁸
- 142** In Chapter Twelve: Harm Minimisation the PCRC identified the issue that the exception in reg 43 undermines that the clear consumer protection and harm minimisation intent of the

regulation in circumstances where Perth Casino's customer base is so large, and such a high proportion of that customer base has consented to the receipt of advertising.

- 143 In view of the links between gambling related harm and advertising, the PCRC recommends that consideration be given to removing the exception for advertising to existing patrons from the advertising prohibition in reg 43 of the GWC Act.

Reforms as to officers and board of regulator

Role and appointment of Chief Casino Officer and authorised officers

- 144 The CCO undertakes a central role in the regulation of Perth Casino.
- 145 The CCO is appointed pursuant to s 9(1) of the CC Act. As discussed in Chapter Five: Regulation of Peth Casino the PCRC considers that the power to appoint and employ the CCO, as an officer of the GWC and someone who is accountable to the GWC, should enure to the GWC. However, the position as to who is the employing authority pursuant to s 9(1) of the CC Act is unclear. In practice and historically, the Department has appointed the CCO. In the case of the present CCO, the appointment was made without consultation with or approval of the GWC.
- 146 The legislation should provide for the CCO to be appointed by the casino regulator and that the CCO is answerable to the casino regulator alone in relation to matters of casino regulation.
- 147 The PCRC does not favour prescriptively defining the role of the CCO or restricting the delegation of the CCO's powers. The regulator should have the responsibility of defining the CCO's role.
- 148 As outlined in the discussion of the models above, the PCRC takes the view that, in order to protect its independence, the regulator should also employ a CFO and a secretariat to assist in the discharge of its duties.
- 149 The PCRC recommends that:
- a. the casino regulator be the employing authority pursuant to Part 3 of the *Public Sector Management Act 1994* (WA) (**PSM Act**) for the CCO, CFO and other dedicated casino regulation staff or if another person or body appoints the CCO, CFO or other dedicated casino regulation staff, that the appointment be made only with the approval of the casino regulator;
 - b. the CCO, CFO and other dedicated casino regulation staff be accountable to the casino regulator for casino regulation activities;
 - c. only the casino regulator be able to direct the CCO, CFO and other dedicated casino regulation staff to perform their casino regulation activities; and
 - d. the CCO also be the CEO of the regulator and that they occupy a full-time position.

Independent and appropriately skilled chair of the regulator

- 150 There is universal agreement among the parties who made submissions to the PCRC that the *ex officio* position on the GWC held by the DG of the Department should not continue.
- 151 The GWC submitted that the chair should be a government appointee, independent of the Department, who is experienced in regulatory and legal administration. As to the skills of that appointee, the GWC said that it was likely more important for them to have demonstrated competence in organisational leadership and regulatory practice rather than experience as a legal practitioner.⁴⁹ The GWC acknowledged that legal qualifications and experience may be important to facilitate proceedings of disciplinary matters and mitigate the risk of reviewable administrative error.⁵⁰

- 152** Crown contended that the chair should be independent from the Department and appointments should be for a fixed period to facilitate renewal.
- 153** The PCRC considers that many of the governance issues that confronted the GWC in the regulation of Perth Casino (including confusion as to its regulatory responsibilities) may have been mitigated if the GWC had an appropriately skilled and independent chair.
- 154** The PCRC has not recommended formal external oversight or an inspectorial role to oversee the operations of the regulator. The PCRC considers that, amongst other things, the chair should have governance and (or) regulatory skills and experience.
- 155** The PCRC recommends the chair of the regulator:
- a. is independent of the Department;
 - b. is appointed by the Minister;
 - c. has sound governance and (or) regulatory skills and experience; and
 - d. has a fixed term of no more than five years.

Appropriately skilled and remunerated board

- 156** Appropriately skilled and remunerated board members are integral to the success of the regulator.
- 157** As to remuneration, the PCRC has concluded that the fee of \$16,600 per annum (before superannuation and tax) for current members of the GWC is inadequate given the scope of their regulatory task.
- 158** As to appropriate skill, many members of the GWC have, at the time of their appointment, not had relevant experience or qualifications and they have not been afforded adequate induction and training to build their skills base.
- 159** Currently, GWC members are appointed by the Minister pursuant to s 12(1)(b) of the GWC Act. Section 12(2) of the GWC requires that those members appointed shall be persons who, in the opinion of the Minister, are persons of integrity, good repute and relevant experience. The PCRC considers that the current statutory criteria are too broad.
- 160** That deficit has, in part, been addressed by recommendations in this chapter regarding appointment, training and induction for members of the board of the regulator. The PCRC also notes the GWC and Department's programme of work to improve the governance of the board, including accountable and ethical decision-making training.⁵¹ The companion to the operational recommendations made later in this chapter, is the introduction into the legislation of a more detailed outline of criteria for the appointment of board members.
- 161** An effective casino regulator requires technical skills in a diverse range of areas including: gaming regulation; accounting; law; governance and regulation. The legislative criteria for appointment of board members should reflect this requirement.
- 162** Further, the lack of a requirement for the GWC to provide advice to the Minister about potential new member appointments is a shortcoming of the GWC's governance arrangements.
- 163** The PCRC recommends:
- a. the remuneration of members of the board of the regulator be increased;
 - b. there be specific criteria for the appointment of board members to ensure that the appointments are appropriately skilled for regulating gambling and casino gaming in Western Australia; and
 - c. the GWC be required to provide advice to the Minister about particular skills or experience, not referred to in the criteria, that are required in future members.

Funding

Obligation to assess adequacy of funding

- 164** The casino gaming licence fee comprises the bulk of the GWC's revenue. It is fixed by the State Agreement. The casino gaming licence fee was initially set at \$400,000, adjusted for Consumer Price Index (**CPI**). That fee has only been reviewed once, in 1990, when it was increased to \$1.4 million, adjusted annually for CPI.
- 165** The GWC is not a party to the State Agreement and so it is not able to directly influence the casino gaming licence fee. The PCRC concludes that this is an appropriate arrangement. The regulator should not be able to determine unilaterally the casino licence fee fund the regulator nor should the regulator be involved in negotiating with Perth Casino about that fee.
- 166** Section 14(1)(a) of the CC Act expressly provides that the funds available for the administration of the CC Act, that is, the funds available for the regulation of Perth Casino, include moneys from time to time appropriated by Parliament. Therefore, it is open to the GWC to seek an appropriation if it needs additional funding to regulate Perth Casino. From 2010 until the present, Parliament has not appropriated any monies to the GWC pursuant to s 14(1)(a) of the CC Act.⁵²
- 167** In Chapter Five: Regulation of Perth Casino, the PCRC found the GWC has not acted appropriately in the discharge of its responsibilities in that it has failed to ascertain:
- a. the costs of regulating Perth Casino; and
 - b. whether the casino gaming licence fee and (or) GWC's income more generally is adequate to meet the costs of regulating Perth Casino.
- 168** The PCRC also found that the GWC was obliged to consider the adequacy of its funding and seek further funding by way of an appropriation if its funding was inadequate in order for it to discharge the regulatory responsibilities that are assigned to it. The PCRC is of the view that these are fundamental requirements of a government agency and do not need to be subject to a recommendation.
- 169** The funding of the regulator in a set amount that is adjusted by CPI may not ensure adequate funding for the regulator where the nature of the operations at Perth Casino is changing and increasing in complexity over time. The PCRC concludes that there is a need for the periodic review of the casino gaming licence fee in order to ensure that it is sufficient for the purpose of casino regulation. The regulator should advise the Minister about its conclusion as to the sufficiency of the casino gaming licence fee. This is a fundamental requirement of a government agency and it does not need to be subject to a recommendation.
- 170** If the regulator has concluded that the casino gaming licence fee is inadequate to meet the cost of regulating Perth Casino, then the Minister can consider whether there is a need for the government to renegotiate the casino gaming licence fee in the State Agreement.
- 171** If there is no increase in the casino gaming licence fee, the regulator should seek additional funding through an appropriation.
- 172** The PCRC does not make any recommendations for enhancements to the regulatory framework in regard to the regulator's obligations to assess the adequacy of this funding. The PCRC notes that the casino regulator needs to comply with its existing obligations in this regard.

Reforms related to Perth Casino governance structure

Casino licensee

- 173** As outlined above in the discussion of s 24 directions, in the context of a casino operation within a corporate group structure, a legislative framework that is focussed only upon the regulation of the licensee and not its associates involved in casino operations, can be problematic.
- 174** An example of the difficulty with the definition of casino licensee appears in s 19(4) of the CC Act, which states that only the casino licensee can conduct casino gaming at the casino. On a strict construction, that section may arguably prohibit entities other than BNL conducting casino gaming at Perth Casino. Crown's position is that, for practical purposes, there is a singular Crown Perth comprised of the Burswood entities which is regulated by the legislative framework.
- 175** A further example arises in respect of s 29B of the CC Act. This section covers contracts entered into by the casino licensee. In a centralised model, there could be contracts entered into by another company in Crown's group operations, such as Crown Resorts Limited (**CRL**), that is not the casino licensee.
- 176** The PCRC recommends that the CC Act be reviewed for references to casino licensee, manager and similar terms and amendments be made to clarify whether and to what extent provisions apply exclusively to the licensee or, more broadly, to associates of the licensee involved in the licensee's conduct and organisation of casino operations.

Definition of 'close associate'

- 177** The definition of a 'close associate' of the casino licensee is outlined in s 18 of the CC Act. That definition is as follows:⁵³
- a person is a **close associate** of a public company with which the Minister has entered into, or is proposing to enter into, a casino complex agreement if the person –
- (a) holds any relevant financial interest in, or is entitled to exercise with respect to, the public company, whether in the person's own right or on behalf of any other person, and by virtue of that interest or power is or will be able, in the opinion of the Commission, to exercise a significant influence over or with respect to the organization and conduct of the gaming operations of the licensed casino with which the casino complex agreement is concerned; or
 - (b) holds any relevant position, whether in the person's own right or on behalf of any other person, in the public company.
- 178** The definition is in similar terms to the definition of close associate and associate in the NSW and Victorian Casino Control Acts, respectively. Both the Bergin Inquiry and RCCOL recommended repealing the definition.⁵⁴ The reasons expressed in both reports was to the effect that the definition is ambiguous and not fit for purpose in the context of Crown's group operations.
- 179** As to the ambiguity in the definition, the Bergin report stated:⁵⁵
- The tests of "relevant financial interest" and "relevant power" descend into a level of technicality and complexity that is unnecessary. Each may require, as a first step, ascertaining if the person is "entitled" or has an "entitlement". These terms are not defined, which has given rise to a question about whether or not they refer to entitlements capable of enforcement by legal means. They then each

require, as a second step, ascertaining if the person is, or will be, able to exercise a “significant influence” over or with respect to the management or operation of the casino licensee’s business. The term “significant influence” is not defined and remains a nebulous concept.

- 180** That analysis applies to the definition of close associate in the CC Act.
- 181** As to fitness for purpose, in Perth Casino context, the difficulty with ascertaining significance of influence is even more acute in that the casino licensee, BNL, is a step further removed from the publicly listed holding company CRL.
- 182** Both the Bergin Report and the RCCOL Report recommended that the definition of close associate or associate be amended so that it means:
- a. the holding company and each intermediate holding company of the casino operator (holding company to be defined as in the *Corporations Act 2001* (Cth) (**Corporations Act**));
 - b. any person who has a relevant interest (as defined in the Corporations Act) in at least 5% (in the case of the RCCOL Report) or 10% (in the case of the Bergin Report) of the issued capital of the casino operator, or any of its intermediate holding companies or its ultimate holding company;
 - c. any director or officer (as defined in the Corporations Act) of the casino operator, any of its intermediate holding companies or its ultimate holding company; and
 - d. any individual or company certified by the regulator to be an associate.⁵⁶
- 183** In Chapter Four: Corporate Governance the difference in the shareholder limits between the Bergin Inquiry and the RCCOL has been discussed and the conclusion reached that there should be no change in the position in this State where the cap is 10%.
- 184** The PCRC recommends the definition of close associate in the CC Act be amended in the manner set out above.

Provisions of the Casino Control Act requiring a geographical or location element

- 185** There are some provisions in the CC Act which include (or could be construed as including) a geographical or location requirement, which may not be appropriate in modern times, and in the context of centralisation and (or) shared services or functions being physically performed away from the casino premises.
- 186** For example, s 22(6) of the CC Act prohibits a casino licensee and ‘any other person or body, corporate or unincorporate, organizing or managing gaming operations *in a licensed casino* [emphasis added]’ to permit the play of unauthorised games or games otherwise than in accordance with approved rules. The phrase *in a licensed casino* may be construed as requiring physical location in the casino. A similar issue arises in respect of the uses of the terms ‘at the casino complex’⁵⁷ and ‘a person shall not in the casino’.⁵⁸
- 187** For example, ‘casino key employee’ is defined in the CC Act to mean a person employed or *working in* a licensed casino [emphasis added].⁵⁹ The words ‘working in’ give rise to an ambiguity in the definition as whether the employee has to be physically present at Perth Casino in undertaking their duties in order for the definition to apply.
- 188** It is unclear whether the definition in the CC Act of casino key employee applies to a person who is a CRL senior manager who provides a centralised service to Perth Casino, but otherwise has no relationship with Perth Casino.
- 189** In the context of Crown’s centralised group functions and (or) shared, this definition should be clarified and if intended, the definition should be expanded so that its application to appropriate employees at group level is clear.

- 190** The PCRC recommends that:
- a. provisions of the CC Act be reviewed for terms which could be construed as containing a geographical or location requirement which is inappropriate; and
 - b. the definition of 'casino key employee' in s 3 of the CC Act be reviewed and expanded, if necessary to include employees of entities associated with the licensee who provide centralised services to Perth Casino regardless of their physical location.

Genting WA

- 191** In the CCBILE Regs, the 'operator' is defined to mean, among other things, Genting WA.⁶⁰ This is a reference to the casino operator at the time the CCBILE Regs were promulgated.
- 192** The PCRC recommends that references to 'Genting WA' in the regulatory framework be removed.

Operator

- 193** As outlined in Chapter Two: History of Perth Casino, no entity has occupied the role of 'operator' of Perth Casino since the Operations Management Agreement was cancelled as part of corporatisation process that occurred in the 1997. However, there are still anachronistic references to 'operator' in the regulatory framework.
- 194** The PCRC recommends that references to 'operator' be deleted from the regulatory instruments, unless the position has some purpose.

Miscellaneous Reforms

Definition of 'gambling' and 'gaming'

- 195** The PCRC has considered whether 'gaming' and 'gambling' when used in the GWC Act includes casino gaming. The issue arises because the definition of 'gaming' in the GWC Act states:⁶¹
- Gaming, subject to s 39(2)(d) and (e), means the playing of a game of chance for winnings in money or money's worth, whether any person playing the game is at risk of losing any money or money's worth or not.
- 196** 'Gambling' is defined to mean 'gaming' or 'wagering'. Wagering is not relevant to the PCRC.
- 197** Section 39(2)(d) of the GWC Act, in part, states that for the purpose of the GWC Act and except in so far as s 44 or s 45 applies, the playing of a game of chance or participation in any activity which is an authorised game as defined by the CC Act played in accordance with rules approved under that Act in a licensed casino, does not constitute gambling contrary to the provisions of the GWC Act. Relevantly, s 44 creates an offence of cheating in gaming and s 45 creates offences in relation to permitted gaming.
- 198** These provisions can be interpreted as meaning that casino gaming does not constitute gambling for the purposes of the GWC Act, except for the purposes of the offences in s 44 and s 45 of the GWC Act.
- 199** The PCRC recommends that the definition of 'gaming' and 'gambling' be clarified so as to include casino gaming in all applicable definitions.

Standard of reporting of casino licensee to regulator

- 200** The new s 27A of the *Casino Control Act 1991* (Vic) mandates the requirement that the casino notify the regulator if the casino operator or an associate breaches or is likely to

breach the Act, regulations, the casino's Responsible Gambling code of conduct, the casino operator's system of internal controls and administrative and accounting procedures, certain agreements to which the casino is a party including the State Agreement and any direction given to or recommendation made to the casino by the regulator.⁶²

- 201** There is no equivalent provision in the existing legislative framework in Western Australia and the PCRC considers the framework would be enhanced by the adoption of a similar provision.
- 202** The PCRC recommends that the new legislative framework require the casino licensee to provide written notice to the regulator if the casino licensee or an associate breaches or is likely to breach, in a material way, the CC Act, regulations, the casino's Responsible Gambling code of conduct, the casino licensees system of internal controls and administrative and accounting procedures, certain agreements to which the casino is a party including the State Agreement and any direction given to or recommendation made to the casino by the regulator.

Delegations

- 203** The GWC has a power to delegate all or any of its powers or duties, save for the power of delegation itself. Due to the part time and lay constituency of the GWC a power of delegation is necessary and appropriate. However, the evidence indicates that the exercise of delegation has been too broad and the processes for reviewing the exercise of delegated power by the delegate have been inadequate. In summary, the PCRC has found in Chapter Five: Regulation of Perth Casino, that the GWC has not appropriately exercised its power of delegation.
- 204** There is no register of delegations maintained by the GWC. The PCRC considers that this has contributed to the lack of clarity in some of the actions that have been taken under delegated power and has impeded the good governance of the GWC. The PCRC has concluded in Chapter Five: Regulation of Perth Casino that it was inappropriate for the GWC to not require the Department to maintain and provide to the GWC a schedule of the instruments of delegations.
- 205** The PCRC recommends:
- a. that there be a review of the casino regulator's delegation powers, with a view to those powers being clarified;
 - b. that the requirement for a register of delegations and decisions made under delegation to be kept, be legislated; and
 - c. that the regulator maintain a schedule of the instruments of delegation.

Definition of 'relevant interests'

- 206** In the CBIA Act and the State Agreement, the term 'relevant interest' arises in two contexts:
- a. first, in s 12 to s 17 of the CBIA Act, which outline the regime for probity approval including the 10% limit on shareholding before probity approval from the GWC is required, and the penalties for breach of that regime;⁶³ and
 - b. secondly, in the context of the 40% limit for foreign ownership of shares where approval is required to be given by the Minister.⁶⁴
- 207** The Seventh State Agreement⁶⁵ introduced Schedule B, which referred to 'relevant interest' in the context of both the 10% and the 40% limits. It defined 'relevant interest' by reference to Division 5 of Part 1.2 of the *Corporations Law*, an enactment that is no longer in force.⁶⁶

208 Prior to 2003, the Minister had the power to grant approval to acquire 10% or more of the shares in an approved company. After the enactment of the *Casino (Burswood Island) Agreement Amendment Act 2003 (WA)*, the power to grant approval was transferred from the Minister to the GWC. That amending Act inserted the following interpretation provision into the CBIA Act:⁶⁷

For the purposes of section 12 to 17 a person has a relevant interest in a share if, under sections 608 and 609 of the Corporations Act 2001 of the Commonwealth, the person has a relevant interest in the share.

209 The definition introduced by the 2003 amendments applies only to the 10% limit and not to the relevant interest of a foreign person. There is no apparent reason the same term should be defined differently in its application to the limits on shareholdings.

210 The PCRC recommends that the CBIA Act be amended so that the meaning of the term 'relevant interest' is consistent throughout the legislation.

Notice Revoking Licence

211 Chapter Nine: Other Criminal Activity outlines the process by which a Notice Revoking Licence (**NRL**) is issued, relevantly, by or on behalf of the casino licensee pursuant to s 26(2) of the CC Act to exclude a person from the casino premises. The PCRC has found that trespass, including breaches of NRLs, is statistically one of the primary offences committed at Perth Casino and that the NRL regime could be improved to deter banned patrons from accessing Crown properties.

212 A review of comparative legislation shows that breaches of NRLs in other jurisdictions attract harsher penalties than in the Western Australian context. For example, in Victoria, patrons who remain in a casino in contravention of an NRL, will have all their winnings paid or payable in respect of gaming after the exclusion are forfeited to the State.⁶⁸

213 In NSW and Victoria, the CC Acts contain cross-jurisdictional exclusion provisions, so that when a patron is the subject of an interstate exclusion order they must not enter or remain in a casino in those states.⁶⁹

214 The PCRC recommends:

- a. the exclusion provisions in the CC Act be reviewed, including whether penalties for patrons in contravention of an NRL or other exclusion order made by the casino licensee should be increased; and
- b. the inclusion of a cross-jurisdictional exclusion regime in the new legislative framework.

Consistency in penalties for non-compliance with licence

215 Chapter Nine: Other Criminal Activity identifies an inconsistency in the maximum penalty amount for non-compliance with the licence condition to report a conviction. Pursuant to reg 15(3) of the CCBILE Regs, the maximum penalty is \$500. Pursuant to reg 16A of the CCBILE Regs, the GWC may impose a fine of not more than \$1,000 for non-compliance with the conditions of an employee licence more generally.

216 The PCRC recommends the penalty for a breach of reg 15(3) of the CCBILE Regs is the same as the penalty for breach of reg 16A of the CCBILE Regs.

Western Australian Police investigation of applicants for casino employee licence

217 Chapter Nine: Other Criminal Activity contains the PCRC's finding that the effectiveness of the employee licensing regime would be enhanced if reg 7(3) of the CCBILE regs were amended to confer upon the CCO a discretion to cause an investigation by WAPOL into the character and (or) suitability of an applicant for the renewal of a licence.

- 218** The PCRC recommends that reg 7(3) of the CCBILE regs were amended to confer upon the CCO a discretion to cause an investigation by WAPOL into the character and (or) suitability of an applicant for the renewal of a licence.

Part Three: Operational reforms

Gaming and Wagering Commission governance

- 219** The PCRC has concluded in Chapter 5: Regulation of Perth Casino that the lack of a board charter was a governance deficiency of the GWC which contributed to a lack of clear demarcation of roles and over-reliance on the Department in the discharge of its responsibilities.
- 220** The PCRC recommends that the GWC devise and introduce a board charter and that the charter be reviewed and updated as necessary at regular intervals.

Appointments

- 221** Earlier in this chapter, the PCRC recommended a more detailed outline of criteria for the appointment of board members be introduced into the legislation. There are also operational changes that can be made to ensure that the board of the regulator is appropriately skilled. The lack of GWC member skills matrix that is regularly reviewed and a GWC nominations committee, are present shortcomings in the GWC's governance arrangements.
- 222** The development of a regularly reviewed skills matrix and a nominations committee would enable the regulator to mitigate the risk of skill gaps arising in future.
- 223** The PCRC recommends that:
- a. the regulator develop a member skills matrix that is regularly reviewed; and
 - b. form a nominations committee.

Strategic Plan and Key Performance Indicators

- 224** The current PSC's governance guidance recommends that time is set aside by a board to develop a strategic focus, so that performance and outcomes of the board can be measured against it. It also recommends that the chair, in consultation with the board, defines and agrees on key performance indicators (**KPIs**) and measures against these to assess the board's performance.⁷⁰
- 225** Up to the close of evidence at the PCRC, the GWC had no strategic plan articulating matters such as its purpose and how it would achieve that purpose. A strategic plan of this type can be of real assistance in achieving goals and objectives.
- 226** The GWC's current KPIs are not fit for purpose. The KPIs ought to be reviewed to measure the substantive effectiveness of the GWC across its broad range of activities. Consideration ought to be given as to how to appropriately evaluate whether the GWC is performing its casino regulatory function.
- 227** The PCRC recommends that the regulator:
- a. develop a strategic plan and review it regularly to ensure it adequately articulates the regulator's goals and the strategies by which the goals will be achieved and funded; and
 - b. review and amend the current KPIs to ensure they measure the substantive effectiveness of the GWC across its broad range of activities.

Induction and training – Gaming and Wagering Commission members

- 228** Expertise and training of the members of the regulator are integral to the successful regulation of Perth Casino. The current PSC’s governance guidance outlines, generally what an induction process for new members should involve. The overarching purpose of an induction is to ensure that new members are aware of their roles and responsibilities, and to understand the objectives and operations of the body overseen by the board.⁷¹
- 229** The PCRC has heard evidence that the materials and training provided to GWC members upon induction were varied. The PCRC has also found that there was no formal programme or system for ongoing training for GWC members in casino regulation. Some members sought out that training of their own volition. Accordingly, GWC members relied heavily on the knowledge and expertise of the Department in respect of casino-related matters.
- 230** The induction process for current GWC members was inadequate because, substantially, it did not follow the PSC’s governance guidance as to the induction process for government board members.
- 231** The PCRC concludes that the board members of the regulator should have a thorough and sector-specific induction programme and ongoing training regime to ensure the achievement of objectives of casino regulation.
- 232** The PCRC recommends:
- a. the adoption of a streamlined induction process for board members of the regulator including casino regulation training consistent with the PSC’s governance guidance;
 - b. the inclusion in member induction packs of outlines of:
 - i. the regulator’s strategic plan;
 - ii. the regulator’s KPIs;
 - iii. processes for exercising powers under delegations; and
 - iv. the regulator’s regulatory philosophy;
 - c. sector-specific training (on, for example, harm minimisation) for board members be undertaken by the regulator at regular intervals and on an events-driven basis;
 - d. that where the regulator does not consider it has the requisite expertise to discharge its responsibilities, the regulator engage an external expert (forensic accountant; responsible gaming expert or consultant) to fulfil that responsibility; and
 - e. that a continuing education program in casino regulation, governance and risk management should be established for board members.

Induction and training – Chief Casino Officer

- 233** Chapter Five: Regulation of Perth Casino observes that there has not been a coherent or consistent understanding shared by the GWC, the Department or successive CCOs as to the content of the CCO role and whether or the extent to which the CCO is accountable to, and able to be directed by, the GWC. The PCRC has found that the lack of a job description for the position of CCO has potentially compromised the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities.
- 234** Further, appropriate induction and ongoing training of the CCO are important to ensure that the CCO can capably and effectively discharge their role throughout the term of their appointment. The role of CCO requires a skilled and experienced regulator. In Chapter Five: Regulation of Perth Casino, the PCRC found that the lack the induction and training process

for successive CCOs has compromised the capability and effectiveness of the GWC in discharging its regulatory functions and responsibilities.

235 The PCRC recommends:

- a. that the regulator prepares a job description for the CCO role; and
- b. that the regulator implements a specialised induction and training programme for the CCO.

Endnotes

- 1 *Casino and Gambling Legislation Amendment Bill 2021* (Vic) [PUB.0033.0047.0001] s 34 – 38.
- 2 *Casino Control Act 2007* (Singapore) [PUB.0016.0001.1759] s 41.
- 3 Department. Submission to PCRC (20 January 2022) [DLG.0022.0001.0017] 101 [418].
- 4 GWC, Transcript (1 February 2022) [TRA.0001.0001.0001] 6088.
- 5 GWC, Submission to PCRC (20 January 2022) [PCRC.0036.0013.0001] [86] 28.
- 6 Western Australian Government, *Streamline WA Regulatory Reforms* (21 December 2021) [PUB.0033.0047.0054].
- 7 A Freiberg, *Regulation in Australia* (2017) 239.
- 8 Ministerial Advisory Committee, Parliament of Victoria, *Independent Inquiry into the Environment Protection Authority* (2016) [PUB.0033.0022.1158].
- 9 *Russo v Aiello* [2003] HCA 53 [PUB.0017.0004.0001], cited in *Lynn v New South Wales* [2016] NSWCA 57 [PUB.0033.0022.2480] [54] (Beazley P).
- 10 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 33.
- 11 *Casino and Gambling Legislation Amendment Bill 2021*(Vic) [PUB.0033.0047.0001] s 9.
- 12 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 25.
- 13 *Casino Control Act 1992* (NSW) [PUB.0033.0033.1899] s 31.
- 14 *Gaming Control Act 1993* (Tas) [PUB.0016.0001.3092] s 23 – 30.
- 15 *Gaming Control Act 1993* (NT) [PUB.0016.0001.2893] s 2A(b).
- 16 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 19(2); *Casino Control Act 1992* (NSW) [PUB.0033.0033.1899] s 13.
- 17 *Burswood Casino – Amendment Directions* (23 February 2021) [GWC.0001.0006.0019_R] dir 23.1.
- 18 Bergin Report vol 2 [BGN.0001.0001.0334] 632 [88].
- 19 PCRC Interim Report [CRW.701.009.4553] 83 [366].
- 20 *Casino Control Act 1992* (NSW) [PUB.0016.0001.2799] s 140(d); *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 140(c); *Gambling Administration Act 2019* (SA) [PUB.0016.0001.2027] s 6(a), 6(b)(iii), 6(c).
- 21 *Gambling Act (2018:1138)* (Sweden) [PUB.0016.0026.0001] ch 14 s 1; *Gambling Act 2003* (NZ) [PUB.0016.0026.0038] s 309A.
- 22 RCCOL Report vol 2 [PUB.0030.0001.0001] 60 [Recommendation 11].
- 23 *Casino Control Act 2007* (Singapore) [PUB.0016.0001.1759] s 170B; *Gambling Act 2003* (NZ) [PUB.0016.0026.0038] s 308(1) – (2); *Gambling Act (2018:1138)* (Sweden) [PUB.0016.0026.0001] ch 14 s 1.
- 24 *Casino Control Act 2006* (ACT) [PUB.0032.0006.0079] div 3.1 s 25.; *Gaming Control Act 1993* (Tas) [PUB.0016.0001.3092] s 112L; Tasmanian Liquor and Gaming Commission, *Responsible Gambling Mandatory Code of Practice for Tasmania* (1 March 2020) [PUB.0007.0032.0001] 3; *Gambling Act 2005* (UK) [PUB.0016.0001.2066] s 24; *Gambling Administration Act 2019* (SA) [PUB.0016.0001.2027] s 15(1)(b); South Australia, *Gambling Codes of Practice Notice 2013* (1 July 2016) [PUB.0016.0027.0076] ch 3.
- 25 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) [PUB.0016.0011.0001] s 5.
- 26 *Gambling Administration Act 2019* (SA) [PUB.0016.0001.2027] s 15.
- 27 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) [PUB.0016.0011.0001] reg 15; United Kingdom Gambling Commission, *Licence Conditions and Codes of Practice* (31 October 2020) [PUB.0032.0001.0001] pt 2 code of practice provisions; International Comparative Legal Guide, ‘Gambling 2022: Chapter 35 Sweden’ (18 November 2021) [PUB.0032.0005.0031] 9.
- 28 *Gambling Act 2003* (NZ) [PUB.0016.0026.0038] s 144(a); *Gambling (Harm Prevention and Minimisation) Regulations 2004* (NZ) [PUB.0032.0005.0001].
- 29 *Casino Control (Responsible Gambling) Regulations 2013* (Singapore) [PUB.0016.0011.0001] reg 8.
- 30 *Gambling Administration Act 2019* (SA) [PUB.0016.0001.2027] s 15.
- 31 *Victorian Responsible Gambling Foundation Act 2011* (Vic) [PUB.0033.0030.0304].
- 32 *Victorian Responsible Gambling Foundation Act 2011* (Vic) [PUB.0033.0030.0304] s 6.
- 33 Victorian Responsible Gambling Foundation, *Annual Report 2020/2021* [PUB.0033.0030.0244] 26; Victorian Responsible Gambling Foundation, *Annual Report 2020 – 2021* [PUB.0033.0030.0244] 26.

34 *Gambling Regulations Act 2003* (Vic) [PUB.0016.0027.0148] s 3.6.1B.

35 United Kingdom Gambling Commission, How the Gambling Commission works to reduce gambling harm [PUB.0032.0006.0296]; United Kingdom Gambling Commission, Lived Experience Advisory Panel: Term of reference [PUB.0032.0006.0291].

36 *Gambling Act 2003* (NZ) [PUB.0016.0026.0038] s 320.

37 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (10 June 2021) [PCRC.0002.0003.0001] 2 – 3.

38 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 15(1).

39 Australian National University Centre for Social Research & Methods, Centre for Gambling Research (1 August 2017) [PUB.0033.0042.0001].

40 ACT Gambling and Racing Commission, Annual Report 2020/21 [PUB.0033.0042.0003] 30.

41 ACT Gambling and Racing Commission, Annual Report 2020/21 [PUB.0033.0042.0003] 30, 96.

42 South Australia, *Gambling Codes of Practice Notice 2013* (1 July 2016) [PUB.0016.0027.0076] cl 3(4)(a). Direct customer communication means a message (including an email message) sent to an account holder or a person enrolled in a loyalty program at an address provided for that purpose: South Australia, *Gambling Codes of Practice Notice 2013* (1 July 2016) [PUB.0016.0027.0076] cl 3(1).

43 South Australia, *Gambling Codes of Practice Notice 2013* (1 July 2016) [PUB.0016.0027.0076] cl 13(1)(h).

44 *Casino Control Act 2007* (Singapore) [PUB.0016.0001.1759] s 170A.

45 *Casino Control (Advertising) Regulations 2010* (Singapore) [PUB.0032.0006.0064] reg 3; Advertising Standards Authority of Singapore, ASAS Advisory on Gambling Advertisements and Promotions (2015) [PUB.0032.0006.0051].

46 Advertising Standards Authority (NZ), *Gambling Advertising Code* (2019) [PUB.0016.0027.0001]; Advertising Standards Authority (NZ), *Gambling Advertising Code* (2019) [PUB.0016.0027.0001] r 1 (b).

47 *Gaming and Wagering Commission Regulations 1988* (WA) [PUB.0016.0022.0001] reg 41(1), 43(2)(e).

48 *Gaming and Wagering Commission Regulations 1988* (WA) [PUB.0016.0022.0001] reg 43(5).

49 GWC, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0001_R] 12.

50 GWC, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0001_R] 12.

51 Department, Submission to PCRC on Improvements to Corporate Governance and Regulatory Framework (20 January 2022) [DLG.0001.0014.0002] 8.

52 GWC statement of information pursuant to *Royal Commissions Act 1968* (WA) s 8A (15 April 2021) [QNE.0001.0001.0024] 3.

53 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 18.

54 RCCOL Report vol 1 [PUB.0030.0001.0001] 84 [3]; Bergin Report vol 2 [BGN.0001.0001.0334] 635.

55 Bergin Report vol 2 [BGN.0001.0001.0334] 634 [97].

56 RCCOL Report vol 1 [PUB.0030.0001.0001] 93; Bergin Report vol 2 [BGN.0001.0001.0334] 635.

57 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 25(1).

58 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 23(7).

59 *Casino Control Act 1984* (WA) [PUB.0004.0005.0001] s 3.

60 *Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985* (WA) [PUB.0033.0015.0006] reg 2.

61 *Gaming and Wagering Commission Act 1987* (WA) [PUB.0004.0005.0107] s 3(1).

62 *Casino and Gambling Legislation Amendment Bill 2021*(Vic) [PUB.0033.0047.0001] s 16.

63 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 12 – 17.

64 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 9 cl 3.6 – 3.7.

65 Consolidated State Agreement [PCRC.0006.0001.0001]; *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] sch 4.

66 Consolidated State Agreement [PCRC.0006.0001.0001] sch B 1(2).

67 *Casino (Burswood Island) Agreement Act 1985* (WA) [PUB.0004.0005.0283] s 11(2).

68 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 78B(2).

- 69 *Casino Control Act 1991 (Vic)* [PUB.0016.0001.1509] s 77(3); *Casino Control Act 1992 (NSW)* [PUB.0016.0001.2799] s 81A.
- 70 PSC, Government of Western Australia, *Governance Manual for Western Australian Boards and Committees* (November 2021) [PUB.0032.0008.0191] 13.
- 71 PSC, Government of Western Australia, *Governance Manual for Western Australian Boards and Committees* (November 2021) [PUB.0032.0008.0191] 19.

CHAPTER 16

Financial Capacity

CHAPTER SIXTEEN

Financial Capacity

Purpose of Chapter

- 1 The financial capacity of the Perth Casino licensee and associated entities is a relevant consideration in the PCRC's assessment of suitability.

The PCRC's Approach

- 2 The PCRC engaged McGrathNicol to provide an expert opinion on the financial capacity of Crown¹ and Crown Perth Resorts.²

Financial Capacity

- 3 McGrath Nicol's opinion was that at the time it completed its report there were no red flags in relation to the financial capacity of Crown and Crown Perth Resorts.³ In its view, historically, the Crown Perth Resort and Crown have been profitable. However, Crown reported a loss in the financial year ending 2021 because its overall financial position had been impacted by COVID. The Crown Perth Resort's financial position was less affected than Crown's other operations because it had fewer closure days and strong local demand.⁴
- 4 McGrath Nicol observed that Crown had a strong net asset position, low gearing levels, significant levels of cash and credit availability and stable arrangements with financiers.
- 5 The financial capacity of Crown has been impacted by COVID and there are material uncertainties as to the financial position due to:⁵
 - a. the outcomes of various regulatory inquiries and Royal Commissions;
 - b. any rating changes which may impact rights under the Euro Medium Term notes; and
 - c. the outcome of the Barangaroo Licensee Apartment sales.
- 6 McGrathNicol commented that the financial forecast should be reviewed and assessed further once the RCCOL delivered its report, and the response of the Victorian Government is known.
- 7 The RCCOL delivered its report 15 October 2021. While the Victorian Government has accepted the findings of the RCCOL, the process of addressing and implementing recommendations is ongoing. Accordingly, further review of the forecasts has not been undertaken at this stage.
- 8 An additional uncertainty has emerged subsequent to the completion of McGrathNicol's report due to Crown's acceptance of the Blackstone offer. Although it could affect Crown and Crown Perth Resort's financial capacity, the PCRC is unable to predict the changes it may produce.
- 9 The PCRC finds that the financial position of Crown and Crown Perth Resort analysed during the course of the PCRC's investigations raises no issues with the financial capacity of Crown or the Crown Perth Resort.
- 10 However, the PCRC acknowledges there have been material uncertainties identified, which may affect the financial position in the future.

Endnotes

- 1 In this chapter, Crown means CRL and all its subsidiaries.
- 2 McGrathNicol, Financial Suitability (18 October 2021) [PCRC.0021.0001.0044_R].
- 3 Crown Perth Resorts balance sheet does not reflect any interest-bearing debt and is not reflective of a standalone business. Limited conclusions can be drawn from it. McGrathNicol, Financial Suitability (18 October 2021) [PCRC.0021.0001.0044_R], 30.
- 4 McGrathNicol, Financial Suitability (18 October 2021) [PCRC.0021.0001.0044_R] 7 – 8.
- 5 CRL, annual report (2021) [PUB.0013.0001.1837].

CHAPTER 17

**Assessment
of Crown
Suitability and
Path Forward**

CHAPTER SEVENTEEN

Assessment of Crown Suitability and Path Forward

Purpose of Chapter

- 1 This chapter contains the PCRC's findings regarding:
 - a. the suitability of Burswood Nominees Ltd (**BNL**) to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino and to continue to hold the casino gaming licence for Perth Casino, as required by ToR 1;
 - b. the suitability of Crown Resorts Limited (**CRL**), Burswood Limited (**BL**) and Burswood Resort (Management) Limited (**BRML**) to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino as required by ToR 2 to 4; and
 - c. the changes that would be required to render each of BNL, BL, BRML (together, the **Burswood entities**) and CRL a suitable person as required by ToR 5. These changes are referred to in this chapter as the 'pathway to suitability'.

The PCRC's approach

- 2 The PCRC's approach to the analysis of suitability for the purpose of ToR 1 to 4 is explained in Chapter One: Subject Matter of Inquiry and Terms of Reference and summarised for context immediately below.
- 3 Assessing the suitability of a person to hold a casino licence or to be involved in gaming operations of a licensed casino requires an assessment of the conduct and attributes of the person that provide an indication of the likelihood that the person will perform the activities permitted under a casino gaming licence in a manner that will facilitate the attainment of the objectives of casino regulation and will reasonably mitigate the identified risks to their attainment.
- 4 The PCRC considers that a 'suitable person' to be engaged in, concerned in or associated with gaming operations of a licensed casino is a person who:
 - a. is of good character and reputation, is honest, has integrity, is competent, has appropriate governance processes and arrangements and is of sound financial standing, so as to have the capacity or ability to ensure compliance with all obligations of the casino gaming licensee;
 - b. does what is reasonable to guard against the risk of gaming operations causing harm to patrons or the public so as to create and maintain public confidence and trust in the credibility and integrity of licensed casino operations;
 - c. does what is reasonable to guard against the risk of criminal infiltration of gaming operations of a licensed casino and to guard against criminal activity otherwise occurring at the casino so as to create and maintain public confidence and trust in the credibility and integrity of licensed casino operations;
 - d. does what is reasonable to guard against risks to the integrity of gaming conducted

pursuant to the licence so as to create and maintain public confidence and trust in the credibility and integrity of licensed casino operations; and

- e. is honest, open, competent and accountable in its dealings with the regulator.
- 5 With respect to each of the Burswood entities and CRL, the PCRC has examined its governance processes and arrangements; the people, systems and processes it has to manage the material risks of casino gaming operations; any past and existing deficiencies in those people, systems and processes; the relevant entity's insight into those deficiencies and remediation of them; its financial status; the organisational culture; the reputation and character of the relevant entity; its competence and other matters germane to the maintenance of public confidence and trust in Perth Casino operations for the purpose of ascertaining whether each has the attributes of suitability.
- 6 The PCRC has made an assessment below in respect of each attribute of suitability and its impact on the entities' suitability. However, it is not a mathematical exercise. The ultimate finding of present suitability has been determined by the PCRC as a value judgement, considering and synthesising all of the relevant factors to determine whether, on balance, each entity is, or is not, presently a suitable person.
- 7 The suitability questions are to be considered separately with respect to each of the Burswood entities and CRL. However, as noted below, there is no clear demarcation, in practice, between the functions and responsibilities of each of the Burswood entities in respect of the operation of Perth Casino. Further, a number of management systems or functions relevant to Perth Casino operations are centralised with oversight and management through CRL.
- 8 In this context, a conclusion as to the adequacy or effectiveness of a system or function relevant to an assessment of suitability will often apply to each of the Burswood entities and CRL equally. In the case of BNL, an assessment of whether it is suitable to continue to hold the casino gaming licence for Perth Casino may be influenced by an assessment of how the Perth Casino operations have been and are conducted pursuant to BNL's licence with the involvement of the other Burswood entities and CRL.
- 9 Part One of this chapter contains the PCRC's assessment of the present suitability of CRL and the Burswood entities. Part Two identifies changes that would be required to render the companies suitable.

Part One: Assessment of present suitability

- 10 There are two particular matters, both of general application, that have informed the PCRC's analysis of present suitability. First, the situation has been, and remains fluid. The Remediation Plan developed and partially implemented by Crown during 2021 and into 2022 means that the factual matrix in respect of which the PCRC is required to opine is different from the one with which the Bergin Inquiry dealt, and different again from that which confronted the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**). A lot has changed even since the report of the RCCOL delivered on 15 October 2021 (**RCCOL Report**). Secondly, the PCRC's view is informed by its assessment of the personnel who are in charge of the Remediation Plan and whose commitment and resolve to implement the plan are critical to its success.

Structural and operational corporate governance issues

- 11 It is convenient to commence the assessment of suitability with a consideration of governance processes and arrangements because corporate governance, risk management and culture contribute directly to an assessment of corporate reputation, character, competence, financial stability and public confidence and trust.

- 12 The PCRC has considered whether CRL and the Burswood entities have appropriate governance structures and arrangements so as to have the capacity or ability to ensure compliance with all obligations of the casino gaming licensee. These issues are examined in Chapter Four: Corporate Governance.

Structural governance issues

- 13 The current structure of ownership and management of Perth Casino is complex due to the hybrid trust and corporate structure of Crown Perth Resort which evolved between 1985 and 2007. This has led to confusion in the relationship between the different entities and their respective roles in operating Perth Casino. There is a tension between the practical or organic operations of Perth Casino and the responsibilities of BNL and BRML under the trust deed establishing the Burswood Property Trust and other instruments of the regulatory regime, and BL's relationship with the other Burswood entities. The corporate group setting and the centralisation of functions also raises questions about compliance with the regulatory regime.
- 14 However, as no findings of breach have been made, the PCRC does not take those matters into account in assessing suitability. Nevertheless, conforming with legal obligations is an essential aspect of good governance and they are material issues that ought to be addressed. This is the subject of observations set out in Chapter Four: Corporate Governance.
- 15 Any rationalisation of the hybrid trust and corporate structure will take time and will require regulatory approval. The balance of this chapter assumes that the current structure will remain in place, for the foreseeable future.

Operational governance issues

- 16 The PCRC has identified a number of governance issues concerning BL, as the entity that has assumed primary governance responsibilities for the Burswood entities. Up until recently, those governance issues included:
- a. confusion about the role and responsibility of the BL board;
 - b. the absence of a board charter or clearly demarcated divisions of responsibility to clarify the role of the BL board;
 - c. the passive approach adopted by the BL board towards the risk management of Perth Casino;
 - d. from 2013, a lack of formal or material consideration by the BL board of the way in which the centralisation of management functions into group roles would or might impact on local operations and the management and oversight of those operations;
 - e. from 2013, a lack of formal direct reporting lines from key group management positions to the BL board, resulting in blurred reporting lines that impeded appropriate accountability and oversight;
 - f. from 2013, an absence of documented divisions of responsibility regarding the board to which the group roles or functions were accountable;
 - g. from 2008 to the beginning of 2021, the non-executive directors were not provided with opportunities for training or experience in gaming, or casino risk management, including money laundering; and
 - h. the lack of clarity in the respective roles of BNL and BRML on the one hand, and BL on the other, for aspects of the operations of Perth Casino and an absence of formal reporting lines between the boards.

- 17 These governance issues of the BL board contributed to failures of Perth Casino to manage the risks associated with the organisation and conduct of gaming operations.
- 18 The BL board was virtually inoperative for the first six months of 2021 and Crown was slow to revitalise the membership. It was said this was due to Crown being in crisis and undergoing significant change. However, Perth Casino was continuing to operate in this period and oversight of its operations was required.
- 19 From August 2021, there have been improvements to the functioning of the BL board. These include the adoption of a board charter (subject to the approval of CRL), a change in composition of the BL board to include non-executive directors with relevant experience, the appointment of an experienced chair, increased quality of agendas and board packs, director training and the board's adoption of a more proactive role in overseeing management.
- 20 However, BL faces a significant workload as it confronts the remediation issues that are necessary. The reconfiguration of its membership and formation of board committees requires attention.
- 21 The board charter, subject to approval by CRL, goes some way towards clarifying the role and responsibility of BL. However, more needs to be done to clarify the relationship between the three Burswood entities. The development of documented reporting lines between the entities, and of management responsible to those entities, is not complete. The development of board charters for BNL and BRML has not been addressed.
- 22 The move to centralise functions has been placed on hold pending the outcome of the PCRC's inquiry. The PCRC takes the view that if there is to be sharing of services it must be done in a way that preserves the autonomy of Perth Casino in the decision-making process as to the development, adoption and implementation of shared services and reporting of group managers to the BL board. This is necessary both to ensure compliance with regulatory requirements and in the interests of proper governance and oversight by BL of the Perth Casino operations.
- 23 The governance issues of the past are many. The evidence concerning the August and December 2021 board meetings indicate an improved approach to governance. There has been only a short period in which the board has been working together to establish a new approach, including ensuring that all directors are kept appropriately informed.
- 24 The PCRC recognises the positive signs but, on balance, concludes that the operational governance processes and arrangements of the Burswood entities are not presently effective and therefore the Burswood entities do not have one of the attributes of suitable persons to be engaged in, concerned in or associated with gaming operations of a licensed casino.
- 25 The reshaping of the governance structures of CRL are more advanced than those of the Burswood entities. Issues relating to the influence of the Consolidated Press Holdings parties has been addressed by the proffer of undertakings to the regulators. The board membership and senior management have undergone major change and, compared with the recent history of Crown, is relatively stable. There is an experienced board chair and members with broad corporate experience and with experience in casino risk management. The same can be said for senior management. The board and senior management have played a central role in the development of the Remediation Plan and its implementation. There has been a process of revision of the charters for a number of board committees.
- 26 The PCRC concludes that CRL presently has effective and therefore appropriate operational governance processes and arrangements, being an attribute of a suitable person to be engaged in, concerned in or associated with gaming operations of a licensed casino.
- 27 However, it is apparent that CRL, as the parent company and the architect of the repository of centralised functions, will have to play a part in the remedial measures that are necessary for

the Burswood entities. Resolution of some of the reporting line issues that affect the Burswood entities are in the control of CRL. The ramifications of some of the RCCOL recommendations that affect the relationship between Crown Melbourne Limited (**CML**) and its parent and associated companies could, in the future, also impact on the governance of CRL.

Risk management

- 28** In Chapter Four: Corporate Governance, the PCRC has considered the effectiveness of the risk management system of CRL and the Burswood entities generally.
- 29** After the arrest of Crown staff residing in China October 2016 (**China Arrests**), which was a significant risk management and governance failure, CRL instigated a number of changes to its risk management policies and functions. Peter Deans (**Deans**), a risk and strategy consultant engaged by the RCCOL and then the PCRC, analysed Crown's revised risk management framework and made recommendations he considered to be necessary for the risk management framework to be effective and robust.
- 30** Following that analysis, Crown has taken positive steps in the last quarter of 2021 to address the problems identified by Deans.
- 31** Deans identified four of his recommendations that had particular significance to ensure that the system was effective and robust, and which had not been implemented at the time of his report prepared for the PCRC's inquiry. Crown has indicated that one of those matters has been implemented and the other three will be presented to the CRL Risk Management Committee in February 2022.
- 32** Other remediation steps undertaken by Crown include the establishment of a dedicated and separate risk management function, the establishment of a separate internal audit function, the elevation of reporting lines of the senior executives in risk management and internal audit, the engagement of quality personnel with relevant experience, and the recognition of the importance of culture in risk management. Crown is planning further improvements as part of its plan to improve its risk management capabilities and framework.
- 33** The PCRC concludes that CRL and the Burswood entities have an effective risk management framework and system, being a factor relevant to overall governance processes and arrangements and, in that sense, an attribute of a suitable person to be engaged in, concerned in or associated with gaming operations of a licensed casino.
- 34** However, there are two issues that need attention. First, one of the remaining items not covered in Dean's recommendations is the role and responsibility of the Perth Executive Risk and Compliance Committee (**Perth ERCC**), and where it fits in the overall risk management structure. Secondly, the resourcing of internal audit on the ground in Perth will need to be closely monitored by the Group General Manager – Internal Audit and the boards of the Burswood entities.

Guarding against the risk of harm to patrons

- 35** As examined in Chapter Twelve: Harm Minimisation, CRL and the Burswood entities have historically fallen short of doing what is reasonable to minimise the risk that gaming operations at Perth Casino may cause harm.
- 36** Until May 2021, to CRL and the Burswood entities' knowledge, Perth Casino's harm minimisation function was inadequately resourced. CRL and the Burswood entities failed to conduct research into gambling-related harm, even after being made aware of the association between loyalty programs, such as Crown Rewards, and harm. They did not review harm minimisation measures used by other casinos in order to improve harm minimisation at Perth Casino. Generally speaking they prioritised profit over harm minimisation.

- 37** Perth Casino's responsible gaming framework was deficient. Among other things, its responsible gaming code did not contain obvious measures to reduce the risk of harm, including those found in Melbourne Casino's equivalent code. Patrons were permitted to gamble for excessive periods of time. Pre-commitment systems offered by Perth Casino were almost wholly unused and thus ineffective. Further, there were deficiencies in the way Perth Casino implemented its responsible gaming framework. It failed to identify the majority of patrons suffering gambling-related harm. It failed to review its records so as to assess the efficacy of its responsible gaming framework. It did not evaluate the performance of its staff in detecting observable signs of problem gambling.
- 38** The risk that the gambling services offered by Perth Casino might cause harm was exacerbated by its reliance on hosts, promotions, gifts and regular marketing of gambling incentives to deliberately induce patrons to gamble more than they otherwise might have done. Perth Casino did not consider whether those patrons could afford to spend more.
- 39** More recently, Crown has taken largely reactive steps to improve its responsible gaming framework. It commissioned a report in response to recommendations by the Victorian Commission for Gambling and Liquor Regulation. It announced enhancements to its framework in response to the RCCOL. Among other things, it has increased resourcing for Perth Casino's responsible gaming team, reduced maximum play periods, and commenced research into the Crown Rewards programme. These steps are positive but limited in scope. They could and should have been taken earlier.
- 40** Perth Casino's harm minimisation function has not been reviewed to confirm that its resourcing is now adequate. The new play periods policy continues to allow for excessive gambling by individual patrons across the week. The casino's records suggest that the policy has not properly been implemented or enforced.
- 41** Crown is rolling out a responsible gaming change program. The program is in draft, is highly contingent, is subject to change by the incoming Group General Manager Responsible Gaming and has not been approved by the CRL or BL boards. Although much work has gone into the draft program, it is not possible to assess which measures will ultimately be implemented or whether those measures will constitute an approach which is reasonable to guard against the risk of gambling-related harm at Perth Casino.
- 42** The time taken before the change program was commenced and when it will be finalised calls into question Crown's commitment to reforms to its harm minimisation function.
- 43** Considered collectively, Crown's harm minimisation program and strategy is not at the stage where it could be regarded as a reasonable measure to protect against gambling related harm.
- 44** The PCRC concludes that CRL and the Burswood entities do not presently have an appropriate harm minimisation programme and strategy to reasonably guard against gambling-related harm. Consequently, they each do not have one of the attributes of suitable persons to be engaged in, concerned in or associated with gaming operations of a licensed casino.

Guarding against the risk of criminal infiltration

- 45** The PCRC has considered whether CRL and the Burswood entities have done, and are doing, what is reasonable to guard against the risk of criminal infiltration of gaming operations and to guard against criminal activity otherwise occurring at Perth Casino. This issue has been considered through the specific topics of money laundering, junkets and other criminal activity.

Money laundering

- 46 Prior to the media allegations in 2019, CRL and the Burswood entities fell short of doing what was reasonable to guard against the risk of money laundering. Crown facilitated or enabled apparent money laundering through patron accounts, including the bank accounts of Riverbank Investments Pty Ltd (**Riverbank**), a subsidiary of BL, despite warnings from its bankers.
- 47 Perth Casino's anti-money laundering (**AML**) framework was deficient. Among other things, it did not address the known risk of structuring through the Riverbank accounts. It did not have an adequate AML programme in place. Perth Casino staff (in particular, cage staff) were not adequately trained or supervised to identify potentially suspicious transactions and the standard operating procedures did not provide sufficient guidance. The internal audit function did not properly assess the management of the risk and there was no external audit. There was no separation of the lines of defence that would be expected in an effective risk management system.
- 48 Senior management responsible for managing the money laundering risk did not carry out their roles in a manner commensurate with the level of risk. They were aware of the risk of structuring through the Riverbank accounts and of the concerns of their bankers that structuring was in fact taking place through those accounts and yet, until 2020, did nothing to investigate, report and take steps to enhance relevant controls.
- 49 There was considerable change in the management of the money laundering risk following media allegations in 2019 and the Bergin Inquiry. Initially, such change was reactive in nature, likely prompted by revelations from the Bergin Inquiry and the RCCOL. From May 2021, change has been conducted in a more comprehensive and planned manner.
- 50 In May 2021, Crown introduced its Remediation Plan and its Financial Crime and Compliance Change Program (**FCCCP**). The PCRC is satisfied that these plans generally have the necessary components to ensure CRL and the Burswood entities are effectively managing the money laundering risk. Crown's commitment to execution of the plans demonstrates a recognition of the significance of the remediation task at hand.
- 51 Almost all of the individuals identified by the PCRC as having contributed to, or taken part in, the implementation of systems found to be deficient, have now left Crown. The PCRC is satisfied that new senior management responsible for managing the money laundering risk have the skills and experience necessary to perform their roles. Crown has significantly invested in its AML team.
- 52 The systems and processes that have now been put in place are sufficient to address the areas of money laundering exposure identified in 2019 and into 2020. However, it is too early to assess whether in fact those enhanced or new systems are effective in their remediation efforts. Crown's new AML programme was only approved by the CRL board on 21 December 2021 and has not been embedded, nor has it been the subject of an external review. The internal audit function requires the assistance of external AML experts to effectively audit the money laundering risk and although Crown intends to engage external assistance, it has not yet done so.
- 53 Further, while good progress has been made, more needs to be done to ensure cage staff at Perth Casino have the training, supervision and effective standard operating procedures to effectively perform their role in identifying and reporting suspicious behaviour.
- 54 The management of money laundering risk at Perth Casino is presently a centralised function. Overall, the PCRC cannot conclude that CRL and the Burswood entities are currently managing the money laundering risk at Perth Casino effectively. However, they have taken significant steps towards the remediation of their management of this risk. The PCRC considers that they will likely be in a position to do so if they complete the FCCCP

as planned, update and improve the standard operating procedures, enhance the training and supervision of Perth Casino cage staff and supplement their internal audit function with external expert AML audit assistance as planned.

- 55** Remedial work is not sufficiently advanced to permit a conclusion that CRL and the Burswood entities presently have sufficiently effective systems and processes in place to reasonably guard against the risk of money laundering. Consequently, CRL and the Burswood entities do not presently have one of the attributes of suitable persons to be engaged in, concerned in or associated with gaming operations of a licensed casino.

Junkets

- 56** Prior to 2020, CRL and the Burswood entities' management of junket operations fell short of what was reasonable to manage the risk of criminal infiltration.
- 57** The business of Crown in China was managed at group level by the International Business Unit (IBU) based in Melbourne. The BL board had little knowledge and exercised no oversight over the marketing of junkets or the approval of junket operators who conducted junket operations at Perth Casino. The Burswood entities did not have any substantive involvement in or oversight of the assessment of junket operators or participants who came to Perth Casino.
- 58** The junket approval process was flawed. The CRL and BL boards did not receive information about the IBU other than profitability of the business unit. The compliance and AML teams had insufficient input into the due diligence assessment of junket operators. The incentives provided by Crown to IBU management encouraged them to take inappropriate risks in the pursuit of profit, there were deficiencies in documents designed to capture risks and, in any event, the VIP International team had a higher risk appetite than the rest of Crown.
- 59** The PCRC considers that the BL board should have, but did not, take steps to satisfy itself that the junket operations of Perth Casino were managed in a way that mitigated the risk of criminal infiltration. Further, until about mid-2019 or late 2020, the directors of the BL board did not have an adequate appreciation of the risks the junket operators presented to gaming operations at Perth Casino.
- 60** As a consequence of the manner in which junket operators for Perth Casino were approved, BNL, sometimes in conjunction with CML, entered into junket agreements with operators with links to triads and other organised crime groups. Executives who were officers, employees or agents of each of the Burswood entities knew of information that suggested that certain junket operators undertaking junkets at Perth Casino had connections or reputations for having connections to triads or other criminal groups. Despite the potential reputational harm and manifest money laundering risk posed by these operators, executives made decisions to continue to maintain relationships with them. Some of these relationships were maintained until they were reviewed in late 2020 in the face of the Bergin Inquiry.
- 61** The directors of BL to whom the executives were supposed to be accountable were not informed of the risks associated with continuing relationships with those junket operators. After the risks were exposed during the Bergin Inquiry, none of BNL, BRML or BL took any steps to review the relationships or cease junket operations.
- 62** The board of CRL made a decision to cease junket operations in 2020 and intends to resume marketing to high value international players in the future, if at all, only with appropriate safeguards against the risks of junket operations that manifested previously. In contrast, none of the Burswood entities had separately and independently made a decision to cease junket operations before CRL made the announcement. However, it is to be noted that in February 2021, the GWC issued a direction prohibiting junket operations to Perth Casino.

- 63** There is no present intention to resume junket operations and in the PCRC's opinion no likelihood that they will be resumed in the short to medium term. A direction is in place to prevent their resumption without regulator approval. The PCRC concludes that CRL and the Burswood entities have processes and arrangements in place to reasonably guard against the risk posed by junkets and therefore, in relation to that risk, have the attributes of suitable persons to be engaged in, concerned in or associated with gaming operations of a licensed casino.

Other criminal activity

- 64** The PCRC is satisfied that there are currently adequate systems in place at Perth Casino to deal with the risk of other criminal activities. However, historically there were some deficiencies.
- 65** There was and is an adequate and effective system in place to guard against the risk of criminal infiltration through employees and others who work at the casino. Otherwise, the security and surveillance teams responsible for dealing with and mitigating the risk of criminal activity at the casino were and are well-resourced and, despite some instances of circumvention, had and have adequate systems, policies, procedures and technology. Perth Casino also has a 'Persons of Interest' sub-committee that identifies and issues notices by which high-risk patrons are barred from entering the casino. These are systems, policies, procedures and technology to be expected of a suitable person to be involved in the organisation and conduct of gaming operations of a licensed casino.
- 66** The PCRC concludes that CRL and the Burswood entities have processes and arrangements in place to reasonably guard against the risk posed by other forms of criminal activity and therefore, in relation to that risk, have the attributes of suitable person to be engaged in, concerned in or associated with gaming operations of a licensed casino.

Communications with the regulator

- 67** The PCRC has found that the communications made on behalf of CRL and the Burswood entities with the GWC with respect to:
- the China Arrests in 2016, 2017 and 2019;
 - money laundering in 2019;
 - the Bergin Inquiry in 2020; and
 - casino tax in 2015 and 2021,
- were not adequate. These communications were not open, accountable and (or) competent.
- 68** The PCRC has found that communications with the GWC with respect to junket regulations in 2009; the Swee Choy See junket in 2018; electronic gaming machine speed of play in 2014 and 2019; and junkets broadly in 2019 made by or on behalf of the Burswood entities were also not adequate.
- 69** Inadequate and inappropriate communications and dealings with the GWC undermines public confidence and trust in the credibility and integrity of licensed casino operations at Perth Casino. Crown has accepted the inadequacy of these communications and has very recently apologised for them to the GWC. Crown's demonstration of insight into its conduct is a mitigating factor in terms of an assessment of its present suitability, as are the assurances from Crown that the past inadequacies will not be repeated.
- 70** Nevertheless, it is important to appreciate that the subject matter of these communications was of significance. These were not trivial or routine issues. They were substantive matters and, in many cases, the GWC relied on inaccurate information in the decisions it made.

It was misled. This conduct is symptomatic of a poor organisational culture which, as explained later in this chapter, will take some time to reform and does not reflect well on the entities concerned.

- 71 The PCRC concludes that CRL and the Burswood entities have not, in the past, been open, competent and accountable in their communications with the regulator. While there are positive signs that they intend to improve their communications in the future, there is insufficient evidence to enable the PCRC to conclude that, in this sense, CRL and the Burswood entities have one of the attributes of a suitable person to be engaged in, concerned in or associated with gaming operations of a licensed casino.

Financial status

- 72 In the assessment of whether a person is a suitable person to engage in, or be concerned in or associated with, the organisation and conduct of gaming operations of Perth Casino, the PCRC may have regard to the financial status and financial background of the person.
- 73 The financial position of Crown analysed during the course of the PCRC's inquiry raises no issues with the financial position of CRL or the Burswood entities. However, some uncertainties have been identified which may impact the financial position in the future.
- 74 The PCRC concludes that CRL and the Burswood entities presently are financially sound, being an attribute of a suitable person to be engaged in, concerned in or associated with gaming operations of a licensed casino.

Culture and insight

- 75 In Chapter One: Subject Matter of Inquiry and Terms of Reference, reference is made to the significance of culture and insight to the assessment of suitability. Culture and insight are interconnected. They demonstrate the extent of an organisation's understanding of past misconduct and acceptance of responsibility for it.

Insight

- 76 There have been many inquiries into the affairs of Crown. There are many examples where CRL or one of the Burswood entities have made a change in a system, strategy or structure in response to an adverse finding or conclusion, or an inevitable likelihood of such an adverse finding or conclusion of those inquiries. While it is not surprising that Crown would be devoting attention and resources to those inquiries, the PCRC is not aware of instances where CRL or a Burswood entity has spontaneously investigated potential past wrongdoing and made an appropriate change before it was uncovered by an inquiry.
- 77 Crown has acknowledged that aspects of Perth Casino's responsible gaming framework can and should be improved. It has otherwise demonstrated limited insight into the framework's deficiencies. It has not expressly accepted that Perth Casino is obliged to do what is reasonable to guard against the risk of harm (as opposed to adopting industry standards).
- 78 Crown's concessions to the RCCOL and to the PCRC demonstrate that Crown has, for the most part, accepted and confronted the serious deficiencies in the identification and management of the money laundering risk at Perth Casino and its failings regarding the China Arrests and junkets identified in the Bergin Report. It has accepted past deficiencies in corporate governance, risk management and culture. This is an important step towards substantive remediation.
- 79 Crown has apologised for misleading the GWC in its communications concerning the matters referred to in the Bergin Report, although that apology is belated and came only after the matter was drawn to Crown's attention by the PCRC.

Culture

- 80** It is evident that poor organisational culture contributed to the past failings of CRL and the Burswood entities referred to earlier in this chapter.
- 81** The review of Crown’s organisational culture carried out by Deloitte in 2021 made a number of concerning observations about the state of Crown’s culture at the time of that report. These included that compliance was not driving behaviour, there was perceived conflict between appeasing customers and driving profit on the one hand, and meeting the obligations and expectations of conduct imposed on a casino licensee on the other, and there was weak support for the value ‘we do the right thing’. There were barriers to compliance including that staff believed it was necessary to bend the rules and work around policies to get the job done and that was driven by customer centricity and profit. Other findings of the survey include that policies were considered weak and reactive, there was a fear of constructive challenge to management and some managers misused their authority.
- 82** Crown is presently undertaking a significant cultural change project. The PCRC has concluded that there are barriers to cultural change at Crown which will need to be overcome by this project. The successful completion of cultural change will not be easy and will take time.
- 83** The leaders of Crown will need to maintain their focus and momentum to ensure that cultural change occurs across the organisation, and at all levels. The PCRC is satisfied that the current leadership team has the will, resolve and ability to complete the reformation of the culture of the organisation, although this will require a period of stability of the leadership group to enable changes to be effective.
- 84** While the PCRC acknowledges that there has been some improvement in Crown’s organisational culture to date, implementation of the culture change programme is not of sufficient maturity to demonstrate necessary insight into, and improvements to, organisational culture.
- 85** The PCRC concludes that CRL and the Burswood entities do not presently have a satisfactory organisational culture, that being a factor relevant to an assessment of overall governance processes and arrangements, and in that sense do not have one of the attribute of a suitable person to be engaged in, concerned in or associated with gaming operations of a licensed casino.

Competence to carry out the relevant activity

- 86** In the assessment of whether a person is a ‘suitable person’, the PCRC may have regard to the competence and adequacy of the knowledge, qualifications, experience and ability of the person to engage in, or be concerned in or associated with the relevant activity.
- 87** Competence, like reputation and character, may be a reflection of the competence of the individuals who are involved in the organisation and conduct of gaming operations at Perth Casino. Competence may also be derived from the systems, strategy, structure and culture of a corporation which render it competent, as an organisation, to be involved in the organisation and conduct of gaming operations. Competence, therefore, is to be assessed in relation to the entities as well as the individuals concerned.
- 88** There has been a complete transformation of the boards of CRL and BL from the time of the commencement of the Bergin Inquiry. There has also been significant change to the senior management of Crown.
- 89** The PCRC has concluded that the current BL directors have experience in areas of risk management, AML, gaming and change management. The CRL directors have a high level of executive and directorship experience, in a number of key areas relevant to Crown’s

business, including corporate governance, regulatory engagement, risk management, AML compliance, gaming management, business transformation and cultural change. The directors of CRL and BL appear committed to making sure the boards take an active role in leadership, particularly on cultural transformation. There is no reason to question the leadership capabilities or the competence of the current directors.

- 90** However, following the resignation of Lonnie Bossi in January 2022, Crown Perth Resort does not currently have a Chief Executive Officer. Therefore, no assessment can be made as to the competence and commitment of the CEO of Crown Perth Resort to deliver the Remediation Plan for Perth Casino.
- 91** The PCRC has considered the attribute of competence and the systems, strategies, structure and culture as an aspect of its consideration of the other attributes of suitability in this chapter.

Reputation and character

- 92** In relation to the matters of reputation, character, honesty and integrity of each of the Burswood entities and CRL, as discussed in Chapter One: Subject Matter of Inquiry and Terms of Reference, the traditional view is that these attributes of a company mirror those of its principal officers and it must, in a broad sense, bear responsibility for their failings. This reflective nature of 'character' permits a corporation to remove the stain from the corporate character by removing the officers whose character is otherwise attributed to the corporation.
- 93** There is a catalogue of past conduct of CRL and the Burswood entities for which the directors and officers of each of the companies were responsible or accountable. That past conduct reflects poorly on the reputation and character of many of the individual directors and officers involved. Crown makes the submission that, whatever may have been the past misdeeds of individuals, any stain has been removed as all the responsible or potentially responsible directors of CRL and the Burswood entities have resigned and have been replaced with new individuals whose reputation, character, honesty and integrity is unimpeached.
- 94** The PCRC accepts that the substantial change in the leadership of CRL and the Burswood entities has gone a long way towards improving the reputation and character of the relevant companies. However, a corporation has a reputation and character that is separate from a particular individual or group of individuals. As discussed in Chapter One: Subject Matter of Inquiry and Terms of Reference, organisational decisions and conduct are more than a combination of individual choices and actions. The systems, strategy, structure and culture of the corporation can either cause or inhibit corporate misconduct and contribute towards good or bad corporate reputation and character.
- 95** Public trust and confidence in the credibility and integrity of licensed casino operations is, in part, created and maintained by the reputation and character of companies involved in the gaming operations of a licensed casino. Restoration or rehabilitation of damaged corporate reputation and character requires more than a change of principal officers, although that may be taken into account. It also requires steps to be taken to address any deficiencies in systems, strategy, structure and culture that have caused or contributed to misconduct or failures of the organisation to meet normative standards and for those steps to be acknowledged by the public.
- 96** The PCRC acknowledges the leadership changes that have been made to date. However, the deficiencies in the management of Crown's casino operations, as exposed by several public inquiries, over the last few years, are considerable. There is significant damage to the reputation of CRL from, among other things, the findings of the Bergin Inquiry and the RCCOL that Crown is unsuitable, and from the RCCOL's findings about the underpayment of tax to the Victorian Government.

- 97 There are positive aspects to reputation. The contribution of the Burswood entities and Crown to employment, charitable endeavours, social outreach and State Revenues is described, albeit briefly, in Chapter Two: History of Perth Casino.
- 98 Restoration of reputation does not happen overnight and requires demonstration of tangible achievements. The PCRC is satisfied that, for Crown, the process has commenced but it would be premature to conclude that CRL and the Burswood entities have sufficiently rehabilitated their reputation and character. The PCRC concludes that CRL and the Burswood entities do not have the reputation and character expected of a suitable person to be engaged in, concerned in or associated with gaming operations of a licensed casino. Consequently, it lacks one of the attributes of a suitable person.

Blackstone and potential impact on suitability

- 99 During the period of the PCRC's inquiry, Crown has been the subject of takeover bids or expressions of interest from a number of parties to acquire all or part of the shareholding of CRL. Interests associated with Blackstone Inc (**Blackstone**), an investment company based in the United States of America, made non-binding proposals in March, May and November 2021.
- 100 On 13 January 2022, Blackstone made a revised offer to acquire all of the shares in CRL by way of a scheme of arrangement.¹ The proposal was subject to a number of conditions, including the support of all CRL directors.
- 101 On 14 February 2022, CRL made an announcement to the (**ASX**) that, subject to customary conditions, it would recommend the proposal to shareholders.² The announcement disclosed that CRL had entered into a scheme implementation deed (**Implementation Deed**) with SS Silver II Pty Ltd, a company associated with Blackstone under which SS Silver II will acquire all of the shares in CRL by way of a scheme of arrangement under s 411 of the *Corporations Act 2001* (Cth) (**Scheme**).³ The CRL ASX announcement suggests that SS Silver II is a company that represents funds of investors managed by Blackstone. That is, SS Silver II is a private equity vehicle. If implemented, the Scheme will result in the delisting of CRL from the ASX and the 'privatising' of ownership of CRL.
- 102 The Implementation Deed and Scheme are subject to a number of conditions precedent. Therefore, there is no certainty that the Scheme will proceed. Nonetheless, if implemented, the Scheme contemplates that CRL must, on the date of implementation of the Scheme, appoint nominees of SS Silver II as directors of CRL and its subsidiaries, including the Burswood entities, and procure the resignation of directors specified by SS Silver II from the boards of CRL and its subsidiaries. Implementation of the Scheme will result in a change of control of CRL to SS Silver II. The PCRC has no information about that company other than what has been made public in the CRL ASX announcement on 14 February 2022 and, given the timing of the offer, has had no opportunity to inquire further into the parties or the terms of the proposed arrangement.
- 103 It follows that there is considerable uncertainty as to whether there will be stability of the current composition of the boards of directors of CRL and the Burswood entities. In such circumstances, it is difficult for the PCRC to be satisfied that the future direction of CRL and the Burswood entities will remain as it has been articulated by the current directors in the evidence given to the PCRC. It is also possible that a change of ownership and control may affect the tenure of senior management who are intimately involved in developing and driving the remediation of Crown.
- 104 The announcement suggests that there will be sufficient funding through SS Silver II to acquire all the issued securities in CRL. However, beyond the acquisition of its share capital, the extent to which CRL will remain adequately capitalised or able to raise capital or debt financing for the purposes of maintaining future gaming operations at Perth Casino is unknown.

- 105** The uncertainties inherent in the circumstances outlined above render it more difficult for the PCRC to be satisfied as to the present suitability of CRL and the Burswood entities. However, it was not determinative of any issue and was not otherwise taken into account in the suitability analysis.

Conclusions on suitability

- 106** As set out above, the ultimate finding of present suitability has been determined by the PCRC as a value judgement, considering and synthesising all of the relevant factors to determine whether, on balance, each entity is, or is not, presently a suitable person.
- 107** Having regard to past conduct, the steps taken to rehabilitate the companies, the steps it is said will be taken in the future, the level of certainty about implementation of those steps and the past, present and proposed future governance arrangements, the PCRC finds that:
- a. each of BNL, CRL, BL or BRML is not a 'suitable person' to be concerned in or associated with the organisation and conduct of the gaming operations of a licensed casino; and
 - b. BNL is not a 'suitable person' to continue to hold the casino gaming licence for Perth Casino.

Part Two: Pathway to suitability

- 108** As the PCRC considers that none of BNL, BRML, BL or CRL is a 'suitable person', ToR 5 requires the PCRC to report upon what, if any, changes are required to render them suitable. This is referred to as a pathway to suitability. It is not part of the function of the PCRC to make recommendations to take regulatory action that displace or abrogate the functions of the GWC or the Minister. What is said in the remainder of this chapter arises from the plain wording of ToR 5.
- 109** Crown has been engaged in remediation activities since the latter part of 2020. Those activities are now guided by a Remediation Plan, for which Crown prepares monthly updates that are delivered to the regulators. The PCRC has seen the monthly updates between May 2021 and December 2021. The PCRC has had regard to evidence about the remediation activities over time, to the Remediation Plan, and to the monthly updates in determining its approach to the pathway to suitability.

Governance: risk management, culture and centralisation

Governance issues

- 110** BL, as the entity that has assumed the primary responsibility for the governance of gaming operations at Perth Casino, and while being a subsidiary in the Crown group, should be independent in carrying out its functions. All executives, employees and agents of CRL or any of its subsidiaries involved in the organisation and conduct of gaming operations at Perth Casino must be accountable to the BL board. This is not to say that those persons are to be accountable solely to the BL board; they will inevitably have responsibilities to other entities within the group.
- 111** The concept of 'independence' in this context means a body with the majority of its members who are not executives or employees of CRL or any of its subsidiaries. It also means members who are able to exercise independent judgement to fulfil and discharge the particular responsibilities and obligations of those entities in the conduct and organisation of the gaming operations at Perth Casino, bearing in mind the special nature of the casino licence.

- 112** There is a need for CRL and the Burswood entities to take the following steps:
- a. Define and clarify the role, function and authority of each of the Burswood entities.
 - b. Define and clarify the role, function and authority of CRL as the ultimate holding company of each of BL, BNL and BRML in a manner which is consistent with the independence of BL.
 - c. Define and clarify the delegation of authority to and manner in which officers, employees and agents of BRML, BNL, BL and CRL are accountable to the boards of directors of those companies for the organisation and conduct of gaming operations at Perth Casino.
 - d. Implement formal reporting mechanisms between the Burswood entities and between CRL and BL.
 - e. Implement board charters for BRML and BNL and formalise agreements, arrangements or understandings between them regarding the organisation and conduct of gaming operations at Perth Casino.

Risk management

- 113** The BL board must be directly and specifically responsible for oversight (responsibility and accountability) of risk management in connection with the organisation and conduct of gaming operations at Perth Casino. That oversight includes the risk of criminal infiltration, the Perth Casino AML/CTF Program and the minimisation of gambling-related harm.
- 114** The BL board should have a risk management committee and a gambling harm minimisation committee (or responsible service of gaming committee) which are board committees. Each of those committees should be chaired by a non-executive, preferably independent, director.
- 115** The Deans recommendations, at least the remaining four recommendations which were critical for an effective and robust risk management system, should be implemented. Additionally, the role of the Perth ERCC should be clarified.
- 116** Risk management policies should cater for different risk appetites being set for the Perth Casino operations in respect of which the key material risks are identified, escalated and addressed by the BL board.

Culture

- 117** As explained in Chapter Four: Corporate Governance, Crown's organisational culture requires complete transformation.
- 118** The boards of the Burswood entities should lead that transformation so that cultural change, in particular risk culture, is embedded across the entire organisation of Perth Casino.
- 119** Implementation of cultural change must be monitored and the success or effectiveness of changes assessed at regular intervals.

Centralisation

- 120** There is a risk that centralisation of management and (or) governance may lead to a lack of accountability of management, the blurring of reporting lines, risks falling through gaps, and an absence of independent and specific focus on financial and non-financial risks relating to Perth Casino gaming operations.
- 121** As explained in Chapter Four: Corporate Governance, there are a number of governance matters relating to centralisation which need to be addressed to ensure compliance with the regulatory framework, and in the interests of proper governance and oversight by BL of the

Perth Casino operations. Those matters are:

- a. the boards of the Burswood entities should consider each of the centralised functions and whether they are suited to local conditions;
- b. the boards of the Burswood entities should be responsible for monitoring performance at Perth Casino of centralised functions;
- c. when a policy is being developed at a central level, the Burswood entities should be involved in their formulation;
- d. there should be a process by which the policies (including policies devised by CRL) are considered and approved by the relevant board or boards of the Burswood entities to become policies of the Burswood entities as well as group policies;
- e. there must be clear and defined responsibilities and accountability, with processes to manage different needs between locations; and
- f. there must be adequate supervision and oversight maintained of implementation at the local level (that is, there should be accountability to the Burswood entities).

- 122** The BL board, before the adoption of any Crown group system, strategy or structure, must give separate and independent consideration as to whether the adoption of that system, strategy or structure is consistent with the responsibilities and obligations of those entities involved in the conduct and organisation of the gaming operations at Perth Casino, bearing in mind the special nature of the casino licence.

AML/CTF

- 123** Having regard to the past failings of the Perth Casino AML/CTF Program, processes and procedures at Perth Casino and the fact that the effectiveness of the current AML/CTF program and money laundering risk controls have not been properly assessed, the following steps should be taken to ensure that past known and potential deficiencies in the system are rectified:
- a. the FCCCCP should be completed. In particular, first line resources should be adequate in number and training to be an effective line of defence, policies and procedures should be upgraded to conform with the revised joint AML/CTF Compliance Program adopted by Crown, BNL, CML and the Barangaroo Licensee (**December 2021 AML/CTF Program**) and changes to policies and procedures. Internal audit should obtain external assistance to adequately audit the AML/CTF programme and money laundering controls. An external audit should be undertaken after implementation of the December 2021 AML/CTF Program;
 - b. all the recommendations in the Promontory, Deloitte and Initialism reports should be implemented and assessed for effectiveness.
 - c. the Exiger review of the December 2021 AML/CTF Program and money laundering controls for compliance with AML/CTF legislation and rules, compliance with the program, policies and procedures and effectiveness, which is due to be delivered by 31 March 2022, should be completed as soon as practicable. A further review by an independent expert should be conducted within 12 months of completion of the Exiger review;
 - d. there should be direct reporting of AML/CTF risk management and compliance to the BL board. The Crown Chief Risk Officer should report to and be directly accountable to the BL board;
 - e. the BL board should consider if the 2021 Joint AML/CTF Program and ML/TF controls adequately address and manage money laundering risks at Perth Casino;

- f. the BL board should consider the adequacy of the FCCCP for the Perth Casino operations;
- g. the BL board should consider if resources allocated to the first, second and third line of defences at Perth Casino are adequate to address and manage money laundering risks at Perth Casino;
- h. the Crown Group General Manager – Internal Audit should directly report to and be accountable to the BL board for the third line of defence of money laundering risks at Perth Casino; and
- i. an appropriately qualified and experienced person must be appointed as General Manager – Cage and Count at Perth Casino.

Harm caused by gambling

- 124** CRL and the Burswood entities must develop and implement a reasonable and appropriate harm minimisation system, strategy, structure and culture at the Perth Casino.
- 125** CRL and the Burswood entities must effectively implement the recommendations in the Responsible Gaming Advisory Panel's (**RGAP**) report titled 'Review of Crown Resort's Responsible Gaming Programs and Services' (**RGAP Report**), and the enhancements to Crown's responsible gaming framework announced on 24 May 2021 (**RG Enhancements**).
- 126** CRL and the Burswood entities must also develop and effectively implement a programme for change, improvement and enhancement of gambling-related harm minimisation at Perth Casino, whether under the rubric of the RG Change Program or otherwise.
- 127** That program should be developed and implemented taking into account the following matters;
 - a. The absence of appropriate research into gambling-related harm associated with gaming operations at Perth Casino and in Western Australia.
 - b. Development of harm minimisation measures based on research relating to gambling-related harm associated with gaming operations at Perth Casino and in Western Australia.
 - c. The applicability of harm minimisation programmes designed and implemented in other jurisdictions to gaming operations at Perth Casino and in Western Australia.
 - d. The adequacy and effectiveness of harm minimisation training of staff working at Perth Casino.
 - e. The adequacy and effectiveness of the resources (financial, people, materials, and services) applied to harm minimisation at Perth Casino.
 - f. The adequacy and effectiveness of any voluntary or involuntary exclusion policy applied at Perth Casino.
 - g. The adequacy and effectiveness of screening processes to guard against promoting gambling to or inducing gambling by patrons who are at risk of gambling-related harm.
 - h. The applicability of industry codes, standards or policies applicable to harm minimisation at Perth Casino.
 - i. The deficiencies in the existing responsible gaming framework at Perth Casino identified in this Final Report.
 - j. The deficiencies in the Crown responsible gaming framework identified in the RCCOL Report.
 - k. The need for a process for periodic review, evaluation and assessment of the effectiveness of the program and for continuous improvement of the program.

Financial status

- 128 The PCRC has concluded that there are presently no impediments to suitability arising from a lack of financial capacity. However, there have been material uncertainties noted which may impact financial capacity in the future.
- 129 The sound financial standing of CRL and the Burswood entities must be maintained.

External Monitor

- 130 Having regard to the conclusions on suitability, the current state of remediation and the remaining changes required to restore suitability, if BNL is to retain the licence (a matter which is beyond the PCRC's Commission), it would be appropriate whilst it and its associates are on the pathway to suitability for there to be some monitoring of the remediation activities, their implementation and effectiveness.
- 131 The GWC should be involved in the monitoring process because it has, and will continue to have, the primary responsibility for regulation of Perth Casino and has links to the Department and Minister for responsible for gaming. However, there are three factors that militate against the GWC having the primary carriage of the monitoring function. First, the customary regulatory functions for Perth Casino, such as audit and inspection, employee licensing and approving the rules of games, will continue in addition to the implementation of Crown's remediation activities. Secondly, the GWC will retain its existing responsibilities for the regulation of wagering. Thirdly, if the PCRC's recommendations for the adoption of a new delivery model for the regulation of gaming and wagering are adopted, the GWC will, itself, be going through a period of transition and change.
- 132 For these reasons, the PCRC takes the view that primary responsibility for the monitoring function should be reposed in a person, firm or organisation other than the GWC. The GWC and the monitor should work together to reduce the potential for duplication of efforts and inconsistencies of approach. It will be a convenient mechanism for periodic reporting by the monitor to the regulatory authorities and the government.
- 133 Similar issues were faced in both the Bergin Inquiry and the RCCOL. In the search for a monitoring model suited to the needs of Perth Casino and the regulatory framework in this State, it is convenient to look at the position arrived at in the other inquiries.

Independent Monitor of Barangaroo Casino

- 134 The Bergin Report concluded that Crown Sydney Gaming Pty Ltd (**Barangaroo Licensee**) was not a suitable person to continue to give effect to the Barangaroo restricted gaming licence. It also concluded that CRL was not a suitable person to be a close associate of the Barangaroo Licensee, as such a licensee. The Bergin Report also described, in general terms, the changes that would be required to render each of the Barangaroo Licensee and CRL suitable. However, the question of whether the Barangaroo Licensee and CRL were rendered suitable after making any changes remained a matter for Independent Liquor and Gaming Authority of New South Wales (**ILGA**).
- 135 After publication of the Bergin Report, ILGA announced an agreement in relation to a number of matters in relation to the Barangaroo Licensee.⁴ Following a request from ILGA, Crown appointed Duff & Phelps Australia Ltd, trading as Kroll (**Kroll**), to act as an 'Independent Monitor' to report back to ILGA on Crown's structural changes, including on corporate governance, AML/CTF measures and culture. The appointment was by a letter of engagement and a tripartite agreement was entered into between Crown, Kroll and ILGA.⁵

- 136** Following the outcome of the Independent Monitor’s report, and also a financial account audit, ILGA is to make a final decision on suitability.
- 137** Kroll’s work includes:⁶
- a. assessing the adequacy of certain aspects of the Remediation Plan to assist ILGA determining the Barangaroo Licensee’s suitability to hold a casino licence; and
 - b. should ILGA determine the Barangaroo Licensee is suitable, periodic assessments of Crown’s progress in implementing the Remediation Plan in accordance with timeframes.
- 138** There are many aspects of Kroll’s assessment of the Remediation Plan that may be relevant to and overlap with changes that have been made or that are required to render CRL a suitable person to be concerned in or associated with the organisation and conduct of gaming operations at Perth Casino.

Special Manager of Melbourne

- 139** The RCCOL Report concluded that CML was not a suitable person to continue to hold the casino licence for Melbourne Casino. It also concluded that CRL was not a ‘Suitable Associate’ of CML. The RCCOL Report made recommendations to amend the *Casino Control Act 1991* (Vic) to make provision for the appointment of a special manager to oversee the affairs of a casino operator and for the appointment of a special manager to CML for a period of two years.
- 140** The *Casino Control Act 1991* (Vic) was amended in accordance with the recommendation. Stephen O’Byrne QC, the former Commissioner of the Independent Broad-based Anti-Corruption Commission, was appointed to CML as special manager.
- 141** A special manager appointed under the provisions of the *Casino Control Act 1991* (Vic) is an eligible natural person⁷ appointed by the Governor in Council on the recommendation of the applicable Minister of the State of Victoria.⁸ The specific functions of the special manager are set out in the instrument of appointment, but the special manager is to:⁹
- a. oversee the affairs of the Melbourne casino operator, including the casino operations;
 - b. carry out the investigations set out in the instrument of appointment;
 - c. report to the Victorian Gambling and Casino Control Commission (**VGCCC**) and the Minister on investigations and functions performed by the special manager; and
 - d. to perform any other functions specified in the instrument of appointment.
- 142** The special manager is given all powers necessary to perform their functions.¹⁰ The powers are extensive including to oversee the affairs and decision making of the casino operator, and a power to give directions to the casino operator to take action or refrain from taking any action in certain circumstances.¹¹ Notwithstanding these powers, the special manager does not have any of the obligations, duties, or liabilities of a director of the casino operator.¹²
- 143** The special manager is to provide interim reports to the VGCCC at least every six months and at the end of two years, the special manager is to make a final report to the VGCCC and the Minister.¹³ The final report is to address:¹⁴
- a. whether there is any evidence of maladministration on the part of the casino operator;
 - b. whether there is any evidence of illegal or improper conduct on the part of the casino operator;
 - c. whether the casino operator has engaged in any conduct that may give rise to a material contravention of any law;

- d. the conduct of casino operations by the casino operator during the period of the special manager's appointment;
 - e. any progress made by the casino operator in implementing the recommendations of the RCCOL; and
 - f. any other matters in the instrument of appointment.
- 144** The RCCOL Report and Appendix I of the RCCOL Report set out a number of areas for determination and evaluation for the special manager. These areas include aspects of risk management, culture, AML/CTF (implementation of external report recommendations, FCCCCP and assessment, and evaluation of AML/CTF resourcing) and responsible service of gaming. The instrument of appointment is not a public document, but the PCRC assumes that it covers all or most of the items that are the subject of a recommendation in the RCCOL Final Report. If so, while many areas are focussed on CML, some areas will overlap with and be relevant to the changes required to render CRL and the Burswood entities suitable.
- 145** The VGCCC is to consider the final report of the special manager, and take whatever action it considers appropriate.¹⁵ But, within 90 days after receiving the final report, the VGCCC may determine that it is clearly satisfied that the casino operator is a suitable person and it is in the public interest that it do so.¹⁶ If the determination of the VGCCC is not made within 90 days after receiving the final report, the casino licence will be cancelled and this cancellation takes effect 180 days after the special manager's final report irrespective of any proceedings which may have been commenced.¹⁷
- 146** If the VGCCC determines the casino operator is a suitable person, the next review by the VGCCC will not be taken until at least three years after the determination.¹⁸
- 147** The reasonable costs and expenses of the special manager and the VGCCC of the process may be required to be paid by the casino operator.¹⁹
- 148** The provisions are to apply despite anything in the contrary in *Casino Control Act 1991* (Vic), the *Casino (Management Agreement) Act 1993* (Vic), the constitution of the casino operator,²⁰ and the provisions are expressed to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* (Cth).²¹

Monitoring of Perth Casino

- 149** The focus of Kroll is on the changes required in accordance with aspects of the Remediation Plan to render the Barangaroo Licensee a suitable person to give effect to the Barangaroo restricted gaming licence and to render CRL a suitable person to be its close associate. The focus of the special manager, amongst other things, is on the changes required to render CML a suitable person to hold the Melbourne Casino licence and to render CRL a suitable person to be its associate. However, the special manager appointment goes further and provides for the special manager to oversee the affairs and decision making of the casino operator, and to issue directions to the casino operator.
- 150** The Bergin Report was tabled in February 2021. The RCCOL Report was delivered on 15 October 2021. The landscape has changed since those inquiries were finalised. In the subsequent months since those inquiries Crown have progressed with its remediation activities and engaged in significant board and senior management renewal. However, as at the time of writing, full implementation of the remediation activities is not complete. As stated above, it is appropriate, as part of a pathway to suitability, for there to be some external monitoring of the implementation of the remediation activities.
- 151** There will be some flow on effect from the work of Kroll and the Victorian special manager through to the Burswood entities. However, the focus of attention of the monitor will be on

issues that are relevant to Perth Casino and the regulatory framework of this State. There are several options that can be considered.

- 152** Due to the change in the landscape since the Bergin Inquiry and the RCCOL, and the renewal of the boards and senior management, the PCRC does not consider it necessary that the external monitor have the full powers of oversight of the affairs and decision making of the casino operator, and with a power to direct those affairs as the special manager has under the Victorian regime. The focus of the external monitor is to be on the implementation of the remediation activities at Perth Casino.
- 153** One option would be for the legislation to be amended to provide for the appointment of a monitor, along the lines of the Victorian model but without the responsibility of control and direction of the operations of the licensee. This legislation would provide adequate powers to the monitor to access information and report on the remediation activities at Perth Casino according to the pathway set out in this Final Report. A possible advantage of amendments to the legislation is that provision could be made for specific powers of an external monitor to give effect to the purpose of the appointment including a power to recover reasonable costs of the monitoring process from CRL and (or) the Burswood entities.
- 154** An alternative model would be the appointment by the GWC of an external monitor with the requisite skills and experience. This could be done by a tri-partite agreement involving the Burswood entities, the monitor and the GWC, which is similar to the model adopted in New South Wales.
- 155** The period of appointment of the monitor is a matter for the Minister. The PCRC observes that a period of approximately two years from the date of this Final Report would likely be a reasonable period of time to allow for the effective implementation of remediation activities on the pathway.
- 156** The PCRC suggests the monitor should have access to at least the same information as Crown is providing to the GWC, including monthly updates of the remediation activities. The monitor should also be given the same powers and rights to receive papers of the boards of BL, BNL and BRML, and to attend meetings of those boards of BL and BRML as is contained in cl 19 and cl 20 of the State Agreement, and cl 17A, Schedule B and Schedule E art 3.18 to 3.20 of the Mandatory Articles.
- 157** It will be necessary to consider what additional powers should be conferred on the monitor. If a tri-partite agreement is entered into, the powers can be specified in the documentation. If the appointment is effected by some other means, recourse to existing or enhanced legislative powers will be necessary.
- 158** A further alternative will be available if the PCRC's recommendation that a casino licence be reviewed at regular intervals is adopted. This would require a legislative amendment. Section 25 of the *Casino Control Act 1991* (Vic) and s 31 of the *Casino Control Act 1992* (NSW) could provide models for the amendments, although it would be desirable to include a provision that the GWC could specify any particular matters that are to be the subject of the review. The first review could be conducted so that the reviewer reports on a specified date, such as 31 December 2024, and that the particular matters to be reviewed include those set out in this Final Report, specifically the remediation activities.
- 159** Whichever alternative is adopted for the appointment of a monitor, the matters which should be monitored and reported on should be the remediation activities on the pathway set out in this chapter. In this respect attention is drawn to the materials referred to in cl 3(b) and (c), 4, 5, 6 and 11 of Appendix I of the RCCOL Report to the extent that they are applicable to the operations of Perth Casino. Further, it will be desirable for the monitor to establish a collaborative working relationship with Kroll and the Victorian special manager.

Endnotes

- 1 CRL, 'Revised Blackstone Acquisition Proposal' (ASX Media Release, 13 January 2022) 1 [PUB.0018.0013.0001].
- 2 CRL, 'Crown Enters into Implementation Deed with Blackstone' (ASX Media release, 14 February 2022) [PUB.0022.0013.0001].
- 3 CRL, 'Crown Enters into Implementation Deed with Blackstone' (ASX Media release, 14 February 2022) [PUB.0022.0013.0001] 5.
- 4 CRL, 'NSW ILGA Announcement in relation to Crown Sydney' (ASX Media Release, 13 May 2021) [CRW.564.003.5263].
- 5 Letter from Kroll to Barangaroo Licensee (7 June 2021) [CRW.709.162.3663_R].
- 6 Kroll, 'Crown Monitorship – Status Update' (22 September 2021) [CRW.709.162.4600_R] 3.
- 7 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36B(2): the criteria are (1) minimum 10 years' experience or knowledge of, commerce, law or public administration, or relevant industry experience; (2) not an associate of a casino operator, a gaming industry participant or a licensee; (3) the person is not disqualified from managing corporations under the Corporations Act.
- 8 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36B(1).
- 9 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36C(1).
- 10 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36D(1), (2).
- 11 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36E, 36F, 36K.
- 12 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36D(3).
- 13 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36G(1), (2).
- 14 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36G(3).
- 15 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36H(1).
- 16 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36H(2).
- 17 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36I(1) – (3).
- 18 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36J.
- 19 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36N.
- 20 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36R(1).
- 21 *Casino Control Act 1991* (Vic) [PUB.0016.0001.1509] s 36R(2).



Volume IV

Contents

VOLUME I

Contents.....	3
Foreword.....	8
Answers to Questions in the Terms of Reference	12
Term of Reference 1.....	12
Term of Reference 2.....	12
Term of Reference 3.....	12
Term of Reference 4.....	12
Term of Reference 5.....	13
Recommendations	14
About this Final Report.....	24
References to documents, people and organisations.....	25
Defined Terms	26
CHAPTER ONE.....	42
Subject Matter of Inquiry and Terms of Reference	42
Purpose of Chapter.....	42
Terms of reference 1 to 4	43
Term of reference 5.....	52
Term of reference 6.....	53
Communications with the Gaming and Wagering Commission.....	54
Meaning of 'adequacy of communications'.....	54
Legislative framework.....	55
Term of Reference 8.....	59
Terms of Reference 9 and 10.....	62
Conflicts of interest.....	63
Term of Reference 11	64
Governance.....	65
CHAPTER TWO.....	72
History of Perth Casino	72
Purpose of Chapter	72
Background to Casino Establishment, Corporate History and Historical Structure	72
Implementation of the casino licence	77
Developments before 1990.....	80
Developments from 1990.....	80
Changes to the structure.....	81
Inquiries into the casino licences.....	82
Perth Casino and Crown Perth Resort.....	83
CHAPTER THREE	90
Overview of Regulatory Framework for Casino Gaming.....	90
Purpose of Chapter.....	90
Reports published prior to the introduction of the Casino Control Act.....	90
The Statutory Regime.....	90
Modification of the statutory regime	96
Industry and legislative reviews.....	97
Aspects of casino regulation in Western Australia	97

CHAPTER FOUR	110
Corporate Governance	110
Purpose of Chapter	110
Introductory comments.....	111
Perth Casino structure.....	111
The boards.....	120
Activity of the boards	123
Centralisation	129
Risk Management.....	133
BL governance issues	144
The complexity of the Burswood entities structure: analysis	152
BL central management and control.....	158
CRL governance issues	164
Remediation of governance, risk management and culture	169
Issues for future consideration.....	190
CHAPTER FIVE	232
Regulation of Perth Casino	232
Purpose of Chapter	232
Part One: Context for examination of the Gaming and Wagering Commission.....	232
Part Two: Gaming and Wagering Commission members	235
Part Three: Gaming and Wagering Commission governance	238
Part Four: Operational relationship between the Gaming and Wagering Commission and the Department.....	250
Part Five: Financial arrangements	273
Part Six: Regulation of specific risks to the attainment of the regulatory objectives.....	292
Part Seven: Statutory enforcement mechanisms.....	298
VOLUME II	
Contents.....	323
CHAPTER SIX	330
Junkets	330
Purpose of Chapter	330
Part One: Context for examination of junkets	331
Part Two: Regulatory framework and implementation by the Gaming and Wagering Commission.....	332
Part Three: Crown’s governance and risk management of Perth Casino’s junket operations.....	360
Part Four: Crown’s communications with the Gaming and Wagering Commission about junket operations	376
CHAPTER SEVEN	400
The China Arrests.....	400
Purpose of Chapter	400
Part One: Context for examination of China Arrests.....	400
Part Two: Background to the China Arrests.....	402
Part Three: Crown’s governance and risk management of Perth Casino.....	409
Part Four: Communications with the Gaming and Wagering Commission and its response to the China Arrests.....	412
CHAPTER EIGHT	432
Money laundering	432
Part One: Context for the examination of money laundering.....	432
Part Two: Regulatory frameworks relevant to money laundering	439
Part Three: The GWC’s regulation of money laundering at Perth Casino	445




Part Four: Management of money laundering risk at Perth Casino between 2010 and 2019.....	450
Part Five: Communications with the Gaming and Wagering Commission	476
Part Six: Management of money laundering risk from 2019 to present date.....	479
Part Seven: The path ahead in respect of ML/TF risk management	505
CHAPTER NINE.....	532
Other Criminal Activity	532
Purpose of Chapter	532
Part One: Context for examination of other criminal activity.....	533
Part Two: Regulation of criminal infiltration and activity by the Gaming and Wagering Commission	533
Part Three: Perth Casino’s systems, policies and procedures	542
CHAPTER TEN	554
Tax	554
Purpose of Chapter.....	554
Part One: Regulatory framework relevant to casino tax.....	556
Part Two: Non-cashable credits and casino tax.....	557
Part Three: Tournament fees.....	567
Part Four: Regulation of the payment of casino tax.....	572
CHAPTER ELEVEN	584
Conflicts of Interest.....	584
Purpose of Chapter.....	584
Part One: Main concepts.....	584
Part Two: Systems and processes to identify and manage conflicts of interest.....	587
Part Three: Identifying and managing conflicts of interest in practice.....	599
Part Four: Connolly’s friendships with Crown officers.....	603
Part Five: The regulatory relationship.....	614
Part Six: Director General’s Macau trip.....	618
VOLUME III	
Contents.....	633
CHAPTER TWELVE	640
Harm Minimisation	640
Purpose of Chapter.....	640
PCRC’s approach.....	640
Part One: Context for discussion	641
Part Two: Current regulation of harm minimisation	650
Part Three: Crown’s management of the risk of gambling-related harm at Perth Casino.....	666
Part Four: Adequacy of communications	699
Part Five: Recommendations for reform to Perth Casino’s gaming operations.....	702
CHAPTER THIRTEEN	732
Electronic Gaming Machines	732
Purpose of Chapter.....	732
Part One: Electronic Gaming Machines and Poker Machines.....	732
Part Two: The EGMs at Perth Casino	744
Conclusion.....	755
Recommendations	756

CHAPTER FOURTEEN	766
Evaluation of Regulation of Perth Casino	766
Purpose of Chapter	766
Part One: Overview	766
Part Two: Particular deficiencies in the regulatory framework	768
Part Three: Deficiencies in the Gaming and Wagering Commission’s manner of operating	773
Part Four: Department’s support of the Gaming and Wagering Commission.....	777
CHAPTER FIFTEEN	786
Enhancements to the Regulatory Framework	786
Purpose of Chapter	786
Part One: Structural regulatory reform.....	786
Part Two: Legislative reforms.....	792
Part Three: Operational reforms	814
CHAPTER SIXTEEN.....	822
Financial Capacity	822
Purpose of Chapter	822
Financial Capacity	822
CHAPTER SEVENTEEN.....	826
Assessment of Crown Suitability and Path Forward	826
Purpose of Chapter	826
Part One: Assessment of present suitability.....	827
Part Two: Pathway to suitability.....	839
External Monitor.....	843
 VOLUME IV	
Contents	851
APPENDIX A	858
Commission dated 12 March 2021	858
APPENDIX B.....	861
Executive Council Minutes	861
APPENDIX C.....	862
Commission dated 23 July 2021	862
APPENDIX D	868
Methodology	868
Establishment	868
Scope of the inquiry and background.....	868
Other Inquiries into casino gaming and regulation in Australia.....	868
Process of evidence gathering	870
Use of Evidence	875
Procedural fairness.....	876
Record Keeping	879
APPENDIX E.....	882
Corporate Governance Theory	882
Purpose of Appendix	882
Nature and conduct of a corporation.....	882
Private Sector Governance	883
Public Sector Governance	904

APPENDIX F	923
Regulatory Theory	923
Purpose of Appendix.....	923
Part One: theories of regulation.....	923
Part Two: legislating regulatory objectives	925
Part Three: approaches to attaining regulatory compliance	929
APPENDIX G	940
List of Parties granted leave to appear	940
APPENDIX H	942
List of public hearings	942
APPENDIX I	945
List of Key People	945
APPENDIX J	950
Crowns Resorts Limited Corporate Structure	950
APPENDIX K	951
Significant provisions in the Trust Deed for the Burswood Property Trust	951
APPENDIX L	953
Directors of Crown Entities: September 2004 – 2022.....	953
APPENDIX M	956
Chronology of Gaming and Wagering Commission delegations.....	956
APPENDIX N:	960
Comparative regulatory framework analysis – Australian jurisdictions	960
APPENDIX O	961
Summary of themes discussed in AML expert focus groups with Perth casino employees	961
Summary of themes arising from PCRC AML expert survey completed by Perth Casino employees.....	965
APPENDIX P	981
Public Call for Information	981
APPENDIX Q	982
List of Public Submissions	982
APPENDIX R	986
List of Discussion Papers and Responses.....	986
APPENDIX S	987
Summary of Responses to Regulatory Models.....	987
Responsive submissions: Model One.....	987
Responsive submissions: Model Two.....	988
Responsive submissions: Model Three.....	988
Responsive submissions: Model Four.....	989
APPENDIX T	991
Practice Directions.....	991
APPENDIX U	992
Acknowledgements	992

Appendices

Commission dated 12 March 2021

		WESTERN AUSTRALIAN GOVERNMENT Gazette ISSN 1448-949X (print) ISSN 2204-4264 (online) <small>PRINT POST APPROVED PP665002/00041</small>	<p>1079</p> 
PERTH, FRIDAY, 12 MARCH 2021		No. 45	SPECIAL
<p>PUBLISHED BY AUTHORITY GEOFF O. LAWN, GOVERNMENT PRINTER © STATE OF WESTERN AUSTRALIA</p> <p>COMMISSION</p> <p>appointing a Royal Commission to inquire into and report on the affairs of the Crown Casino Perth and related matters.</p> <p>To: The Honourable Neville John Owen The Honourable Carolyn Frances Jenkins Mr Colin Murphy PSM</p> <p>RECITALS</p> <p>1. The Gaming and Wagering Commission has functions and duties in relation to gaming, wagering and the operations of casinos under legislation including the <i>Gaming and Wagering Commission Act 1987</i> (WA) and the <i>Casino Control Act 1984</i> (WA). Its duties include, among other things:—</p> <ul style="list-style-type: none">a. administering relevant laws and keeping relevant matters under review;b. formulating and implementing policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling;c. administering all matters relating to any casino complex, licensed casino, casino key employee, casino employee or gaming in a casino, pursuant to the <i>Casino Control Act 1984</i> (WA) and any casino complex agreement;d. causing relevant licences, permits, approvals, authorisations and certificates, as appropriate, to be issued;e. advising the Minister as to any matter relating to gambling and to make recommendations to the Minister in relation to the control and supervision of gambling and other matters; andf. enforcing, and prosecuting persons contravening, the laws relating to gambling. <p>2. Crown Perth is the trustee of the Burswood Property Trust and holder of the casino gaming licence in respect of the Crown Casino Perth granted under and subject to the provisions of the <i>Casino Control Act 1984</i> (WA). Crown Perth is a wholly-owned subsidiary of Crown Resorts Limited ACN 125 709 953.</p> <p>3. The Bergin Inquiry concluded that Crown Sydney Gaming Pty Ltd (a wholly-owned subsidiary of Crown Resorts Limited) was not a suitable person to continue to give effect to the restricted gaming licence to operate a restricted gaming facility in premises located at Barangaroo on the Sydney Harbour foreshore and that Crown Resorts Limited was not a suitable person to be a close associate of the person holding that restricted gaming licence.</p> <p>4. The Bergin Inquiry also found, among other things, that Crown Resorts Limited:—</p> <ul style="list-style-type: none">a. facilitated money laundering through the accounts of Southbank Investments Pty Ltd ACN 075 088 327 and Riverbank Investments Pty Ltd ACN 103 254 619 unchecked and unchanged in the face of warnings from its bankers;b. disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; andc. entered into and/or continued commercial relationships with Junket operators who had links to Triads and other organised crime groups. <p>5. Some of the conduct considered by the Bergin Inquiry related to the Crown Casino Perth and other conduct related to the casino operated in Melbourne by Crown Melbourne Limited ACN 006 973 262 (which is also a subsidiary of Crown Resorts Limited).</p>			

OPERATIVE PART

By this commission under the Public Seal of the State, I, the Governor, acting under the *Royal Commissions Act 1968* (WA) and all other enabling powers and with the advice and consent of the Executive Council—

- (a) appoint you to be a Royal Commission to inquire into and report upon the following matters—

SUITABILITY

A. The following affairs of the Crown Casino Perth, and related matters—

1. whether Crown Perth is a suitable person—
 - i. to be concerned in or associated with the organization and conduct of the gaming operations of a licensed casino; and
 - ii. to continue to hold the casino gaming licence for the Crown Casino Perth;
2. whether Crown Resorts Limited is a suitable person to be concerned in or associated with the organization and conduct of the gaming operations of a licensed casino;
3. whether Burswood Resort (Management) Limited ACN 009 396 945 is a suitable person to be concerned in or associated with the organization and conduct of the gaming operations of a licensed casino;
4. whether Burswood Limited ACN 075 071 537 is a suitable person to be concerned in, or associated with, the organization and conduct of the gaming operations of a licensed casino;
5. in the event that the answer to (1)(i), 1(ii), (2), (3) or (4) above is no, what, if any, changes would be required to render that entity suitable;
6. the adequacy of communications by Crown Perth and/or any Crown Perth Associates with the Gaming and Wagering Commission, including responses and disclosures to the Gaming and Wagering Commission, prior to and during the Bergin Inquiry in relation to matters related to or connected with the Bergin Report and any matters referred to therein; and
7. any matter reasonably incidental to these matters.

REGULATORY FRAMEWORK

B. The following affairs of the Crown Casino Perth and related matters—

8. the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address extant and emerging strategic risks identified in the Bergin Report, or otherwise by this inquiry, including in relation to junket operations, money laundering, cash and electronic transactions and the risk of infiltration by criminal elements into casino operations;
 9. the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged by the Gaming and Wagering Commission under State and Commonwealth laws;
 10. the capability and effectiveness of the Gaming and Wagering Commission in discharging its regulatory functions and responsibilities, and the Department in supporting the Gaming and Wagering Commission, including in relation to identifying and addressing any actual or perceived conflicts of interest by officers involved in casino regulation; and
 11. matters which might enhance the regulatory framework and the Gaming and Wagering Commission's and Department's future capability and effectiveness in addressing any of the matters identified above, including any policy, legislative, administrative or structural reforms or changes, including additional regulatory controls.
- (b) declare that, for the purposes of your inquiry and recommendations, you are to have regard, in particular, to the following matters—
- i. the Bergin Report including any matters referred to therein (including the allegations, issues, findings, observations, materials and recommendations referred to therein);
 - ii. public transcripts of evidence before the Bergin Inquiry and such other materials provided to or otherwise considered by the Bergin Inquiry, to which the Commission may obtain access and consider it appropriate to have regard;
 - iii. communications between Crown Perth and/or Crown Perth Associates, and the Gaming and Wagering Commission (including responses and disclosures to the Gaming and Wagering Commission) prior to and during the Bergin Inquiry in relation to matters related to or connected with the Bergin Report and any matters referred to therein; and
 - iv. such further or other evidence and materials to which the Commission may consider it appropriate to have regard in order to satisfy the terms of reference;
- (c) declare that in your report you may make any recommendations you consider appropriate;
- (d) declare that, to facilitate the proper and expeditious conduct of the inquiry, you are not required to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a proceeding;

- (e) appoint you, the Honourable Neville John Owen, to be the Chairman of the Commission;
- (f) declare that, by virtue of this commission, you may in the execution of this commission do all the acts, matters and things and exercise all the powers that a Royal Commission may lawfully do and exercise, whether under the *Royal Commissions Act 1968* (WA) or otherwise;
- (g) declare that the *Royal Commissions Act 1968* (WA) section 18 applies to this Commission;
- (h) declare that in this commission—

Bergin Inquiry means the Inquiry by the Honourable PA Bergin SC under section 143 of the *Casino Control Act 1992* (NSW) established on 14 August 2019 resulting in the publication of the Bergin Report;

Bergin Report means the report of the Inquiry by the Honourable PA Bergin SC under section 143 of the *Casino Control Act 1992* (NSW) dated 1 February 2021;

Crown Casino Perth means the casino in respect of which a casino gaming licence has been granted under section 21 of the *Casino Control Act 1984* (WA) (and described in the Casino (Burswood Island) Agreement the subject of the *Casino (Burswood Island) Agreement Act 1985* (WA) as Burswood Casino);

Crown Perth means Burswood Nominees Ltd ACN 078 250 307 the trustee of the Burswood Property Trust and holder of the casino gaming licence in respect of the Crown Casino Perth;

Crown Perth Associates means any person concerned in or associated with the organization and conduct of the gaming operations of the Crown Casino Perth;

Department means the Department of Local Government, Sport and Cultural Industries and relevantly any predecessors and includes any current or former officers, employees, persons engaged under contracts for services by, or agents of the Department or relevantly any predecessors;

Gaming and Wagering Commission means the Gaming and Wagering Commission of Western Australia established under the *Gaming and Wagering Commission Act 1987* (WA) and includes any current or former delegates, officers, employees, persons engaged under contracts for services by, or agents of the Gaming and Wagering Commission;

Suitable person means suitable person to engage in, or be concerned in or associated with, the relevant activity and, without limiting the generality of the foregoing, the matters to which the Commission may have regard include—

- (a) the reputation, character, honesty and integrity of the person;
- (b) the competence and adequacy of the knowledge, qualifications, experience and ability of the person to engage in, or be concerned in or associated with, the relevant activity;
- (c) the financial status and financial background of the person;
- (d) governance processes and arrangements;
- (e) the creation and maintenance of public confidence and trust in the credibility and integrity of licensed casino operations; and
- (f) such other matters as the Commission sees fit;
- (i) declare that you are to begin your inquiry as soon as practicable;
- (j) declare that you are to make your inquiry as expeditiously as possible;
- (k) declare that you are to submit to me an interim report in relation to paragraphs 8 to 11 of the Operative Part that you consider appropriate by no later than 30 June 2021; and
- (l) declare that you are to submit to me a report of the results of your inquiry, and your recommendations, by no later than 14 November 2021.

Issued under the Public Seal of the State at Perth on 5 March, 2021.

K. BEAZLEY, Governor.

M. McGOWAN, Premier.

APPENDIX B

Executive Council Minutes

Executive Council

Western Australia

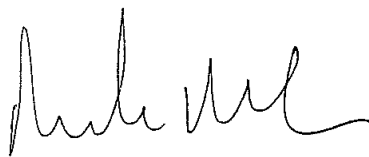
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Minute No. **0288**

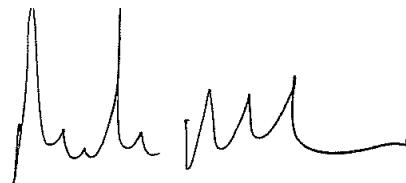
The Council advises the Governor

To amend paragraph 11(1) of the Commission appointing a Royal Commission (known as the Perth Casino Royal Commission) to inquire into and report on the affairs of Crown Casino Perth and related matters, issued on 5 March 2021, to read as follows: -

- (1) declare that you are to submit to me a report of the results of your inquiry, and your recommendation, by no later than 4 March 2022.

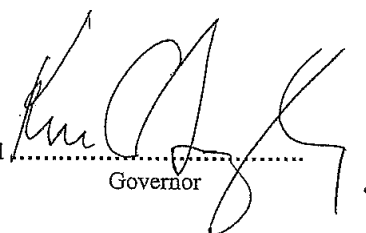


.....
Premier



.....
Premier

Date of Meeting **23 JUL 2021**

Approved 

Governor

APPENDIX C

Commission dated 23 July 2021

Western Australia

Commission

appointing a Royal Commission to inquire into and report on the affairs of the Crown Casino Perth and related matters.

To: **The Honourable Neville John Owen**
The Honourable Carolyn Frances Jenkins
Mr Colin Murphy PSM

RECITALS

1. The Gaming and Wagering Commission has functions and duties in relation to gaming, wagering and the operations of casinos under legislation including the *Gaming and Wagering Commission Act 1987* (WA) and the *Casino Control Act 1984* (WA). Its duties include, among other things: –
 - a. administering relevant laws and keeping relevant matters under review;
 - b. formulating and implementing policies for the scrutiny, control and regulation of gaming and wagering, taking into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling;
 - c. administering all matters relating to any casino complex, licensed casino, casino key employee, casino employee or gaming in a casino, pursuant to the *Casino Control Act 1984* (WA) and any casino complex agreement;
 - d. causing relevant licences, permits, approvals, authorisations and certificates, as appropriate, to be issued;
 - e. advising the Minister as to any matter relating to gambling and to make recommendations to the Minister in relation to the control and supervision of gambling and other matters; and
 - f. enforcing, and prosecuting persons contravening, the laws relating to gambling.
2. Crown Perth is the trustee of the Burswood Property Trust and holder of the casino gaming licence in respect of the Crown Casino Perth granted under and subject to the provisions of the *Casino Control Act 1984* (WA). Crown Perth is a wholly-owned subsidiary of Crown Resorts Limited ACN 125 709 953.

- 2 -

3. The Bergin Inquiry concluded that Crown Sydney Gaming Pty Ltd (a wholly-owned subsidiary of Crown Resorts Limited) was not a suitable person to continue to give effect to the restricted gaming licence to operate a restricted gaming facility in premises located at Barangaroo on the Sydney Harbour foreshore and that Crown Resorts Limited was not a suitable person to be a close associate of the person holding that restricted gaming licence.
4. The Bergin Inquiry also found, among other things, that Crown Resorts Limited: –
 - a. facilitated money laundering through the accounts of Southbank Investments Pty Ltd ACN 075 088 327 and Riverbank Investments Pty Ltd ACN 103 254 619 unchecked and unchanged in the face of warnings from its bankers;
 - b. disregarded the welfare of its China-based staff putting them at risk of detention by pursuing an aggressive sales policy and failing to escalate risks through the appropriate corporate risk management structures; and
 - c. entered into and/or continued commercial relationships with Junket operators who had links to Triads and other organised crime groups.
5. Some of the conduct considered by the Bergin Inquiry related to the Crown Casino Perth and other conduct related to the casino operated in Melbourne by Crown Melbourne Limited ACN 006 973 262 (which is also a subsidiary of Crown Resorts Limited).

OPERATIVE PART

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4. whether Burswood Limited ACN 075 071 537 is a suitable person to be concerned in, or associated with, the organization and conduct of the gaming operations of a licensed casino;
5. in the event that the answer to (1)(i), 1(ii), (2), (3) or (4) above is no, what, if any, changes would be required to render that entity suitable;
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7. any matter reasonably incidental to these matters.

REGULATORY FRAMEWORK

B. The following affairs of the Crown Casino Perth and related matters: –

8. the adequacy of the existing regulatory framework in relation to casinos and casino gaming in Western Australia to address extant and emerging strategic risks identified in the Bergin Report, or otherwise by this inquiry, including in relation to junket operations, money laundering, cash and electronic transactions and the risk of infiltration by criminal elements into casino operations;
 9. the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged by the Gaming and Wagering Commission under State and Commonwealth laws;
 10. the capability and effectiveness of the Gaming and Wagering Commission in discharging its regulatory functions and responsibilities, and the Department in supporting the Gaming and Wagering Commission, including in relation to identifying and addressing any actual or perceived conflicts of interest by officers involved in casino regulation;
 11. matters which might enhance the regulatory framework and the Gaming and Wagering Commission's and Department's future capability and effectiveness in addressing any of the matters identified above, including any policy, legislative, administrative or structural reforms or changes, including additional regulatory controls;
- (b) declare that, for the purposes of your inquiry and recommendations, you are to have regard, in particular, to the following matters: –
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- 4 -

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- (e) appoint you, the Honourable Neville John Owen, to be the Chairman of the Commission;
- (f) declare that, by virtue of this commission, you may in the execution of this commission do all the acts, matters and things and exercise all the powers that a Royal Commission may lawfully do and exercise, whether under the *Royal Commissions Act 1968* (WA) or otherwise;
- (g) declare that the *Royal Commissions Act 1968* (WA) section 18 applies to this Commission;
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- 5 -

Department means the Department of Local Government, Sport and Cultural Industries and relevantly any predecessors and includes any current or former officers, employees, persons engaged under contracts for services by, or agents of the Department or relevantly any predecessors;

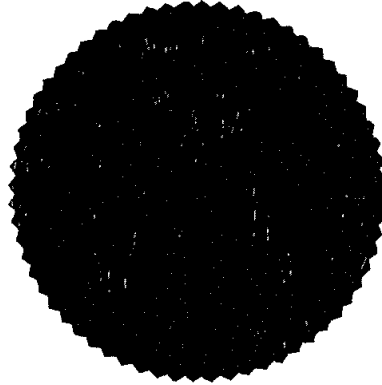
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- (a) the reputation, character, honesty and integrity of the person;
 - (b) the competence and adequacy of the knowledge, qualifications, experience and ability of the person to engage in, or be concerned in or associated with, the relevant activity;
 - (c) the financial status and financial background of the person;
 - (d) governance processes and arrangements;
 - (e) the creation and maintenance of public confidence and trust in the credibility and integrity of licensed casino operations; and
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-
- (i) declare that you are to begin your inquiry as soon as practicable;
 - (j) declare that you are to make your inquiry as expeditiously as possible;
 - (k) declare that you are to submit to me an interim report in relation to paragraphs 8 to 11 of the Operative Part that you consider appropriate by no later than 30 June 2021; and
 - (l) declare that you are to submit to me a report of the results of your inquiry, and your recommendations, by no later than 4 March 2022.

- 6 -

Issued under the Public Seal of the State
at Perth on 23 July 2021.



Governor

A handwritten signature in black ink, appearing to read 'Mark McGowan', written in a cursive style. The signature is positioned to the right of the word 'Premier'.

Premier

APPENDIX D

Methodology

Establishment

- 1 The establishment of the infrastructure to support the Perth Casino Royal Commission (**PCRC**) was conducted by the State Solicitor's Office (**SSO**) and the Department of Premier and Cabinet (**DPC**). Officers of the PCRC were appointed by the Attorney General, the Hon John Quigley LLB JP MLA.
- 2 The PCRC comprised three Commissioners, a legal team, an investigatory team and a secretariat. The legal team included counsel and solicitors assisting the PCRC. Patricia Cahill SC and Michael Feutrill SC were appointed as senior counsel assisting. Kirsten Nelson, Adam Sharpe, David Leigh, Ann Spencer and Verity Long-Droppert were appointed junior counsel assisting. Karess Dias and Thea Chee were seconded from the SSO to the legal team. Corrs Chambers Westgarth, Perth was appointed solicitors assisting with Kirsty Sutherland the lead partner.
- 3 The PCRC found premises within the existing space occupied by the Western Australian Industrial Relations Commission (**WAIRC**) at 111 St Georges Terrace, Perth, including hearing rooms and office space. The PCRC had moved in and started the work of the inquiry by 1 April 2021.

Scope of the inquiry and background

- 4 The first task for the PCRC was to examine the terms of reference in order to understand the scope of the inquiry and to inform the process of gathering information. The PCRC's approach to the terms of reference is set out in Chapter One: Subject Matter of Inquiry and Terms of Reference.
- 5 The PCRC then conducted research on the historical and legislative background to the establishment of Perth Casino and the regulatory framework for casinos and casino gaming in Western Australia.

Other Inquiries into casino gaming and regulation in Australia

- 6 Paragraph (b) of the Commission required the PCRC to have regard to the Bergin Report and the Bergin Inquiry. The terms of reference required the PCRC to consider the findings and recommendations in the Bergin Report.
- 7 Paragraph (d) of the Commission provided that the PCRC was not required to inquire into matters the PCRC was satisfied had been or would be sufficiently and appropriately dealt with by other inquiries.
- 8 Publicity surrounding money laundering at Australian casinos and the findings of the Bergin Inquiry led to other inquiries in other Australian jurisdictions in 2020 and 2021. While these inquiries were separate, independent, and constituted under different legislation with different terms of reference, they have intersecting subject matter with the PCRC. As required by the terms of reference, the PCRC considered the scope, findings and recommendations of other relevant inquiries being conducted into casino gaming and regulation in Australia.

New South Wales

- 9 The Bergin Report was published on 1 February 2021. The PCRC considered the transcripts of the hearings and the exhibits tendered in the Bergin Inquiry, as well as examining the findings in the Bergin Report. Where the PCRC has relied on the findings and evidence in the Bergin Report in this Final Report that has been identified.
- 10 Following the findings and recommendations of the Bergin Inquiry, the Independent Liquor and Gaming Authority of New South Wales (**ILGA**) began an inquiry into whether, in light of remedial measures taken and to be taken by Crown Resorts Limited (**CRL**) and its subsidiaries, the Barangaroo Licensee is suitable to hold the licence for the Barangaroo Casino (**ILGA Inquiry**). There have been discussions between ILGA and Crown as part of that inquiry. The discussion and the inquiry are not public and are being conducted in confidence. ILGA is yet to conclude its deliberations.

Victoria

- 11 On 22 February 2021, the Hon Ray Finkelstein AO QC was appointed as Commissioner of the Royal Commission into the Casino Operator and Licence in Victoria (**RCCOL**). On 15 October 2021, the RCCOL submitted its report to the Victorian Governor (**RCCOL Report**).
- 12 The PCRC engaged with the RCCOL at an operational level about the way that inquiry was conducted. The RCCOL shared some information with the PCRC, including expert reports and notices requiring documents be produced. The PCRC also considered the transcripts of the hearings and the exhibits tendered in the RCCOL and the findings in the RCCOL Report.
- 13 In addition to the RCCOL, the Victorian Minister for Consumer Affairs, Gaming and Liquor Regulation commissioned a review (**Victorian Regulatory Review**) to investigate the structural and governance issues relevant to casino regulation in that State and the role of the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**). The Victorian Regulatory Review was held at the same time as the RCCOL and the PCRC understands that the Victorian Regulatory Review is complete. This review was not public and the PCRC is not aware of the outcome of the review.
- 14 The PCRC has also considered reports by the VCGLR after an investigation under s 24(1) – (2) of the *Casino Control Act 1991* (Vic) that was published in February 2021 (**VCGLR China Arrests Report**), and an inquiry by the VCGLR under s 20 of the *Casino Control Act 1991* (Vic) that was published in April 2021 (**VCGLR Junket Report**).
- 15 The findings made in the RCCOL Report and aspects of the VCGLR China Arrests Report and the VCGLR Junket Report have been used by the PCRC in different ways in respect of different aspects of the PCRC's inquiry. In each section of this Final Report the way that the findings of other inquiries have been used has been set out.

AUSTRAC Investigation

- 16 In October 2020, the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) commenced an investigation into Crown about non-compliance with anti-money laundering (**AML**) laws at Melbourne Casino.
- 17 On 7 June 2021, CRL announced it had been notified by AUSTRAC that it had commenced a formal enforcement investigation into a potential serious risk of non-compliance with AML laws at Perth Casino.
- 18 The AUSTRAC investigation has not been conducted in public and in the preparation of this Final Report the PCRC has not been provided with any detail about the alleged non-compliance, the material Crown has produced to AUSTRAC, nor any preliminary concerns or findings.

Process of evidence gathering

Case study methodology

- 19 The evidence gathering process reflects the PCRC's approach to the terms of reference, including paragraph (d) that provided that the PCRC is not required to inquire into matters that the PCRC is satisfied have been or will be sufficiently and appropriately dealt with by other inquiries.
- 20 In conducting its inquiry, the PCRC had to balance the breadth of the scope of its inquiry with the necessity to look into the matters raised in sufficient detail. It was not possible to look closely at everything relevant to the terms of reference that has happened at Perth Casino since 1985 or even since the current owners became involved in 2004. Accordingly, it was necessary to select issues that have particular relevance to the terms of reference and that were amenable to detailed analysis of the required degree to inform the decision-making process with which the PCRC was entrusted.
- 21 The PCRC adopted a case study methodology that provides a window into events that demonstrate the systems and processes utilised by Perth Casino over time, the functionality of those systems and processes for the objectives they were required to achieve and the consequences for the operations of the business entities. The same can be said for the activities and approach of the Gaming and Wagering Commission (**GWC**) and the Department of Local Government, Sport and Cultural Industries (**Department**) in carrying out their regulatory responsibilities.
- 22 The process of evidence gathering reflected this case study methodology and the topics chosen for detailed analysis.

Sources of information

- 23 The PCRC gathered information of different kinds relevant to the matters contained in the terms of reference. Each of the various sources of information is explained in this chapter. In summary, the information falls into the following categories:
 - a. documents and other sources of information obtained by the use of the PCRC's coercive powers in the *Royal Commissions Act 1968* (WA);
 - b. submissions from the public;
 - c. responses from the public and interested parties to discussion papers;
 - d. publicly available materials, including academic writings and media;
 - e. evidence from witnesses in witness statements and in oral hearings;
 - f. evidence from witnesses in private and restricted hearings
 - g. the findings and recommendations found in the reports of other inquiries dealing with similar subject matter; and
 - h. expert opinions.
- 24 Once the PCRC received the information it was given a unique identifier. If the PCRC made the decision, or expected, to rely on a source of information, the document with its unique identifier was made available to the interested parties and ultimately admitted into evidence as an exhibit. A composite exhibit list was annexed to each of the PCRC's orders admitting tranches of documents into evidence and provided to the interested parties. The composite exhibit list contained the exhibit number for each document exhibited, being its unique document identifier. Exhibit numbers have been included in the references in this Final Report.

Documents compulsorily acquired

- 25 The PCRC used the coercive powers in the *Royal Commissions Act 1968* (WA) to obtain information relevant to the terms of reference from people and organisations.
- 26 The PCRC was empowered by the *Royal Commissions Act 1968* (WA) to serve a notice on a public authority or public officer and require production of a statement of information.¹
- 27 These notices are referred to as requests for information (**RFIs**).
- 28 The PCRC was also empowered by the *Royal Commissions Act 1968* (WA) to serve a notice on a person to require the person to produce documents, books, writings, and things specified in the notice.² These notices are referred to as notices to produce (**NTPs**).
- 29 The PCRC issued 109 NTPs and RFIs. The PCRC received nearly 370,000 documents from 27 different organisations and individuals, in response to these NTPs.

Documents that cannot be published

- 30 Some of the documents were the subject of applications for non-publication orders and (or) claims for legal professional privilege or were covered by statutory secrecy provisions.
- 31 The PCRC published Practice Direction 3 to provide a protocol for the production of documents and Practice Direction 4 to provide the procedure for an application for a non-publication order.³
- 32 The PCRC took a flexible approach to documents the subject of an application for a non-publication order. Some applications were resolved, and non-publication orders made or refused. Some applications were not resolved, instead if the documents were used in a public hearing they were shown to witnesses and counsel and not placed on the screen that was visible to the public.
- 33 Some documents relevant to the work of the PCRC are protected by the provisions of *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth), which prevents the documents being produced to the PCRC by Crown. An exemption was granted by AUSTRAC to Crown in respect of documents that were required by the PCRC.⁴ That exemption enabled certain officers of the PCRC to receive the documents. The PCRC is prohibited from making public or disclosing the contents of these documents.
- 34 The PCRC sat in a restricted hearing when documents of this kind were referred to during the examination of witnesses, so that only those people who were permitted to receive the documents were present.
- 35 In preparing this Final Report, the PCRC has not referred to any information that is the subject of a non-publication order. Some documents that contain information that is the subject of an order have been discussed in this Final Report and included in a footnote; the PCRC has ensured that the documents have been referred to in a manner that does not breach the order.
- 36 No information that is the subject of the AUSTRAC exemption has been included in this Final Report.

Submissions from the public

- 37 Public submissions were invited by notice on the PCRC website in all phases of the inquiry. Submissions were received both orally and in writing and were treated as public, anonymous, or confidential.⁵

- 38 The PCRC first invited public submissions on the topic of Part B of the terms of reference: the regulatory framework governing Perth Casino. The PCRC then invited public submissions on any improper conduct at Perth Casino. The PCRC then made a request for public submissions relating to social harms.⁶ The PCRC continued to accept submissions until 31 October 2021.
- 39 People and organisations who made submissions were encouraged in the first instance to put their submissions in writing. The investigative team undertook additional telephone and face-to-face interviews based on the submissions. Some of the people who had made submissions gave sworn oral evidence to the PCRC in private or restricted hearings and others gave signed and witnessed formal written statements to the PCRC.
- 40 The PCRC received a total of 111 submissions ranging from formal academic writings to comments of a general nature made by email. The public submissions were published on the website.

Discussion Papers

- 41 The PCRC produced four discussion papers on various topics. The discussion papers were released by the PCRC to provide an opportunity for the public and the interested parties to consider specific topics and have input into the work of the inquiry. No final or concluded views were expressed by the PCRC in the discussion papers.
- 42 The PCRC formed the view that two of them – the regulatory framework and the issue of poker machines and electronic gaming machines (**EGMs**) – should be made available for the public to make submissions. These discussion papers were made available on the PCRC website.
- 43 The discussion paper on the regulatory framework explored changes that might enhance the current regulatory framework, proposed future models of regulating the casino and examined particular aspects of regulation in some detail. The interested parties and members of the public were invited to express their views on proposed alternative regulatory models and other aspects of regulation. Responses to this discussion paper were published on the PCRC website.
- 44 The discussion paper about the regulation of poker machines and EGMs explored the existing regulatory framework governing the use of poker machines and whether, and if so, to what extent, that framework applied to the EGMs at Perth Casino. Submissions from the public were invited about the proper construction of relevant statutory terms, including the term poker machine. The responses to this discussion paper were published on the PCRC website.
- 45 The other two discussion papers, namely on the 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 interested parties and they were not made public.
- 46 The interested parties had the opportunity to make submissions on all or any of the discussion papers and were at liberty to address the issues they thought relevant to their interests.

Publicly available materials

- 47 The PCRC also relied on publicly available materials, which fall into the following categories:
 - a. academic writing and published academic journal articles;
 - b. media reports;

- c. publicly available reports from a range of authors such as not-for-profits, government departments and AUSTRAC;
- d. legislative documents, including parliamentary reports, Hansard and the gambling legislation in other countries; and
- e. case law from a number of jurisdictions.

48 When a document that is publicly available was considered relevant to the work of the PCRC it was made an exhibit and was available to the interested parties. Many of these documents have been referenced in this Final Report. If any of the academic writing or media is available only to subscribers, the document has not been loaded to the exhibit database and it has been noted that it is subscription only in the reference in this Final Report.

Witness examinations

- 49 The PCRC held hearings to examine witnesses, predominantly past and current members of the GWC, past and current employees of the Department and past and current directors and employees of Crown. A total of 69 witnesses were examined over 57 days of public hearings; some witnesses were examined more than once.⁷
- 50 The PCRC had two preliminary hearings in April 2021. At the first, the chair of the PCRC and senior counsel gave an opening statement and at the second the PCRC heard applications for leave to appear. The parties who have been granted leave to appear are described in this Final Report as interested parties.⁸
- 51 In Practice Direction 4, the PCRC set out the procedure for witness examinations. The PCRC requested that each person who was called to give evidence provide a written witness statement setting out their evidence in chief.⁹ The solicitors assisting provided each witness with an outline of the questions or topics that should be addressed by the witness in their witness statement. Prior to witnesses being called the PCRC provided a copy of the witness statement and an index of the documents referred to in the witness statement to the interested parties.
- 52 Witness examinations were held in two phases. The first phase of hearings started on 10 May 2021 and concluded on 27 May 2021. The second phase of hearings started on 26 July 2021 and concluded on 17 November 2021. The delineation between phases was not always precise, and on occasion the availability of a witness meant that the evidence was heard out of sequence.
- 53 In the first phase the PCRC inquired into Part B of the terms of reference (**the regulatory framework**) and heard evidence from current and former members of the GWC and employees of the Department.
- 54 Following the first phase of hearings, the PCRC sat on 25 June 2021 for the purpose of tendering exhibits.
- 55 The second phase of hearings started on 26 July 2021 with opening statements addressed to Part A of the terms of reference (**suitability**). This phase was divided into a number of sections and concluded on 17 November 2021. In the first section of this phase the witnesses were current and former directors of various Crown entities. In the second section of this phase some of the witnesses from the first phase were recalled so that the evidence that had been gathered from the examinations of Crown officers could be put to those witnesses.
- 56 In the third section of this phase the PCRC heard from a number of Crown employees about operational matters. In the fourth section the PCRC heard evidence about Crown's plans for the future from the then current directors of CRL and office holders with responsibility for enacting change in the Crown group. In the next section the PCRC heard evidence from

experts on topics relevant to the terms of reference. The final witness was Steven Blackburn, the Crown group's Chief Compliance and Financial Crime Officer.

- 57 Given the number of witnesses that were examined in a short amount of time the Commissioners on occasion sat at the same time in different hearing rooms. The use of concurrent hearings was kept to a minimum in light of the burden that appearing in two rooms simultaneously placed on the interested parties.

Private and restricted examinations

- 58 From July 2021, the PCRC made a request for submissions about improper conduct or social harms at Perth Casino. The PCRC received 54 submissions and of those, 36 submissions were from persons who wished to remain anonymous. Those persons included former and current Perth Casino employees, current and former Perth Casino patrons, former Department employees, family members of persons impacted by social harms and victims of crime. Private hearings were conducted in order to determine what use the PCRC could make of the information provided by some of those people.
- 59 The PCRC respected the request made by those witnesses to remain anonymous. The *Royal Commissions Act 1968 (WA)* provides that 'the Commission is not required to make known ... the content or nature of any evidence taken in private'.¹⁰ Witnesses who appeared at private examinations were questioned by counsel assisting the PCRC on oath and subject to the powers of the Commission to penalise for giving false testimony.¹¹ Eight private examinations took place between 16 August and 27 August 2021. Each witness was given the opportunity to get independent legal advice before the hearing.
- 60 A further five restricted witness examinations were conducted between 17 September and 21 October 2021. Leave to appear at these hearings was granted to only some of the parties. None of these hearings were live-streamed and the public gallery remained closed.
- 61 The PCRC did not base any findings or make any recommendations on the evidence adduced during the private hearings unless it was supported by evidence that was adduced during hearings at which the interested parties were present. This process ensured protection of the private witnesses and procedural fairness to the parties. The PCRC has made a non-publication order in respect of these hearings.

Findings from other inquiries

- 62 The findings made in the Bergin Report and the RCCOL Report and aspects of the VCGLR China Arrests Report and the VCGLR Junket Report have been used by the PCRC in different ways in respect of different aspects of the PCRC's inquiry. The way that the findings of other inquiries have been used has been set out in different chapters of the Final Report.

Experts

- 63 The PCRC conducted research into the regulatory framework in other jurisdictions and obtained information about those jurisdictions and regulatory theory and practice from publicly available sources. The PCRC used that work to inform the drafting of a discussion paper to seek the input of parties and other contributors. The PCRC received helpful responses to the discussion paper, including from experts. The PCRC concluded that to obtain expert evidence about best practice in casino regulation was not necessary in light of that work.
- 64 The PCRC engaged experts to provide opinions on other topics relevant to the terms of reference. Matthew Caddy of McGrathNicol (**Caddy**) who provided an opinion in relation to

the financial suitability of Crown and whether Crown Perth Resort would be financially viable if it was separated from the wider Crown group.¹² The interested parties advised the PCRC that they did not require Caddy to appear before the PCRC to be examined. Parts of the report are the subject of a non-publication order.

- 65 The PCRC engaged Robyn McKern of McGrathNicol (**McKern**) and Rachel Waldren of Murray Waldren Consulting (**Waldren**) to provide a joint forensic report and forensic review of Crown's AML/CTF program.¹³ Waldren was examined on 11 November 2021. The interested parties advised the PCRC that they did not need to examine McKern. Parts of the joint report are subject to a non-publication order.
- 66 Crown engaged the services of Deloitte to conduct a review of its culture. A partner from Deloitte, Victoria Whitaker (**Whitaker**), gave evidence to the RCCOL about the outcomes of the review. The Deloitte reports were made exhibits in the PCRC and Whitaker was examined on 5 November 2021.¹⁴
- 67 The PCRC engaged Professor Matthew Rockloff (**Rockloff**) to provide a report on harm minimisation.¹⁵ After receiving the report, Crown advised the PCRC that it had engaged its own expert on the topic. Crown engaged Dr Khalil Philander (**Philander**) who provided a responsive report on harm minimisation.¹⁶ Rockloff and Philander conferred about their opinions and then were examined at the same time on 16 November 2021.
- 68 The PCRC engaged Peter Deans from Notwithoutrisk Consulting (**Deans**) who provided a report on Crown's risk management framework and systems.¹⁷ The interested parties advised the PCRC that they did not need to examine Deans.

Use of Evidence

- 69 The fact-finding role of a Royal Commission is directed to the establishment of facts necessary to ascertain the matters the subject of the terms of reference. It is not the role of a Royal Commission to gather evidence sufficient to enable prosecution or disciplinary proceedings.
- 70 The role of a Royal Commission is to gather information using coercive powers and without the need to follow the rules of evidence. That is permitted because of the seriousness of the subject matter and the need for Government to be properly informed. However, it also means that great care must be taken with the information that has been gathered.
- 71 The PCRC has considered all of the evidence that has been gathered before reaching the findings and conclusions and making the recommendations in this Final Report. The PCRC has ensured that it does not make a finding without considering and weighing the evidence fairly and impartially in support of it and against it and applying the appropriate onus and standard of proof.

Onus and standard of proof

- 72 No person or interested party bears an onus of proof in the PCRC. Rather, credible evidence admitted in the PCRC must be sufficient to prove the fact or matter under consideration.
- 73 The standard of proof that the PCRC has applied before making a finding is the balance of probabilities. Where a potential finding was in relation to an important issue or was adverse to an interested party, the PCRC applied what is known as the 'Briginshaw standard'. This standard is based on the presumption that members of society do not ordinarily engage in fraudulent, criminal conduct or other seriously questionable conduct and a trier of fact should not lightly make a finding that, on the balance of probabilities, a person has been guilty of such conduct. The PCRC has taken note of the observations of Dixon J in *Briginshaw v Briginshaw*.¹⁸

Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency.

Procedural fairness

- 74** The rules of procedural fairness apply to Royal Commissions. The PCRC was required to provide procedural fairness to all parties whose rights or interests may be affected by the findings and recommendations contained in this Final Report.

Principles of procedural fairness

- 75** There is no express requirement in the *Royal Commissions Act 1968 (WA)* that makes it necessary for a Royal Commission to provide procedural fairness. The requirement to provide procedural fairness is implied, unless there is an express exclusion of that requirement.¹⁹ There is no exclusion of this implied requirement in the *Royal Commissions Act 1968 (WA)*.
- 76** The requirement to provide procedural fairness was a paramount consideration in all of the PCRC's work to inquire into and report on its terms of reference.
- 77** The principles of procedural fairness that have guided the exercise of the PCRC's powers under the *Royal Commissions Act 1968 (WA)* can be distilled as follows:²⁰
1. to act fairly;
 2. to prescribe practices and procedures that are adapted to the nature and subject matter of this inquiry; and
 3. to ensure that the parties whose rights or interests may be affected by the work of the PCRC:
 - a. know what has been put against them; and
 - b. have a real opportunity to be heard.
- 78** The way in which procedural fairness is to be afforded is not itself an absolute. It involves the adoption of fair procedures that are appropriate to the circumstances of the particular inquiry.²¹ The rules can vary from inquiry to inquiry,²² and they can vary within an inquiry, according to the circumstances applicable to an individual person or issue. The PCRC adopts the comment of Roger Gyles QC (as he then was), the Royal Commissioner into Productivity in the Building Industry in New South Wales:²³

I can say that I do not accept that in this type of inquiry an adverse finding is the equivalent of a finding of disputed fact, of any criticism of a party, or of the exposure of evidence or material which might reflect badly on a person. Nor do I accept that a warning must be given of all possible ramifications of each piece of

evidence before it can be referred to in the Report. I do agree that a party should not be confronted for the first time in the Report with a true adverse finding upon a totally new point or issue which it could not have reasonably anticipated. I do not accept that this anticipation can only come from an express statement or warning by the Commissioner or Counsel Assisting.

- 79 This was a dynamic inquiry with new issues and new material emerging. Procedural fairness has to be viewed in the context of the entire inquiry and all of its processes. The important thing is that in this Final Report no one is confronted for the first time with a true adverse finding on a new point or matter that could not reasonably have been anticipated.

Procedural fairness in the context of this Inquiry

- 80 The fundamental legal requirement is to act within the terms of reference and in compliance with the *Royal Commissions Act 1968* (WA). From this follows a commitment to procedural fairness understood as set out in the preceding section.
- 81 The requirement to provide procedural fairness has been a paramount consideration in all of the PCRC's work at each stage of the inquiry. Each of the stages is discussed below.
- 82 At the outset, the PCRC met the requirement to provide procedural fairness by publishing its terms of reference and informing the public and interested parties through opening addresses of its approach to its terms of reference.
- 83 The first Practice Direction published by the PCRC provided the opportunity to any person (defined to include a body corporate) to appear or otherwise participate in the hearings of the PCRC. Applications for leave to appear were granted to people and organisations including companies in the Crown group that have been defined as the Crown entities, the Department, the GWC, and some of the current and former directors of the Crown entities.
- 84 The PCRC also provided the opportunity for people appearing as witnesses to be represented by a legal practitioner. Fourteen law practices were granted leave to appear for witnesses, mainly current and former Crown employees and directors. The SSO acted for current and former employees of the Department and Quinn Emmanuel acted for the GWC (including current and former members).
- 85 The people and organisations were granted leave because they had an interest in the work of the PCRC and they were either to be called as a witness, might be the subject of an adverse finding or might be able to assist the inquiry. Once leave was granted to them, those parties were described as interested parties in the work of the PCRC (**interested parties**).
- 86 The grant of leave to appear entitled the interested parties to:
- a. apply to have evidence tendered or heard;
 - b. apply for leave to examine or cross examine a witness; and
 - c. make submissions about the findings available.
- 87 The interested parties were provided access to an online hearing book where documents relevant to the hearings and the work of the PCRC were located. They were also given the opportunity to make opening statements.
- 88 The requirement to provide procedural fairness meant that the procedures adopted by the PCRC had to be fair and flexible. The requirement to provide procedural fairness guided the development of the PCRC's procedures set out in the practice directions that were published from time to time.
- 89 The practice directions set out the way in which the PCRC gathered and used evidence and advised the interested parties of the programme for the work of the inquiry and the

practical steps that then led to the production of this Final Report. The PCRC flexibly applied the procedures set out in the Practice Directions, on occasion granting leave to parties to depart from those procedures where not to do so would have been unfair.

- 90 Throughout the hearing phase of the PCRC the solicitors assisting provided witnesses who were summonsed to appear with an outline of the topics that would be covered in that hearing. However, witnesses were not limited to the topics identified in the outline and were at liberty to include other relevant matters if they so wished.
- 91 Before the hearing the solicitors assisting provided all of the interested parties with a copy of the witness statement and an index of the documents referred to in the witness statement. Access to the documents was provided through an online hearing book accessible by all parties. Throughout its hearing phases the PCRC provided lists of exhibits that had been tendered.
- 92 Prior to the publication of the Interim Report the PCRC provided the interested parties with a list of documents that it intended to rely on in that report and advised that those documents would be tendered. Interested parties had the opportunity to object to the documents being tendered and (or) apply for a non-publication order in respect of any document.
- 93 Until 19 November 2021, and thereafter with leave of the PCRC, the PCRC afforded to the parties an opportunity to tender documents that they considered relevant to the inquiry and to seek non-publication orders in relation to any document. Following this process, the PCRC provided parties with a composite list of documents that had been tendered and that were therefore evidence in the inquiry.
- 94 On 17 December 2021, the PCRC provided a document described as Closing Observations to the interested parties. This procedure was adopted by the PCRC because it was the most practical way to deal with the significant amount of material that had to be considered in a short time frame and in a way that is fair. In this context the term 'fair' is used both in the technical sense of procedural fairness and generally in accordance with broader notions of fairness.
- 95 A primary purpose of the Closing Observations was to identify issues that the PCRC 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 those issues.
- 96 The nature of this inquiry meant that it was not possible to ask every witness about all the matters that might be the subject of adverse findings during the hearings. Some matters came to light in the course of the evidence given by other witnesses or the PCRC's other investigations. For that reason, the Closing Observations document was a comprehensive record of the matters that had been inquired into and the basis for potential findings.
- 97 Sufficient material was included in the Closing Observations to enable the interested parties to see the findings that were potentially open on the evidence and the analysis of the evidence that supported each matter. The interested parties were then able to respond to correct or contradict adverse material and to draw attention to other relevant material.
- 98 The PCRC provided the whole document to all the interested parties, not just the sections in which each party was named. This was done because all of the individuals named in this Final Report have worked as part of an organisation: the Crown group, the regulator or the Department. It was accordingly necessary for the individuals to see the findings that could potentially affect them in the broader context of the organisations of which they are, or have been, a part, and in the context of the whole inquiry.
- 99 The Closing Observations and the parties' written responses are the subject of a non-publication order. The PCRC has been conscious of the expectation that as much as possible

of its inquiry should be conducted in public so members of the community can be informed about the process. The PCRC has not taken lightly decisions that have been made that limit public access to inquiry material.

- 100** At the time of the provision of the Closing Observations the PCRC had not reached any final views. The PCRC did not make that document public because it had not had the opportunity to hear submissions from the interested parties at that time. To make public potential findings, that is, findings that were seen to be open but that might not be made 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 the Closing Observations.
- 101** The interested parties were afforded the opportunity to respond with written submissions to the Closing Observations. Their written submissions were also provided to all of the other interested parties, and they were all able to provide written submission responding to the other parties' submissions. 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. As previously noted, this was done for the protection of a person's reputation where this Final Report makes no adverse finding against that person and to guard against the publication of potential conclusions that are not made in this Final Report.
- 102** In many inquiries the conclusion of the evidence gathering process is followed by the provision of written and oral submissions from counsel assisting the inquiry. This is not the process that the PCRC has adopted. The reason for the departure from the typical process is because counsel and solicitors assisting the PCRC worked closely with the Commissioners to select the topics for inquiry and to investigate and consider the matters to be reported on in this Final Report. It was considered to be a better use of time, which is a scarce commodity, and more appropriate given the working relationship between the Commissioners and solicitors and counsel assisting for the document to be prepared by counsel and solicitors assisting the PCRC with input from the Commissioners.
- 103** On 1 and 2 February 2022, the PCRC heard oral closing submissions. All interested parties were given the opportunity to speak. Most elected not to do so and none who applied for leave were refused. The oral closing submissions were an opportunity for those parties who sought to do so to explain to the public and to the Commissioners what they consider to be the most significant factors in the inquiry and how they see those matters affecting their interests.

Record Keeping

- 104** The PCRC acknowledged the importance of record keeping from the commencement of its operations, to ensure that its processes are available for scrutiny in the future after the conclusion of the PCRC.
- 105** The records of the PCRC were retained during the inquiry in a number of places. The solicitors assisting facilitated the use of a project management document system. The PCRC local file system was used to store all documents produced by PCRC secretariat and investigative and legal teams. A third-party provider was used to store documents produced to the PCRC in response to NTPs. An eHearing book was used to share documents with the interested parties and to display witness statements and exhibits during public hearings on screens in the room. All PCRC documents that were available to the public were uploaded to the website.
- 106** The PCRC's record keeping plan was approved by the State Records Commission on 16 November 2021. The PCRC received support from the DPC in developing and implementing the plan.

- 107** The purpose of the record keeping plan is to outline the types of records held by the PCRC and how they are stored. The record keeping plan describes the record keeping program within the PCRC, including information regarding the PCRC's record keeping systems, disposal arrangements, policies, practices and processes. The record keeping plan provides evidence of the PCRC's compliance with the *State Records Act 2000 (WA)* and implementation of best practice in record keeping.
- 108** The record keeping plan applies to the Commissioners, PCRC employees including contract officers and all organisations that provide services to and on behalf of the PCRC.
- 109** At the conclusion of the PCRC the records will be transferred to DPC to be managed in accordance with the record keeping plan, until all records have either been archived at the State Records Office or destroyed in accordance with the guidelines provided in the Sector Disposal Authority for Reviews, Investigations and Special Inquiries.²⁴
- 110** The PCRC documents will not be available to the public for 75 years from the date of the publication of this Final Report. The DPC is responsible for dealing with applications for access to the PCRC documents.

Endnotes

- 1 *Royal Commissions Act 1968* (WA) [PUB.0004.0005.0075] s 8A.
- 2 *Royal Commissions Act 1968* (WA) [PUB.0004.0005.0075] s 8B.
- 3 PCRC, Practice Direction 9: Closing observations and interested parties' written submissions 17 December 2021 (17 December 2021) [PCRC.0039.0001.0050] [Appendix T].
- 4 *Anti-Money Laundering and Counter-Terrorism Financing (Exemption – Crown Entities) Instrument 2021 (No. 18)* [PUB.0033.0041.0001].
- 5 PCRC, List of Submissions [Appendix Q].
- 6 PCRC, The West Australian Advertisement dated 10 July 2021 [Appendix P].
- 7 PCRC, List of Witnesses, Representatives and Public Hearing Dates [Appendix H].
- 8 PCRC, List of Parties Granted Leave to Appear [Appendix G].
- 9 PCRC, Practice Direction 4: Witness evidence (30 April 2021) [PCRC.0039.0001.0027] [Appendix T].
- 10 *Royal Commissions Act 1968* (WA) [PUB.0004.0005.0075] s 19A.
- 11 *Royal Commissions Act 1968* (WA) [PUB.0004.0005.0075] s 24.
- 12 McGrathNicol, Financial Suitability, expert report (18 October 2021) [PCRC.0021.0001.0044_R].
- 13 McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report', expert report (28 October 2021) [PCRC.0021.0001.0121_R] 22.
- 14 Whitaker, transcript [TRA.0001.0001.0001] 5646.
- 15 M Rockloff, N Hing, M Browne, A Russell, H Thorne, P Newall, T Visintin, 'Gambling Harm and Harm Minimisation in Western Australia', expert report (October 2021) [PCRC.0100.0001.0001].
- 16 K Philander, 'Independent Expert Evidence for the Perth Casino Royal Commission', expert report (November 2021) [CRW.998.002.1212].
- 17 P Deans, 'Changes to the Risk Management Framework and Systems of Crown Resorts Limited', expert report (22 October 2021) [PCRC.0021.0001.0089_RPCRC.0021.0001.0089_R_R].
- 18 *Briginshaw v Briginshaw* (1938) 60 CLR 33 [PUB.0037.0001.0001] 361–362 (Dixon J).
- 19 *Annetts v McCann* (1990) 170 CLR 596 [PUB.0033.0041.0115] 598, 608 – 609.
- 20 *Edwardes v Kyle* [1995] WASC 731 [PUB.0033.0041.0174] 26 – 28.
- 21 *Kioa v West* (1985) 159 CLR 550 [PUB.0033.0041.0029] 585.
- 22 *National Companies and Securities Commission v News Corporation Limited* (1984) 156 CLR 296 [PUB.0033.0041.0142] 312.
- 23 HIH Royal Commission, Commonwealth of Australia, The Failure of HIH Insurance Volume 1: A Corporate Collapse and Its Lessons (April 2003) [PUB.0033.0046.0001] 2.
- 24 Government of Western Australia, Sector Disposal Authority for Reviews, Investigations and Special Inquiries (DA 2017-004) (25 October 2017) [PUB.0033.0017.0001].

APPENDIX E

Corporate Governance Theory

Purpose of Appendix

- 1 The purpose of this appendix is to explore prevailing principles and theories of corporate governance as applied to private sector companies and public sector corporations that form part of the terms of reference (**ToR**).
- 2 The appendix commences with a consideration of the nature of and manner in which a corporation engages in conduct and the relevance of 'corporate governance' to the Part A and Part B ToR. The appendix then deals separately with principles and theory of corporate governance as applied to private sector companies, including the important topics of risk management and culture, and the principles and theory of corporate governance as applied to public sector corporations.
- 3 There is considerable useful material on corporate governance generally in the report published by the Hon Ray Finkelstein AO QC on 15 October 2021 (**RCCOL Report**)¹ and the report published by the Hon PA Bergin SC on 1 February 2021 (**Bergin Report**).² The PCRC acknowledges this and does not propose to repeat all of that material.

Nature and conduct of a corporation

- 4 In Anglo-Australian law, the concept of a corporation has its origins in Royal Charters and Acts of Parliament. Under these instruments a corporation with a separate legal existence was established typically for a public purpose and (or) the grant of a privilege.³
- 5 The limited liability company that is the foundation of modern commerce was a later development and owes its continuing existence to a series of 'Companies' Acts ending, in Australia, with the *Corporations Act 2001* (Cth) (**Corporations Act**).⁴ A company is a form of body corporate or corporation. In Australia, a company is incorporated and registered in accordance with the Corporations Act.⁵ Under the Corporations Act all companies are corporations, but not all corporations are companies.⁶
- 6 In the context of the private sector, the phrase 'corporate governance' is normally used in reference to the governance of limited liability companies and, in particular, companies listed on a stock exchange. The discussion in this appendix about private sector corporate governance is in reference to the governance of limited liability companies.
- 7 Outside the operation of the Corporations Act, there are numerous corporations that are established under specific legislation for public purposes. These are public sector bodies or statutory corporations. These corporations are not incorporated or registered in accordance with the Corporations Act, but are incorporated under separate legislation of the states, territories or Commonwealth. Although involving different considerations, the concept of 'corporate governance' is also relevant and applicable to the governance of public sector corporations. The discussion in this appendix about public sector corporate governance is in reference to the governance of such corporations.
- 8 There are two main characteristics of a corporation (private or public) that necessitate its governance. First, a corporation is a separate legal or juristic person. It is separate and distinct from its members and directors or governing body.⁷ In the modern commercial setting, where corporate groups are common, it is easy to overlook or downplay the significance of this principle. Second, a corporation can only act through natural persons

and, for the purposes of the application of substantive laws, certain action or inaction of individuals is deemed to be conduct of a corporation.

- 9 As a legal person, a corporation has rights, obligations and liabilities and engages, or is taken to engage, in conduct. The law has developed legal rules for attributing the action or inaction of natural persons to a corporation as conduct of the corporation. These rules of attribution are to be found in the legislation establishing the existence of the corporation, the corporation's constitution, the general law of agency and vicarious liability and special rules of attribution.⁸
- 10 The governance of a corporation is concerned with the modes and mechanisms of decision-making that result in the attribution of conduct of natural persons to corporations as conduct of corporations. In this respect, there are three key questions:
 - a. *Who* makes decisions?
 - b. *How* are decisions made?
 - c. *Why* (or for what purpose) are decisions made?
- 11 Typical discussions of corporate governance tend to focus on the *who* (shareholders, directors, managers) and *how* (rules, relationships, systems and process) questions, but *why* and for what purpose decisions are made is arguably the most important question. The *why* (or for what purpose) question is directed to the ends to be served by decisions and involves considering what interests of the corporation are intended to be advanced by decisions.

Private Sector Governance

Meaning of 'corporate governance'

- 12 Focus on the concept of 'corporate governance' is a relatively recent phenomenon. It has coincided with a recognition that there is a need to legitimise the power of large corporations, which challenges or surpasses that of the State, and the many scandals and financial crises involving failings of corporate governance of the last few decades.⁹
- 13 In Australia, failings of 'corporate governance' were features of the Royal Commission into the Failure of HIH Insurance (**HIH Royal Commission**), the APRA Prudential Inquiry into the Commonwealth Bank of Australia¹⁰ and the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**). Corporate governance failings were also the subject of the inquiry by the Honourable PA Bergin SC under s 143 of the *Casino Control Act 1992* (NSW) established on 14 August 2019 (**Bergin Inquiry**) and the Royal Commission into the Operator and Licence in Victoria (**RCCOL**). Further afield, there have also been a number of reports which have examined the role of corporate governance.¹¹
- 14 Increased attention on corporate governance has resulted in the publication of corporate governance 'best practice' guidelines and benchmarks. The ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (**ASX Principles**) and the Australian Institute of Company Directors 'Guiding principles of good governance' (**AICD Principles**) are examples.¹² The ASX Principles being on a 'if not, why not' basis.
- 15 Notwithstanding the prevalence of the use of the phrase, a settled meaning of corporate governance has not emerged in the various inquiries, reports and academic literature that have considered the topic.¹³ However, broadly, there are two approaches.

- 16** The first concentrates on the legal rules and standards regulating the internal affairs of the company. Of particular concern is the relationship between the shareholders, directors and senior officers appointed to manage the company. It is a static, inward-looking approach that looks at the company as if it existed in a vacuum.
- 17** The second is a broader more holistic approach. It looks beyond the internal workings and legal constraints to the wider systems which influence the direction and control of the company. It takes into account the company's relationship with those who are interested in its affairs, its professional advisers, government regulators, industry counterparts and the market generally. It encompasses strategies, policies and culture. In the context of an inquiry into the suitability of a company, the PCRC considers that it is appropriate to adopt the broader approach.
- 18** The broader approach and its rationale is described in the HIH Royal Commission Report in the following terms:¹⁴
- While numerous renditions of the term can be found in the literature, many of them useful, corporate governance is not a term of art. At its broadest, the governance of corporate entities comprehends the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in a corporation. It includes the practices by which that exercise and control of authority is in fact effected.
- The relevant rules include applicable laws of the land as well as the internal rules of a corporation. The relationships include those between the shareholders or owners and the directors who oversee the affairs of the corporation on their behalf, between the directors and those who manage the affairs of the corporation and carry out its business, and within the ranks of management, as well as between the corporation and others to whom it must account, such as regulators. The systems and processes may be formal or informal and may deal with such matters as delegations of authority, performance measures, assurance mechanisms, reporting requirements and accountability.
- 19** That description of corporate governance has been incorporated into the ASX Principles,¹⁵ and has been referred to with apparent approval or acceptance in subsequent Royal Commissions in which corporate governance has been considered.¹⁶
- 20** At a conceptual level – and leaving to one side for the moment the framework – corporate governance is primarily concerned with the stewardship and accountability of the directors and officers of the corporation in respect of the interests of the corporation.¹⁷ In this regard, the influential Cadbury Report identified the principles underpinning the 'Code of Best Practice' as openness, integrity and accountability.¹⁸ An open approach contributes to efficiency and scrutiny. Integrity encompasses both straightforward dealing and completeness. Accountability contributes to responsible exercise of power. These were statements of general principle made in respect of financial reporting. However, they may be applied equally to financial and non-financial interests of a corporation.¹⁹
- 21** The concepts of stewardship, accountability to stakeholders and 'best interests of the corporation' are closely linked and are at the heart of the concept of corporate governance.

Framework

- 22** The sources of the rules through which decisions are made fall into two general categories: formal legal rules comprised of legislation and common law principles and informal rules comprised of codes of conduct, guidelines and benchmarks. Typically, informal rules provide guidance on mechanisms for augmenting and giving effect to the formal legal rules.
- 23** Beyond rules there are the relationships, systems and processes through which decisions are made in practice. These are idiosyncratic and are the modes and mechanisms by which a company gives effect to the formal and informal rules.
- 24** The aim of good corporate governance is to create and maintain a framework for accountable decision-making. While decisions are to be made with the best interests of the company in view, good governance does not guarantee good decisions or positive outcomes for or performance of the company. In this regard, the 'business judgment rule' provides some protection for directors.²⁰
- 25** Codes of conduct, guidelines and benchmarks are all directed towards creating a system of governance that is conducive to good decision-making. However, it is necessary to approach any 'best practice' statements with an eye to flexibility and an understanding that corporate governance is not something where one size fits all. Systems and practices should be adapted and modified to suit the particular circumstances of the company to be governed.²¹
- 26** Prescriptive or slavish adherence to codes, guidelines and benchmarks also carries with it the danger of developing or encouraging a tick-the-box approach to governance. Compliance with the letter of best practice statements should not be or become an end in itself. It is more important to focus on the quality of the conduct of the company that results from the system of corporate governance. Accordingly, periodic review of the actual performance of governance processes against benchmarks or indicators must be a key component of an effective corporate governance system.²²
- 27** In the Banking Royal Commission Report a connection was drawn between governance and culture.²³ This was in the specific context of remuneration but the principle is of general application. Good culture is essential for good governance. It is another reason for not placing too much emphasis on compliance with codes or guidelines or ticking boxes. Ensuring that people adhere to the governance systems and bring timely information (good or bad) to the primary decision-makers is critical to good governance of a company.
- 28** The following sections describe the functions of directors, shareholders, officers, employees and other agents and the suggested attributes of good corporate governance. The sections also outline approaches to effective risk management and creating and maintaining a culture that promotes good governance.
- 29** While the discussion in the following sections identifies features from various models of best practice, these descriptions should not be taken as an endorsement of any particular system of corporate governance or prescription of what is an effective system. As was observed in the HIH Royal Commission Report:²⁴

... the effectiveness of corporate best practice models in themselves is limited. Those companies with an ethical culture are likely to adopt appropriate corporate governance practices, while those where this culture is lacking are more likely to continue to adopt an idiosyncratic or expedient approach. Those in charge of a company should turn their minds to the effectiveness of their governance model in practice, and not content themselves with the mechanisms. It is yet another instance where substance is to be preferred to form.

Board of Directors

Stewardship, accountability, powers and duties

- 30** The essential role of the board includes setting the company's strategic aims, providing leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.²⁵ The board must also ensure that the corporation has in place the necessary controls over its activities and, of equal importance, ensure that the controls are working.²⁶ The essential functions of a board also include determination of strategic and tactical directions, management of the agenda, ensuring accountability and establishing and monitoring policies and practices introduced to ensure compliance with obligations.²⁷
- 31** It is neither desirable nor practicable for the board of a large corporation to involve itself in matters of day-to-day management. But the board is ultimately responsible for the proper governance of the corporation. Accordingly, it must decide where the lines of authority lie. The board should set clearly defined delegations of authority to the chief executive officer and have a well understood policy on matters that are reserved to it.²⁸
- 32** Most corporate governance models recognise the board as the key mechanism for ensuring that management acts always in the interests of the corporation. The role of non-executive directors in monitoring and guiding the behaviour of executives is integral in this regard.²⁹
- 33** In formal terms, the directors are appointed by, and are accountable to, the members. The power to manage the business of the company is delegated to the directors. The delegation arises as part of, or by virtue of, the contract between members and the company contained in the company's constitution or by reason of the replaceable rules.
- 34** The general law (common law and equity) recognises a number of duties applying to directors, in particular, to act in good faith for the benefit of the company, to exercise powers for proper purposes, to avoid conflicts of interest and to exercise care, skill and diligence.
- 35** These duties are augmented and reflected in the provisions of the Corporations Act.³⁰ An important statutory duty is contained in s 181(1) which provides that a director or other officer of a corporation must exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose.
- 36** The concept of the best interests of the company lies at the heart of the notion of stewardship, directors' and officers' duties and corporate governance. What falls within the concept of best interests of the company is an important topic and is examined separately later in this appendix.

Composition

- 37** The governance structure of an Australian company usually comprises a unitary board including a combination of non-executive and executive directors.
- 38** Key to an analysis of board composition is a consideration of the experience and qualities of individual members of the board, the balance of executive and non-executive directors and the process and style of its overall functioning.³¹ The ASX Principles include that the board of a listed entity should be of an appropriate size and collectively have the skills, commitment and knowledge of the entity and industry in which it operates, to enable it to discharge its duties effectively and to add value.³²
- 39** While codes and guidelines are useful for identifying desirable features of a well-composed board, more important is the question of whether the board, as actually composed, is

working well and effectively discharging its functions. A board that is functioning well and discharging its duties is better than a dysfunctional board that meets code or guideline characteristics of a board.

- 40 Part of the board's responsibility is to keep its own composition and effectiveness under review. The chair should lead the process and ensure there are regular opportunities for review and consideration, whether through a formally constituted nomination committee or otherwise.³³

Executive directors

- 41 Executive directors are employees of the company and take part in the day-to-day operations of the company in accordance with the duties and functions of the role in which they are employed.
- 42 Executive directors have a responsibility to inform other members of the board of matters within their knowledge that might not otherwise be known and which might be material to the board's consideration of relevant issues. Executive directors must look beyond their executive duties and accept their full share of the responsibilities as board members for the governance of the company.³⁴

Non-executive directors

- 43 Non-executive directors are not directly involved in the day-to-day operations of the business of the company. The role of the non-executive director is to bring a broader perspective to the company's activities. They should exercise independent judgment over the company's strategy, performance, resources and standards of conduct.³⁵
- 44 The role of non-executive directors has been described as ensuring there is an effective executive team in place, to participate actively in the decision-making processes of the board, and to exercise appropriate oversight over execution of the agreed strategy of the executive team.³⁶
- 45 Non-executive directors have been described as 'custodians of the governance process'.³⁷ The AICD states that in Australia, it is considered good practice from a governance perspective for a majority of directors on a board to be non-executive and independent, especially in listed companies.³⁸

Relationship between the board and officers, employees and agents

- 46 As mentioned above, executive directors have a responsibility to inform the board of matters within their knowledge that might be relevant to matters under consideration by the board.
- 47 It is generally accepted that the board and senior management of a company are entitled to delegate their powers and rely on advice of others in carrying out their duties. In *AWA v Daniels* it was acknowledged that the board cannot manage the day-to-day operations of a large company and this function must be delegated to management.³⁹ If directors of large public companies are immersed in the details of day-to-day operations they would be incapable of taking abstract, strategic and holistic decisions at board level.⁴⁰ The power to delegate and the ability to rely on others' advice is also recognised and reflected in the provisions of the Corporations Act.⁴¹
- 48 The Corporations Act provides that the directors may delegate their powers, but if they do so, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.⁴² There is protection if the director believes on reasonable grounds that the delegate is reliable and competent and has made

enquiries when necessary. Similarly, directors may rely on information and professional advice provided the director believes on reasonable grounds that the source is reliable and competent.

- 49** Reasonable grounds for belief require the director to know of or make proper inquiries to be informed about the matter in question. Reasonable grounds for belief may require the:
- a. establishment of appropriate and adequate systems and processes for ensuring that the information or advice necessary for board decision-making is received;
 - b. directors to interrogate and question the person providing the information or advice or the delegate of the power;
 - c. directors to ensure that the systems and processes are working as designed and that they are receiving the information required for them to make decisions; and
 - d. board to be properly informed of the activities of the delegates of power and providers of information and advice.⁴³
- 50** The extent to which the directors may be required to take one or more of these steps will depend on the circumstances of any given matter. However, the passive receipt of information or reposing unquestioned trust and confidence in management is not appropriate.
- 51** As was said in the Banking Royal Commission Report, boards must have the right information to discharge their functions. In particular, they must have the right information to challenge management on important issues including issues about breaches of law and standards of conduct. Without the right information a board cannot discharge its functions effectively. Boards must seek out the information necessary to challenge management effectively and actively challenge management about serious issues within scope of the powers delegated to management.⁴⁴
- 52** One of the important responsibilities of the senior executive team is to provide the board with accurate, timely and clear information on the entities' operations to enable the board to perform its responsibilities.⁴⁵

Board charter

- 53** Board charters serve a number of important functions. Board charters remind the board of the legal framework in which they operate. Board charters document the policies the board has decided upon to meet its legal and other responsibilities, and allow communication of the board's policies and expectations to management. Board charters provide guidance and comfort to shareholders that the board has implemented robust governance processes. In short, board charters assist in allowing the corporation's leadership to deliver good governance.⁴⁶
- 54** The ASX principles provide that a listed entity should have and disclose a board charter setting out the roles and responsibilities of its board and management and those matters expressly reserved to the board and those delegated to management. The ASX Principles provide guidance on what the board of a listed entity should be responsible for.⁴⁷
- 55** The AICD has published guidance concerning board charters as part of its directors' tools publications.⁴⁸

Board committees

- 56** Boards of large organisations often delegate work to committees of directors. Those committees tend to deal with complex or specialised issues and allow for directors' time to be used more efficiently. Committees make recommendations to the board, which retains

collective responsibility for decision-making.⁴⁹ Even though the board may delegate the exercise of its powers to committees, directors remain responsible subject to principles of fair delegation which are set out in s 190(2) of the Corporations Act.

- 57** The ASX Principles recommend the board of a listed entity should have a nomination committee, an audit committee, a committee to oversee risk, and a remuneration committee.⁵⁰ The ASX Principles also recommend for some committees that the members be non-executive directors, the majority of members are to be independent directors, and the committee is to be chaired by an independent director. Generally, it is good governance practice for board committees to be chaired by non-executive directors.
- 58** The ASX Principles also recommend that each committee have its own charter setting out its role and the powers conferred to the committee.⁵¹
- 59** The minutes of the committee should capture key deliberations, show options for action and make recommendations for the Board to endorse or decide on, and be included in the board papers for the next full board meeting.⁵²

Chair

- 60** The chair's primary function is to preside at board meetings and exercise procedural control. To that extent, the chair has responsibility for the board's overall performance.⁵³ The chair has the power, authority and responsibility to:⁵⁴
- a. set agenda items for board meetings;
 - b. ensure the board has sufficient information to meaningfully discuss agenda items;
 - c. ensure sufficient time for discussion on complex or contentious matters; and
 - d. ensure board members work effectively together and that there is a workable and harmonious relationship between executive and non-executive directors. This would include managing disruptive behaviour on the board.
- 61** A chair is more generally responsible for monitoring the performance of the board, board members and committees,⁵⁵ and may have a public relations role in representing the organisation to outside parties.⁵⁶ A chair may also have greater responsibility for:⁵⁷
- a. defining and ensuring the board sets and implements the organisation's corporate culture (the organisation's set of shared values);
 - b. defining and ensuring the board sets and implements the appropriate corporate governance structure within the organisation;
 - c. ensuring communication with members and taking into account their interests and concerns; and
 - d. assisting with identifying, and inducting, new directors and educating directors.
- 62** The chair's conduct may be assessed against the organisation's expectations, or against any usual or normative corporate practices. Those expectations may arise from the chair's own representations, including their represented personal qualities and skills.⁵⁸

Independence

- 63** The ASX Principles recommend that the majority of a listed company's board of directors should be independent directors.⁵⁹ That recommendation is consistent with the weight of current opinion.
- 64** However, the concept of an 'independent' director begs the question of what is meant by independence. Does it mean independent of management? Does it mean independent from

any other interest that may influence the director's decision-making? Does it mean both these things?

- 65 The core of the concept is directed to the best interests of the company. Therefore, what is relevant is independence of judgment. That is, decision-making that is uninhibited by any considerations other than what is in the best interests of the company.⁶⁰
- 66 A criterion such as executive or non-executive is not a particularly useful way of identifying 'independence'. The real question is whether, taking into account all the characteristics of the director, that person is *subjectively* capable of exercising independent judgment in the best interests of the company.⁶¹ A majority of board members with independence of that character promotes decision-making that is the best interests of the company.

Shareholders

- 67 The role of shareholders in corporations is determined by the Corporations Act, the corporation's constitution (if any) and in some cases any shareholders' agreement. Shareholders have an indirect, but important, role to play in the governance of a company.
- 68 The directors are accountable to the shareholders. The shareholders have the ability to convene a general meeting of the members and remove directors with whose performance the shareholders are not satisfied.⁶² Shareholders of listed companies also have the ability to influence the remuneration of directors and executives.⁶³ Ultimately, shareholders have the means by which to control *who* manages and makes decisions of the company.

Officers, employees and agents

- 69 The extent to which an employee or agent plays a role in corporate governance depends on the extent to which the employee or agent has authority to make significant decisions attributed to the company or has the ability to meaningfully influence those decisions. Employees who fall within the definition of 'officer' in the Corporations Act are in that category. These are employees in positions such as company secretary, chief executive officer (**CEO**), chief financial officer and other senior management positions that form part of the executive team to whom the board has delegated, directly or indirectly, authority to make significant decisions for the company.
- 70 The meaning of 'officer' is also sufficiently wide to capture other agents. It may also apply to individuals who do not hold any formal position within a company, but is a person in accordance with whose instructions or wishes the directors of the corporation are accustomed to act. For example, an influential shareholder or representative of an influential shareholder may be an 'officer' of a company.
- 71 Irrespective of the mechanism (formal or informal) by which a person is placed in a position to make or participate in making significant decisions affecting a company, the delegation of authority to that person should be recorded and the scope of that person's authority identified. Likewise, that person's reporting lines and the other person(s) to whom that person is accountable for the exercise of powers under delegation should be clearly recorded and implemented. There should be no doubt:
- a. that a person is appointed to and has authority to exercise a power or discharge a duty of the directors (agent);
 - b. about the nature and extent of an agent's appointment and authority; or
 - c. about the other person(s) to whom the agent is to report and be accountable for the exercise of the power and discharge of the duty.

- 72 In large companies it is not unusual for the directors to delegate most powers of management to a CEO and for the CEO, in turn, to delegate many of those powers to other executives and so on. Consequently, it is possible for employees at some distance from the board down the hierarchy to have significant decision-making functions.⁶⁴
- 73 It follows that selection and appointment of the CEO is an important and significant aspect of the corporate governance of a company. That person is accountable to the board. Therefore, continued review of the performance of the CEO and, through the CEO of all other management, is a key component of corporate governance.

Interests of the company

- 74 One of the primary duties of a director is to act in the best interests of the company. The academic literature identifies three competing theories in relation to what is meant by acting in the best interests of the corporation (company): shareholder primacy; stakeholder primacy; and communitarian.
- 75 *Shareholder primacy* maintains that 'the powers granted to the management of a corporation [are] a trust, exercisable only for the benefit of the shareholders and no-one else'.⁶⁵ A company is to be run in such a way as to maximise the interests of shareholders ahead of any other interested persons and to maximise the market value of the company. 'through allocative, productive and dynamic efficiency'.⁶⁶
- 76 *Stakeholder primacy* considers that the objective of a corporation is to benefit all who can be identified as stakeholders. Stakeholders in addition to shareholders have claim on a company's assets and earnings as contributors to the company's capital.⁶⁷ In addition, stakeholders can also be adversely affected by a company with which they are otherwise not associated.
- 77 In a stakeholder primacy approach, it is first necessary to identify the class or classes of 'those who have a stake in the company's success'. They include the policyholders, general creditors, employees, shareholders, regulators and in a more indirect, but no less important sense, members of the public.⁶⁸
- 78 *Communitarian theory* is to the effect that 'the corporation is (or should be) run so as to take account of the effect of corporate decisions on the broader community'.⁶⁹ Pursuant to this view, corporations 'are increasingly expected to be active stakeholders in solving society's problems while generating economic value'.⁷⁰ Communitarian theory may be categorised as a variant of stakeholder primacy where the 'community' is taken to be a stakeholder.⁷¹
- 79 Although at one time shareholder primacy may have been a dominant theory, there is little contemporary support for it. The modern approach is to recognise that the 'interests of the company' take into account all who have a stake in the success of the company and the interests of the company are not confined to financial interests, but include non-financial interests such as reputational harm, compliance with laws and regulatory action. Under this approach the directors may be required to take into account the interests of the community or the public where the interest of the company and public interest intersect.
- 80 For the reasons that follow, the PCRC favours a stakeholder approach, but would hesitate to place on it the label stakeholder *primacy* as the word 'primacy' tends to shift the emphasis of the interest away from the true nature of the duty which is owed to the company. That is, the duty is owed to the company and it is the interests of the company – and not any particular stakeholder or stakeholders – that directors must have in mind when discharging their duties.
- 81 It is in the conception of the 'content' of the duty in any given circumstance that the interests stakeholders have in the success of the company are to be taken into account. Not every exercise of every power and discharge of every duty requires the interests of every

stakeholder to be taken into account. Not every company has the same stakeholders. Thus, it is the business activities in which the company engages and the relationships it forms with and the affect its conduct has on shareholders, creditors, employees, customers and neighbours that drive the content of the duty to exercise powers and discharge duties in the interests of the company. Under this approach, the directors may be required to take into account the interests of the community or the public where the interests of the company and the public intersect.⁷²

- 82** The stakeholder approach is sometimes referred to in the literature as ‘enlightened shareholder value’. That is, the focus remains on creation of value for shareholders, but without an exclusive focus on the short term financial bottom line. It involves ‘striking a balance between the competing interests of different stakeholders in order to benefit the shareholders in the long run’.⁷³
- 83** In the Banking Royal Commission Report it is said, in relation to the duties a director owes a company:⁷⁴
- a. financial returns will always be an important consideration, but it is not the *only* matter to be considered;
 - b. the best interests of a corporation cannot be determined by reference only to the current or most recent accounting period;
 - c. the longer the period of reference, the more likely it is that the interests of shareholders, customers, employees and all associated with any corporation will be seen as converging on the corporation’s continued long-term financial advantage; and
 - d. long-term financial advantage is more likely to follow if a corporation conducts itself according to proper standards, treats employees well and seeks to provide financial results to shareholders that, in the long run, are better than other investments of broadly similar risks.

Corporate groups

- 84** Large corporate group structures are common in commercial life in Australia. The reality of these groups is that they are managed and controlled at group level. The group structure can be complex with executives employed by a subsidiary once or twice removed from the main listed entity.⁷⁵
- 85** The group structure raises many governance issues:⁷⁶
- a. The parent company’s board must decide to what extent it will integrate subsidiaries in the group, which is particularly important where subsidiaries handle activities and assets vital to the parent company and its performance.
 - b. The parent company’s shareholders are further removed from the subsidiary’s activities than the parent company’s activities with the consequence that the group structure creates an additional layer in the management-shareholder relationship.
 - c. If the subsidiary follows group policy, the subsidiary’s board may be faced with the problem of how to balance the group’s interests and the subsidiary’s interests, which is particularly complex where the subsidiary’s economics are stressed.
 - d. Groups may share services or facilities and financial resources through joint financial arrangements for the group such as cross-guarantees. An extensive net of commitments and transactions within the group will have implications for stakeholders in subsidiaries.
- 86** In the case of the directors of a corporation that is a wholly-owned subsidiary of a body corporate, s 187 of the Corporations Act provides that a director is taken to act in the

best interests of the subsidiary if the constitution of the subsidiary expressly authorises the directors to act in the best interests of its holding company, and where the director acts in good faith in the best interests of the holding company, and if the subsidiary is not insolvent.

- 87** In the group context, the requirement to act in the best interests of a corporation does not mean that the interests of the wider group must be ignored in the discharge of duties owed to a particular corporation within the group. However, it does require that when a decision is made affecting a particular corporation, the interests of that corporation are taken into account. That corporations within the wider group also benefit from the decision does not mean that the decision is not in the best interests of the particular corporation.⁷⁷
- 88** Having noted those challenges, there are two broad frameworks for how a group should be structured from a governance perspective.⁷⁸

Centralised vs decentralised

- 89** A centralised model is one where more comprehensive authority is exercised by the board and senior management at the group level. This model could have the following benefits:
- a. better alignment with centrally set objectives, strategies and policies;
 - b. effective assessment and mitigation of risks across the group by aggregating and analysing data at a group level;
 - c. consistent and efficient control functions such as risk management, compliance and internal audit that may have economies of scale; and
 - d. attainment of consistency across the corporate group.
- 90** A centralised model requires comprehensive authority and control at the group level; sufficient regard of local obligations and risks; and strong lines of communication. It poses challenges for governance from a group perspective. This includes:
- a. ensuring alignment with centrally set objectives, policies and measures with local requirements, circumstances and cultural aspects;
 - b. ensuring a clear allocation of responsibilities and accountability of the management of the subsidiaries vis-à-vis group management;
 - c. effective oversight of management in subsidiaries;
 - d. ensuring risk appetite takes into account different risk appetites for subsidiaries which may vary depending on line of business and locality;
 - e. ensuring compliance, and effective implementation of group governance requirements, at an entity level;
 - f. ensuring risk and compliance culture at group level sets an effective example for all entities; and
 - g. obtaining information, and responding to such information, in a timely basis on a group-wide basis as well as on an entity basis.
- 91** A decentralised model is one where greater autonomy and authority rests with the boards and senior management at an entity level. This model could have the following benefits:
- a. better facilitation of compliance with local regulatory requirements and changes including any cultural sensitivities relating to that environment;
 - b. increased focus of risk management at an entity level, enabling the entity to react flexibly and in a timely manner;

- c. better facilitation of oversight over senior management of the entity as responsibility remains with the management body of that entity; and
 - d. sensitivity to the environment and culture in different locations.
- 92** There is a tension as to the balance to be struck between effective group direction on the one hand and sufficient regard for local obligations on the other. Sufficient information and authority for group key players and autonomy for key players at the entity level are necessary for good governance.
- 93** A decentralised model needs to take into account a degree of group-wide coordination, and consistency. It poses challenges from a governance perspective, which include:
- a. ensuring objectives and strategies (including risk appetite) set at an entity level are effective from a group-wide perspective;
 - b. ensuring clear responsibilities and accountability at group level and accountability and effective oversight at the entity level;
 - c. ensuring control functions at entity level are sufficiently independent from the business of the entities;
 - d. ensuring risks are treated consistently across the group and that group-wide risks are properly identified, aggregated and mitigated; and
 - e. ensuring communication to the group level of issues at entity level which may impact the group as a whole and obtaining information on entities in a timely manner.
- 94** The focus of the challenges is on the implementation of group governance requirements and the coordination of the objectives and policies of the entities. This is to ensure that entities and their key players take sufficiently into account the group perspective without which there might be a risk of entities pursuing separate and incompatible goals and taking risks that the group would find unacceptable.
- 95** As mentioned above, there are advantages that flow to members of company groups. There may be efficiencies in having various functions and services performed by a single member of the group for all group companies. However, the performance of functions or services at a group level does not alleviate the directors and officers of a corporation that is a recipient of services from the duty to act in the best interests of the corporation when determining whether or not to accept the services. It also requires directors or officers of the particular group corporation to genuinely consider the interests of that corporation when making decisions that affect its interests.

Guidance from the Banking Royal Commission

- 96** In the Banking Royal Commission Report, discussion of governance centred on accountability, including the 'who', 'for what' and 'how' questions.⁷⁹ It concluded that 'failings in governance and the occurrence of misconduct can be examined under three headings: the role of the board, the entity's priorities and accountability'.⁸⁰
- 97** The Banking Royal Commission found that boards tended towards certain deficiencies which lead to poor corporate governance. Those deficiencies were identified as:⁸¹
- a. boards did not get the right information about emerging non-financial risks;
 - b. boards did not do enough to seek further or better information where what they had was clearly deficient; and
 - c. boards did not do enough with the information they had to oversee and challenge management's approach to these risks.

- 98** Financial risks were considered paramount and non-financial risks were underdeveloped.⁸² This meant that the longer-term stability and performance of a company was sometimes subservient to the priority of profit, whereas they should have been taking these matters into account.⁸³
- 99** In relation to accountability, the Banking Royal Commission found that, in a financial services context, it was often unclear who was responsible for what duties, which meant issues were simply left outstanding and unresolved.⁸⁴
- 100** As to the role of the board, the Banking Royal Commission emphasised the importance of the board having access to the right information (for example quality information about standards of conduct, illegal conduct and matters which could lead to a poor outcome for the business).⁸⁵ It stated that challenging management and setting the strategic direction of a business are key aspects to the role of a board.⁸⁶
- 101** Finally, the Banking Royal Commission commented that concepts of governance arrangements and their success are not isolated from related issues of organisational culture and remuneration systems. Those matters 'march together'.⁸⁷ Regulators also have a role to play in supervising those elements which 'requires attention to culture, governance and remuneration'.⁸⁸ The importance of corporate culture is discussed later in this appendix.

Guidance from RCCOL

- 102** The RCCOL Report adopted a view of corporate governance that acknowledged the impact of corporations on a variety of stakeholders. This model extends traditional notions of governance to include understanding and managing the impacts of a corporation on its employees and customers, and other matters such as the importance of environmental integrity and impacts on the community.⁸⁹ The RCCOL understood this model of corporate governance to sit within a framework involving legislation, voluntary commitments, self-regulating arrangements and business practices.⁹⁰
- 103** The RCCOL Report indicates that managing a corporation was not the same as running the enterprise of the corporation or its business affairs. The purpose of corporate governance was to make 'sure [the company] is running in the right direction and being run well'.⁹¹ This observation is a reflection of the distinction between governance and management.
- 104** In respect of stakeholders, the RCCOL Report recognises the evolving nature of corporate governance and the emerging importance of stakeholders beyond the shareholder. It recognised corporations have a relationship with stakeholders including employees, government agencies, banks, suppliers, customers and government generally.⁹²
- 105** The RCCOL Report notes that a broader perspective of corporate governance is now widely accepted.

Risk Management

- 106** Failures in risk management have been identified as causative factors in numerous corporate failures and scandals. Corporate governance and risk management failures were considered to be one of the key factors leading to the Global Financial Crisis.⁹³
- 107** At a basic level, in the context of risk management, risks are uncertainty surrounding a particular event occurring where the occurrence of that event could have a negative outcome.⁹⁴ It is a combination of the probability or frequency of an event and its consequences.⁹⁵ Risk management is defined in various different ways, but it can be simply said to involve the identification and understanding of a risk, and then acting to avoid or mitigate the risk.⁹⁶ Risk management is fundamental to corporate governance. The failure to ensure that these systems are in place can be fatal to a company.⁹⁷

- 108** Human behaviour and culture significantly influence all aspects of risk management at each level and stage.⁹⁸
- 109** Overseeing risk management in the corporate context is the responsibility of the board.⁹⁹ Principle 7 of the ASX Principles provides that a listed entity should recognise and manage risk by establishing a risk management framework and periodically review the effectiveness of that framework.¹⁰⁰ The ASX Principles set out a number of recommendations in relation to risk management, including that there should be a risk committee, and disclosure of whether the corporation has material exposure to environmental or social risks, and how those risks are managed.
- 110** A 2014 study conducted by Morison and Ramsay, revealed that 90% of the top 20 companies and 80% of small capitalisation 10 companies reserved determination of risk management policy to the boards,¹⁰¹ and all of the companies in the financial services sector had dedicated risk management committees.¹⁰²
- 111** The board has a critical role in risk management as it decides which risk management framework the entity adopts, it sets the entity's risk appetite, and it undertakes and encourages explicit discussions and decisions about risks and opportunities (and trade-offs) with senior executives and management.¹⁰³ The board is responsible for overseeing and ensuring all material risks are being managed.¹⁰⁴ Oversight by the board involves the board:
- a. determining whether management is appropriately identifying, assessing and managing material risks;
 - b. receiving sufficient information that an appropriate and disciplined risk management process is in place for the purposes of (a) above;
 - c. satisfying itself that management is bringing more significant ongoing and newly emerging risks to the board and that the board receives timely and relevant analysis of the risks and management's risk response; and
 - d. reviewing the risks and the risk response, the risk appetites and the portfolio view of risk across the entity, and considering whether any modifications are needed.
- 112** However, risk management should not be viewed solely as a board concern. Management of risks forms an integral part of the business process at all levels. It involves the maintenance of a sound system, so that the ultimate decision maker can be provided with accurate and meaningful information.¹⁰⁵
- 113** Rather than treating each risk separately in a siloed approach, what has developed in more recent times is the adoption of integrated risk management or enterprise risk management frameworks.¹⁰⁶ Enterprise risk management has been defined by the Committee of Sponsoring Organisations of the Treadway Commission (**COSO**) as:¹⁰⁷
- a process, effected by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within [its] risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.
- 114** It is a systematic enterprise-wide approach of dealing with all risks with a reasonable likelihood of significantly affecting an entity.¹⁰⁸ All decision-making within the entity will involve a consideration of risks and the application of risk management.¹⁰⁹
- 115** The adoption of enterprise risk management or a high-quality risk management program has been linked to improvement in a company's financial performance¹¹⁰ and an increase in value.¹¹¹ Risk management is said to reduce cash flow volatility and financial costs including penalties, tax payments, financial distress costs, information asymmetry and financing costs.¹¹²

- 116** The eight interrelated components of enterprise risk management (as they are stated by COSO) are:¹¹³
- a. internal environment (how risk is viewed and addressed in an organisation);
 - b. objective setting;
 - c. event identification (and which are classified as risks);
 - d. risk assessment;
 - e. risk response;
 - f. control activities;
 - g. information and communication; and
 - h. monitoring.
- 117** The components will not function the same in each entity,¹¹⁴ and the way those components are to function is to fit with the entity's strategic direction, organisation, reporting process, values and culture.¹¹⁵
- 118** Information and communication are key. For a risk management system to operate effectively and for there to be good governance there is to be comprehensive and frequent reporting with stakeholders so that properly informed decisions can be made on the level of risk and the risk response or treatment against appropriate risk criteria.¹¹⁶ Enterprise risk management puts in place timely reporting and actions to the board and senior management,¹¹⁷ and translates financial and non-financial principles and metrics, into a view on what an entity will or will not do at any given time.¹¹⁸ It is important that boards are given the right information with a focus on quality not quantity, take steps to seek further and better information when the information is clearly deficient, and challenge management on key issues, including on approaches to risk management.¹¹⁹ In this way, enterprise risk management addresses information asymmetry between management, the board and shareholders.
- 119** A chief risk officer is the most senior executive in an entity who is responsible and accountable for the risk management process and leads the risk management function of an entity.¹²⁰ There is a trend of appointment of chief risk officers in organisations who have implemented enterprise risk management.¹²¹ In some sectors the appointment of a chief risk officer is mandated by law.¹²² Due to the increased prominence given to risk management, this role increasingly has direct reporting lines to the CEO and the board.¹²³
- 120** In modern times, risk management focusses on a wide range of risks.¹²⁴ It is now accepted that an entity must consider both financial and non-financial risks.¹²⁵ Non-financial risk governance is critical to a company's longevity.¹²⁶ Non-financial risks can include operational, cyber, climate change, regulatory, reputational, human resources, business disruption, security and financial crime.¹²⁷ The fact that non-financial risks can be ambiguous and have elements of subjectivity does not excuse boards from effective risk oversight of such risks.¹²⁸ The ASX Principles recognise that non-financial risks (such as in that case, environmental and social risks, including climate change risk) are to be managed by a listed company and disclosure made of the risks and how those risks are managed.¹²⁹
- 121** Risk management has developed its own formal standards and terminology.¹³⁰
- 122** It is not possible within the confines of this report to canvas all aspects of modern corporate risk management. In the section that follows the PCRC comments on some areas which are of key relevance to this inquiry. Those areas are:
- a. risk management frameworks and risk management policies;
 - b. risk appetites;

- c. three lines of defence;
- d. internal audit;
- e. risk committees; and
- f. root cause analysis (RCA).

Risk Management Framework and Risk Management Policy

- 123** A risk management framework encompasses integrating, designing, implementing, evaluating and improving risk management across an organisation.¹³¹ The purpose of the risk management framework is to assist the organisation in implementing risk management into significant activities and functions.¹³² The effectiveness of risk management will depend on its integration into the governance of the organisation, including decision-making.¹³³ The framework is embedded within an entity's overall strategic and operational policies and practices¹³⁴ and it includes a plan which specifies the approach, the management components and the resources to be applied to the management of risk.¹³⁵ The framework provides for the application of risk management processes at different levels within an organisation and is to ensure that information about risk is adequately reported and used in decision-making and accountability at all levels.¹³⁶
- 124** Top management and oversight bodies demonstrate and articulate their continual commitment to risk management through a policy, a statement or other forms that clearly convey an organisation's objectives and commitment to risk management.¹³⁷ The policy includes the organisation's purpose for managing risk and links to its objectives and other policies.¹³⁸ The policy reinforces the need to integrate risk management into the overall culture of the organisation and core business activities and decision-making.¹³⁹ Further, the policy establishes authorities, responsibilities and accountabilities, details how conflicting objectives are dealt with and allows for measurement and reporting within the performance indicators for the entity.¹⁴⁰ Risk criteria are the terms of reference against which the significance of a risk is evaluated.¹⁴¹
- 125** The policy should include a commitment to review and improve the risk framework.¹⁴²
- 126** However, culture and the manner of implementation of the risk management framework can be of equal importance to the framework itself.

Risk Appetites

- 127** Risk appetites are now part of an accepted aspect of risk management. Risk appetites are a written articulation of the types of risks and the level of risk in quantitative and qualitative terms that an entity will accept or avoid, in order to achieve its objectives.¹⁴³ Risk appetites are explicit thresholds, limits and loss limits for financial and non-financial risks.¹⁴⁴ Risk appetites need to align with an entity's values, strategies, capabilities and the competitive environment existing from time to time, and in a dynamic environment may need to be regularly adjusted.¹⁴⁵
- 128** There are two ways risk appetites are applied. First, risk appetites are applied in monitoring. The risk appetites provide boundaries for the risks to be taken and allows management and the board to monitor whether risks are within appetite,¹⁴⁶ and communicate and escalate risks for reporting within the entity and corrective action to be taken if there is deviation from risk appetite. Second, risk appetites are applied in decision-making to consider which risks may occur and what risk treatments should be applied to manage the risk.¹⁴⁷

Three lines of defence

- 129** The three lines of defence model was developed by the Institute of Internal Auditors in 2013.¹⁴⁸ The objective of the model is to clearly communicate the roles and responsibilities of risk management and control staff within an entity.¹⁴⁹
- 130** Under this model, the first line of defence is management and staff who conduct the revenue generating operations of the entity. This line is responsible for owning and managing risks. This line of defence is responsible for identifying, assessing, controlling and managing risk, and escalating information about risks within the management levels.¹⁵⁰
- 131** The second line of defence consists of those in roles within the entity who are responsible for overseeing or who specialise in risk management and compliance.¹⁵¹ This line of defence is responsible for monitoring and facilitating effective risk management by the first line of defence. This line defines control requirements and ensures those requirements are incorporated into the procedures and policies of the first line.¹⁵² This line also helps ensure consistency of definitions and measurement of risk across an entity.¹⁵³ This part of the three lines of defence model holds ‘strong subject matter expertise’¹⁵⁴ and provides ‘high level administrative support to senior management through risk management consultancy, system design and policy development’.¹⁵⁵ This line is also responsible for the communication of risk within the entity.¹⁵⁶
- 132** Finally, the third line of defence is internal audit, whose role is to assess the risk management and control systems of the other two lines, including focusing on gaps and weaknesses, and helping an entity implement risk treatments¹⁵⁷ and advise on how the risk management process could be improved.¹⁵⁸ An important function of internal audit is providing an independent and objective assurance to the senior management and the board on a broad range of objectives including the effectiveness of risk management of the first two lines of defence.¹⁵⁹ Internal audit also supports the board in challenging management on risk issues.¹⁶⁰ Internal audit is discussed in more detail below.
- 133** The board, the board’s risk committee and senior management supervise and oversee the three lines of defence.¹⁶¹
- 134** Following the Global Financial Crisis, the concept of a ‘four lines of defence’ model for financial institutions was proposed due to the peculiarities of the nature of those businesses and the institutional framework.¹⁶² The fourth line of defence added by this model are external parties such as regulatory supervisors and external auditors, reflecting the vital role these parties play in assurance and governance.¹⁶³

Internal Audit

- 135** The internal audit function also forms part of the three lines of defence as noted above (the third line of defence). It is an independent, objective assurance and consulting activity designed to add value and improve an entity’s operations. It brings a systematic disciplined approach to evaluating and improving the effectiveness of risk management, control and governance processes.¹⁶⁴
- 136** The Institute of Internal Auditors Australia publishes Core Principles, Code of Ethics and International Standards for the Professional Practice of Internal Auditing (**IIA Standards**) as an internal framework for the practice of internal audit by internal auditors.
- 137** Relevantly, the IIA Standards (2017) provide:
- a. IIA Standard 1100 – the internal audit activity must be independent, and internal auditors must be objective in performing their work. To achieve this level of independence, the chief audit executive is to have direct and unrestricted access to senior management and the board;

- b. IIA Standard 1110 – the chief audit executive must report to a level of the organisation that allows the internal audit activity to fulfil its responsibilities. The chief audit executive must confirm to the board, at least annually, the organisational independence of the internal audit activity. It is effectively achieved when the chief audit executive reports functionally to the board;
- c. IIA Standard 1110.A1 – the internal audit activity must be free from interference in determining the scope of internal auditing, performing the work; and communicating the results;
- d. IIA Standard 1112 - where the chief audit executive has or is expected to have roles or responsibilities that fall outside of internal auditing, safeguards must be in place to limit impairments to independence or objectivity;
- e. IIA Standard 1120 - internal auditors must have an impartial, unbiased attitude and avoid any conflicts of interest;
- f. IIA Standard 1210 – internal auditors must possess the knowledge, skills and other competencies needed to perform their individual responsibilities; and
- g. IIA Standard 1220 – internal auditors must apply the care and skill expected of a reasonably prudent and competent internal auditor.

Risk Committees

- 138** A board may have a standalone risk committee, or a combined audit and risk committee, or different committees which consider different classes of risk.¹⁶⁵ A committee may be an efficient and effective way to bring focus on risk management, and also transparency and independent judgment to oversee the management of risk and the risk management framework.¹⁶⁶ Risk committees bring independent judgement to risks, and focus the board's oversight of risks, including non-financial risks.¹⁶⁷
- 139** A risk committee would usually have a charter which sets out its role and powers. The ASX Principles provide guidance as to the role of a risk committee.¹⁶⁸
- 140** There is a link between compliance with enterprise risk strategies and frameworks and the existence of an independent audit committee responsible for considering risk.¹⁶⁹ Active corporate boards and audit committees which meet frequently are important for determining enterprise risk management strategies.¹⁷⁰

Root cause analysis

- 141** RCA is the process of identifying the causes of adverse events and preventing these root causes from happening again in the future.¹⁷¹ The process aims to understand why an adverse event came about.¹⁷² The RCA process should be considered part of the overall risk management process.¹⁷³
- 142** The steps of an RCA process are to define the problem, collect the data, analyse the data, identify root causes and identify remedial action.¹⁷⁴
- 143** The RCA process should not focus on the individuals involved in the adverse event, but rather the system as a whole.¹⁷⁵ When the RCA process targets individuals rather than the system in which the adverse events occurred, deficiencies in the system are not addressed.¹⁷⁶

Culture

What is meant by culture?

- 144** The initial academic study of the concept of culture was in the field of anthropology in the late-nineteenth and early twentieth century.¹⁷⁷ This led to the emergence of a specialist field of cultural anthropology, which strives to understand the cultural variations amongst humans, and cultural psychology, which focusses on the relationship between culture and the individual, and the individual's behaviour,¹⁷⁸ and institutional or organisational anthropology, which is the study of culture within and between institutions and organisations. Since the 1940s and 1950s the study of culture, specifically organisational culture, has been adopted and studied in the disciplines of organisational psychology, management and organisational behaviour.¹⁷⁹ It has been stated that the discipline or system of law is a relative 'latecomer' to the concept of culture. Though the concept of culture in the context of corporate governance may have been what was known as business ethics, which is discussed below.
- 145** Whatever field or discipline is being considered, the definition of the term culture has caused significant debate. It is a broad term which is considered to not be capable of easy definition.¹⁸⁰ What this has led to is numerous definitions of the term culture.
- 146** The definition of corporate culture in the *Criminal Code Act 1995* (Cth) is 'an attitude, policy, rule, course of conduct or practice within the body corporate generally or in the part of the body corporate in which the relevant activities take place'.¹⁸¹
- 147** ASIC has described culture as:¹⁸²
- ... a set of shared values and assumptions within an organisation. It reflects the underlying 'mindset of an organisation', the 'unwritten rules' for how things really work. It works silently in the background to direct how an organisation and its staff think, make decisions and actually behave.
- 148** Culture has been described as 'what people do when no-one is watching'.¹⁸³ Corporate culture is 'the charisma or personality – sometimes overt but often unstated – that guides the decision-making process at all level of an organisation'.¹⁸⁴
- 149** The working definition of 'culture' for the purposes of this inquiry is:¹⁸⁵
- Culture is the sustained pattern of behaviours resulting from the underlying values, shared mindsets and beliefs and systemically reinforced behavioural norms across the organisation. It is shaped by the actions and decisions of leaders and reinforced by organisational systems and ways of working. These values, norms and mindsets help or hinder various business outcomes.
- 150** While there is some contention as to which elements are critical to the definition of the term, the following are some of the elements which can be distilled from the various definitions:
- a. culture is shared among a group of people;
 - b. culture directs or guides or manifests in values, beliefs, behaviours and decision-making;
 - c. culture can be underlying and not expressly stated; and
 - d. leadership and organisational systems are involved.
- 151** The definitions do not specify what standard or quality a culture is to have.

- 152** There are also sub-sets or categories of culture. There is risk culture which for the purposes of this inquiry is:¹⁸⁶
- the influence of systemically reinforced behavioural norms and mindsets on effective management of risk.
- 153** There is also compliance culture, or culture of compliance, which was described by French J as:¹⁸⁷
- corporate culture of compliance means a set of attitudes and behaviours or an ethos predisposed to obedience to the law.
- 154** It is also accepted that most large corporations can have sub-cultures within individual teams, departments and peer groups.¹⁸⁸

Corporate Governance and Culture

- 155** Culture and corporate governance are related and reliant on each other. As was stated in the HHH Royal Commission:¹⁸⁹
- those companies with an ethical culture are likely to adopt appropriate corporate governance practices, whilst those where this culture is lacking are more likely to adopt an idiosyncratic or expedient approach.
- 156** While it may not have been called culture or corporate culture, business ethics or the notion of 'doing the right thing' has been a feature of corporate governance for a considerable period of time.¹⁹⁰
- 157** Recently, both internationally and in Australia, the spotlight has been thrown on corporate culture in the context of the Global Financial Crisis and the financial services industry. The misconduct and resulting institutional failings which led to the Global Financial Crisis have been attributed to poor risk cultures combined with weak risk management.¹⁹¹ In Australia, culture and governance were included in the terms of reference, and were the subject of extensive discussion in the final reports of the Australian Prudential Regulatory Authority inquiry into the Commonwealth Bank of Australia in 2018, and the Banking Royal Commission in 2019. Specifically in relation to Crown, findings about culture in the context of corporate governance were made in the Bergin Inquiry and the RCCOL, and these are examined elsewhere in this report.
- 158** However, the use and prevalence of the concept of corporate culture should not distract the attention away from the importance of corporate governance as a whole, and culture as a part of corporate governance.¹⁹² Governance shapes how a business is run, and governance shapes culture.¹⁹³

Why is culture important?

- 159** Culture is relevant in at least two respects. First, it may inform or explain how past conduct arose. Secondly, it may assist in determining whether planned or required changes in systems, strategies and structures are likely to be accepted and embedded within an organisation.
- 160** Culture can drive or discourage misconduct.¹⁹⁴ A sound culture throughout a corporation, particularly in relation to risk culture, is the main support for effective risk management, as it leads to sound decision making and behaviours in relation to risk, and ensures emerging risks or risks beyond appetite are escalated and addressed.¹⁹⁵ It has been stated that:¹⁹⁶
- ... a culture that fosters poor leadership, poor decision making or poor behaviour will undermine the governance framework of the entity.
- 161** Additionally, a focus on corporate culture, and improvement to that culture is a way in which a corporation, or an industry, can regain community trust. ASIC has stated that 'culture is a

major risk to investor trust and confidence' and 'the fair, orderly and transparent operations' of markets.¹⁹⁷

- 162** Due to the importance of culture, insurers consider an organisation's culture, including the systems of incentives and constraints embedded within it when considering directors' and officers' insurance policies.¹⁹⁸

Assessment of a corporation's culture

- 163** Understanding the culture of a corporation can be challenging.¹⁹⁹

- 164** In the Banking Royal Commission, it is stated:²⁰⁰

...a careful and detailed assessment of the culture of an entity can be of great value. It can show how issues relating to culture are at the root of misconduct. And if those issues can be identified early, then steps can be taken to address them before misconduct eventuates.

- 165** Practitioners in the field of culture assessment use a variety of approaches.²⁰¹ Assessments can use perception-based data such as the observations, opinions and beliefs of staff which are obtained with the use of surveys of employees (and other stakeholder groups), focus groups and staff interviews. Assessments can use fact-based data which analyse the documented formal mechanisms such as policies, procedures and systems as well as historical events.²⁰² The different types of assessments can be combined to form a view on the corporation's culture.²⁰³ Specialist external advisers are usually engaged to undertake a culture assessment.

Elements for an effective culture

- 166** Culture is unique to each corporation. Accordingly, there is no 'one size fits all' approach that can be taken and it is difficult to identify 'best practice'.²⁰⁴

- 167** Nonetheless, the following elements of culture have been considered to be drivers of a positive corporate culture:²⁰⁵

- a. tone from the top: board and senior management create and monitor good culture and lead by example;
- b. enterprise values: the board sets the corporation's values, and senior management are then responsible for ensuring the values are cascaded and understood throughout the corporation;
- c. translating values into business practices: there ought not be a gap between the corporation's desired values and the actual conduct;
- d. accountability: senior managers monitor and enforce compliance and governance frameworks, and all staff are accountable for their conduct;
- e. effective communication and challenge: the board and senior management promote and encourage a positive critical attitude and constructive engagement;
- f. recruitment, training and rewards: hiring staff whose behaviours and attitudes align training staff on the corporation's values, and the linking of remuneration and incentives to values; and
- g. governance and controls: monitoring by the board of culture, conduct and compliance.

- 168** However, as with most aspects of corporate governance, it is important that corporations do not adopt a 'tick a box' approach to developing and monitoring culture.

- 169** Problems occur when there is a divergence between a corporations' goals, values and policies and the 'lived experience' within a corporation.²⁰⁶ The 'lived experience' being that others are rewarded or admired for unethical or irresponsible behaviours, such as excessive risk taking, then an individual within an organisation is likely to fall in with those behaviours (that is, be enculturated into those behaviours) or leave the organisation.²⁰⁷

Cultural change

- 170** Cultural change can be defined as transformation in the behavioural norms, mindsets and system reinforcers of an organisation, including change in outcomes.²⁰⁸ It involves forming a view on the existing culture, identifying problems, developing and implementing a plan to address the problems and determining whether the changes have been made and are effective.²⁰⁹
- 171** It is acknowledged that once culture is established in an organisation it can be difficult to change and change can take some time.²¹⁰ Leaders throughout the organisation are critical to cultural change.²¹¹ They act as change agents.²¹² Leaders inspire change, show how change is possible, and invest where required to support change. Leaders need:²¹³
- a. a clear vision for change that staff find compelling;
 - b. trust, so staff are willing to follow; and
 - c. transparency so issues can be addressed quickly.

Public Sector Governance

Meaning of Public Sector Governance

- 172** There is no universally agreed definition for the term 'public sector governance'.²¹⁴
- 173** The Chartered Institute of Public Finance & Accountability International Framework: Good Governance in the Public Sector (**Chartered Framework**) defines public sector governance in generic terms:²¹⁵
- arrangements that have been put in place to ensure that the intended outcomes for stakeholders are defined and achieved. Includes political, economic, social, environmental, legal and administrative structures and processes.
- 174** How the term is understood depends on the jurisdiction,²¹⁶ and 'questions of political, economic and legal ideology inform assessments of appropriate governance models for both the private and public sectors'.²¹⁷
- 175** In the Australian context, academic literature posits a framework where governance exists at three levels.²¹⁸ The first is *public governance*. This focusses upon governance within the public domain at large. It is not limited to the function and operation of government. Public governance transcends government and considers governance at a societal level. It covers governance of:
- a. societal relations;
 - b. the public policy process;
 - c. public procurement and service delivery to people;
 - d. the business of government;
 - e. networks engaged in policy-making and delivery; and
 - f. collaboration between different levels of government.

- 176** The second is *public sector governance*, which may straddle public governance. This level focusses attention upon governance within the public sector generally. It focusses on governance at a governmental level as applied to organisations within and across the public sector. This includes different levels of government and their interactions with one another and other societal groups.²¹⁹ The Australian National Audit Office, which took the mantle in setting out public sector governance in Australia,²²⁰ defines public sector governance to mean:²²¹
- the arrangements and practices which enable a public sector entity to set its direction and manage its operations to achieve expected outcomes and discharge its accountability obligations.
- 177** Public sector governance covers how an entity is managed, its structures, policies and strategies, and the way it deals with various stakeholders.²²²
- 178** The third is *corporate governance or organisational governance*. This focusses upon the governance of organisations in the public sector, and upon the governance of their relations and interactions with others within and beyond the sector.²²³ Literature on governance at the organisational level identifies governance with the elements of: performance; legal and policy compliance; and accountabilities. Those elements might be further divided into:²²⁴
- a. substantive elements (conformance, performance, accountability);
 - b. qualitative elements (fairness, integrity, leadership and ethics);
 - c. structural elements (management, committee and advisory structures); and
 - d. functional elements (planning, resourcing, management, monitoring and reporting).

Influence of private sector corporate governance

- 179** The public sector has adopted ideas and practices of corporate governance in the private sector in terms of language, forms, structures and practices to enhance various goals including managerial efficiency, stakeholder representation and overall public accountability.²²⁵ An obvious influence is the adoption of the corporate form through statutory corporations and laws with respect to directors' liabilities. This may have also led to importing corporate codes and corporate governance practices from the private sector.²²⁶
- 180** There is also a common emphasis in governance on accountability, conformance, performance and assurance in the public and the private sectors, which indicates points of convergence across the sectors.²²⁷ However, as Professor Edwards et al observe, corporate governance in the public sector is neither fully derived from, nor transposable to, the private sector.²²⁸ They state:²²⁹
- [D]ifferences in values across the public and private sectors, and in the dynamics of relationships with shareholders and stakeholders across both sectors, all affect the degree of corporate governance transposition from one sector to the other.

What is good governance in the public sector

- 181** What constitutes 'good governance' in the context of the public sector has been developed by reference to principles-based frameworks.²³⁰ In 2014, the Chartered Framework set out an international principles-based framework for good governance in the public sector.²³¹
- 182** Good governance requires each public sector entity to achieve their objectives while acting in the public interest, consistent with the requirements of legislation and government policies. Acting in the public interest implies primary consideration of the benefits of society with positive benefits for service users and other stakeholders. Each public sector

entity must avoid acting in its self-interest and any perceived organisational interest.²³² The principles developed by the Chartered Framework include:²³³

- a. behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law;
- b. ensuring openness and comprehensive stakeholder engagement;
- c. defining outcomes in terms of sustainable, economic, social and environmental benefits;
- d. determining the interventions necessary to optimise the achievement of the intended outcomes;
- e. developing the entity's capacity, including capability of its leadership and the individuals within it; and
- f. managing risks and performance through robust internal control and strong public financial management.

183 As explained by the Chartered Framework, underlying these principles is the basal premise that public sector entities are established and run for the public good. Those entities use public money raised through taxation to produce things which have public value including outcomes (for example, improved health) and services (for example, primary health services).²³⁴ As a corollary, public sector entities must act in the public interest and are accountable for their expenditure and how they use resources in their stewardship. Each entity should demonstrate the appropriateness of its actions, adhere to ethical values and respect the rule of the law. There must be clear and trusted channels of communication and consultation with all stakeholder groups, which include individual citizens and service users as well as institutional stakeholders.²³⁵

184 These principles recognise that the long-term nature and impact of their responsibilities require public sector entities to define and plan sustainable outcomes with input from all stakeholders. Those entities need to have robust decision-making processes that enable them to achieve their defined outcomes using their resources in a way which enables effective and efficient operations. This requires the right mix of legal, regulatory and practical interventions.²³⁶

185 Public sector entities need appropriate structures and leadership with the right skill set to operate efficiently and achieve their intended outcomes. Effective risk management systems are needed to identify and address significant risks involved in achieving their outcomes. In particular, a strong system of financial management is essential to enforce financial discipline, the strategic allocation of resources and efficient service delivery. Ultimately, public sector entities need to be accountable for their decisions and delivery of services. This requires not only reporting on actions completed, but how an entity plans to carry out their activities in a transparent manner. Both external and internal audits contribute to effective accountability.

Corporate governance issues in context of statutory authorities

186 The spectrum of public bodies can be divided into three categories. The first is the departments of state and executive agencies. These organisational forms have vertical lines of accountability consistent with the constitutional system of responsible government. The second is the corporate style bodies that have been created by Parliament but are influenced by private corporate law. The third is a mix of government and statutory bodies reflecting the historical evolution between the State and private corporations which are governed by various regulatory regimes.²³⁷ The third category includes Statutory Authorities.

- 187** As noted above, one of the clear influences of private sector governance has been the adoption of the corporate form in the public sector. Statutory corporations however face distinct governance challenges when compared to private sector corporations.
- 188** First, the potential liability of directors in a private sector corporation rests upon the clarity of their roles and interactions with management in particular. This allocation of power between the board and management informs the governance arrangements that have been set up through statutory processes, voluntary codes of practices and market assessments.²³⁸ In contrast, this allocation of power is complicated when considering a statutory corporation given the role of ministers in appointing directors and the unclear lines of communication which may exist between a minister and relevant persons or bodies in a statutory corporation.²³⁹
- 189** In practical terms, board members of statutory corporations are subject to government constraints. There are State jurisdictions where statutory corporations are required to prepare a corporate plan or statement in consultation with the minister or voting shareholders. The minister may issue directions.²⁴⁰ The board of a statutory corporation will need to have regard to government policy in their decision-making as well as the corporation's public purpose. Their appointments are generally made by responsible ministers.²⁴¹ The board operates within a constitutional framework where ministers are responsible to Parliament for the decisions which are taken within the purview of their department, although the extent to which ministers are responsible for the actions of non-departmental entities has been a matter for debate.²⁴²
- 190** These external constraints clearly affect the authority and independence of the board of any statutory corporation.²⁴³ Judgment by board members can only be exercised within the parameters established by those constraints.²⁴⁴ This may be contrasted to private corporations.
- 191** Second, boards are expected to embrace a diversity of views, particularly those of independent or external members. Independent or external board members are also expected to provide oversight. But this does not easily sit with the traditional public sector administration model where a decision is by a single decision-making secretary or officer,²⁴⁵ and there is a vertical line of accountability within the Westminster tradition of responsible government.²⁴⁶
- 192** Third, questions arise as to the extent to which measures of corporate performance in the private sector apply to statutory corporations.²⁴⁷ Performance metrics such as rates of returns, board composition and risk-taking are based on market and shareholder assessments which are difficult to assess in the public sector context.²⁴⁸ There are lower performance incentives in the public sector as directors of statutory corporations are shielded from risks of hostile takeovers and bankruptcies.²⁴⁹
- 193** Fourth, corporate governance arrangements which feature prominently in the private sector are less likely to matter in the public sector. Directors of statutory corporations are less likely to be held to account for a breach of director duties by shareholder actions or regulators.²⁵⁰ Though officers (which includes members of the governing body of a corporation) are subject to common law directors' duties and to some specific duties under the *Statutory Corporations (Liability of Directors) Act 1996 (WA)*.²⁵¹
- 194** Fifth, accountability for the performance of state corporations involves a complex chain of agents (management, the board, ownership, the executive government and the legislature) without clearly identifiable principals. Conflicts of interest may arise that motivate decisions based on criteria other than the enterprise's best interests (assuming that can be identified).²⁵²
- 195** Having regard to these general observations, it is appropriate to consider the particular regulatory context that a statutory corporation in Western Australia operates in. The balance of this appendix considers the statutory framework before considering applicable standards.

Public Sector Management Act 1994

- 196** The *Public Sector Management Act 1994* (WA) (**PSM**) sets out principles of public administration and management to be observed by the Public Sector. The Public Sector covers all agencies, ministerial offices and non-**SES** organisations. These principles include:
- a. the Public Sector is administered in a manner emphasising importance of service to the community;
 - b. it is structured and organised to achieve and maintain operational responsiveness and flexibility in order to adapt to changes in government policies and priorities;
 - c. public sector bodies are structured and administered so that decisions can be taken without excessive formality;
 - d. administrative responsibilities are clearly defined and authority is delegated sufficiently;
 - e. public sector bodies have continued improvement in efficiency and effectiveness of performance as their goal;
 - f. resources are deployed to ensure their most efficient and effective use;
 - g. proper standards of financial management and accounting are to be maintained; and
 - h. proper standards relating to records are maintained.
- 197** The PSM imposes certain obligations on public sector bodies. A public sector body is defined as an agency, ministerial office or a non-SES organisation.²⁵³ An agency is defined to mean a department or SES organisation. All public sector bodies and employees are required to:
- a. comply with the provisions of the PSM or other laws which govern their conduct;²⁵⁴
 - b. comply with the Public Sector Commissioner's instructions, public sector standards and codes of ethics;²⁵⁵
 - c. comply with any code of conduct applicable to the public sector body or employee concerned;²⁵⁶
 - d. act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities;²⁵⁷ and
 - e. exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.²⁵⁸
- 198** 'A public sector standard is defined as a standard referred to in s 21(1) and established under the Public Sector Commissioner's instructions. Section 21 provides that they can issue:
- a. public sector standards relating to, in general terms, employment of persons;²⁵⁹ and
 - b. instructions establishing codes of ethics setting out minimum standards of conduct and integrity to be complied with by public sector bodies and employees.²⁶⁰
- 199** The Code of Ethics issued under the Public Sector Commissioner's instructions sets out minimum standards of conduct and integrity. It refers to the following principles:²⁶¹
- a. personal integrity – acting with care and diligence and making honest, fair, impartial and timely decisions;
 - b. relationship with others – treating people with respect, courtesy and sensitivity and recognising their rights interests, safety and welfare; and
 - c. accountability – using resources in a responsible and accountable manner.
- 200** The Commissioner may issue instructions regarding, among other things, the management and administration of public sector bodies²⁶² or official conduct.²⁶³ They have to be consistent

with principles set out in the PSM.²⁶⁴ The Commissioner's instructions can apply generally, to a public sector body, an office or class of offices, or an employee or class of employees.²⁶⁵

Financial Management Act 2006

- 201** The *Financial Management Act 2006* (WA) (**FM Act**) establishes certain obligations upon an agency.²⁶⁶ An agency is defined to mean a department, a sub-department or statutory authority. A statutory authority covers any entity which is listed in Schedule 1.
- 202** Each agency is to have an accountable authority. That authority is responsible to the Minister for the financial management of the services under the control of the agency.²⁶⁷ The accountable authority has certain functions. These functions include:²⁶⁸
- a. ensuring the agency operates in a manner that is efficient, economic and achieves the agency's objectives;
 - b. ensuring the agency complies with the FM Act, Treasurer's instructions and any other written law that applies to the agency;
 - c. having custody, control and management of, and accounting for, all public property or other property under the agency's control;
 - d. ensuring the agency's total cost of services does not exceed the expense limit for the agency contained in the resource agreement;
 - e. ensuring the agency complies with the State government policy prescribed by the Treasurer's instructions;
 - f. ensuring the agency has documented policies and procedures relating to delegations or authorisations to the agency's officers to enter into financial obligations and how such authority is to be exercised;
 - g. establishing and maintaining records relating to, and a register of, all delegations made, and authorisations given, to the agency's officers;
 - h. developing and maintaining an effective internal audit function for the agency; and
 - i. any other function given to the accountable authority under the FM Act or written law.²⁶⁹
- 203** In the case of a statutory authority, the person or body having general direction and control of, and overall responsibility for, operations is the accountable authority.²⁷⁰
- 204** The Treasurer may issue, amend or revoke instructions concerning the principles, practices and procedures to be complied with in the financial management of the State consistent with the Act. An accountable authority must comply with the Treasurer's instructions, which include relevant instructions concerning corporate governance. Those key instructions are discussed below.²⁷¹

Treasurer's Instructions

Risk Management²⁷²

- 205** Risk management is seen as integral to an agency's risk culture and an essential component of effective internal control.
- 206** An accountable authority is required to ensure the agency has suitable risk management policies and practices.
- 207** Those policies and practices are to be periodically assessed and updated to ensure that they are suitable for managing risks inherent in the agency's operations.

Key Performance Indicators²⁷³

- 208** The instruction requires the disclosure of performance indicators to assist stakeholders and interested parties to assess agency performance in achieving government desired outcomes and obtaining value for public funds from services.
- 209** Accountable authorities are required to identify and report key performance indicators of effectiveness, and either efficiency or cost effectiveness, in their annual reports:
- a. Effectiveness indicators provide information on the extent to which level government desired outcomes have been achieved, or contributed, through the delivery of services. It needs to be reported in narrative and not numerical form;
 - b. Efficiency indicators generally relate services to the level of resource inputs required to deliver them. The most common efficiency indicator focuses on financial resources; and
 - c. Cost effectiveness indicators relate outcomes directly to inputs and can provide an overview of the agency's effectiveness and efficiency.

Internal Audit²⁷⁴

- 210** Accountable authorities are required to develop and maintain an effective internal audit function under s 53 of the FM Act. An effective internal audit function is critical to good governance. It provides an independent, objective, risk-based review of an agency's governance, risk management and control processes which can improve performance.

Sources of other obligations

Auditor General Act 2006

- 211** The Auditor General is required to audit the accounts of an agency at least once a year.²⁷⁵ He or she is also required to audit the financial statements, key performance indicators and other information submitted by agencies under the FM Act.²⁷⁶
- 212** The Auditor General, in his or her report to Parliament, is required to draw attention to any case in which the functions of accountable authorities were not adequately or properly performed.²⁷⁷
- 213** The Auditor General may at any time carry out an investigation or examination for a number of purposes into an agency, including to:²⁷⁸
- a. examine the accounting and financial management systems of an agency to determine their effectiveness; and
 - b. examine an agency's compliance with legislative provisions, public sector policies or its own internal policies.
- 214** The Auditor General may prepare and sign a report on the examination or investigation and deliver it to Parliament or certain parliamentary committees.²⁷⁹

State Records Act

- 215** A government organisation²⁸⁰ is required to have a record keeping plan approved by the State Records Commission that:²⁸¹
- a. complies with the principles and standards by the State Records Commission;
 - b. ensures that government records kept by the organisation properly and adequately record the performance of the organisation's functions; and

- c. is consistent with any written law that the organisation is subject to when performing its functions.²⁸²
- 216** That plan must be complied with by the government organisation and its employees.²⁸³ A State organisation, which includes government organisations, must keep its State records that are not State archives until it destroys them in accordance with its record keeping plan.²⁸⁴

Freedom of Information Act

- 217** The *Freedom of Information Act 1992 (WA)* establishes certain duties on agencies, unless they are exempt agencies. Agencies are to give effect to this Act in a way which:²⁸⁵
- a. assists the public to obtain access to documents;
 - b. allows access to documents to be obtained promptly and at the lowest reasonable cost; and
 - c. assists the public to ensure that personal information contained in documents is accurate, complete, up to date and not misleading.

Public Sector Commission's Good Conduct Guide

- 218** In 2020, the Public Sector Commission (**PSC**) issued nine governance principles to assist public sector agencies:²⁸⁶
- a. the agency's relationship with the government is clear: clear and transparent relationships between the elected government and the public sector is essential to prevent undue influence and allow government policies and strategies to be implemented quickly and efficiently;
 - b. the agency's management has clear oversight and accountability, and defined responsibilities: good governance requires clear management responsibilities and accountabilities; meaningful strategic plans and work programs; and independent oversight;
 - c. the agency's structure services its operations: good governance depends on an organisational structure that helps the agency achieve what it was set up to do;
 - d. the agency plans its operations to achieve its goals: operational planning is key to management and using resources effectively, increasing compliance and improving accountability;
 - e. ethics and integrity are embedded in the agency's operation and values;
 - f. the agency's leadership in people management can contribute to individual and organisational achievements: this requires fair, transparent and equal treatment of employees, and strategies to motivate and lead people, and promote development;
 - g. the agency safeguards financial integrity and accountability: agencies need comprehensive financial management processes in place;
 - h. the agency communicates with all parties in a way that is accessible, open and responsive; and
 - i. the agency identifies and manages risks.
- 219** Each of the guidelines have operational elements to be met. These guidelines and operational elements are the culmination of historical development in public sector guidelines in 2014 to 2018.

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APPENDIX F

Regulatory Theory

Purpose of Appendix

- 1 This appendix is divided into three parts. Part One introduces the theory and concept of regulation. Part Two considers different approaches to legislating regulatory objectives. Part Three considers a regulator's approach to attaining the regulatory objectives.
- 2 The content of this appendix is informed by a discussion paper on the regulatory framework that was published by the PCRC and submissions received in response to that discussion paper.

Part One: theories of regulation

- 3 The ordinary dictionary meaning of regulation is a rule or order governing conduct or behaviour, typically prescribed by an authority.¹ Regulatory theory commentators suggest broader definitions which encompass and extend upon that meaning, including:²
 - a. the promulgation of rules by government accompanied by mechanisms for monitoring and enforcement, usually assumed to be performed through a specialist public agency;
 - b. more broadly, any form of direct state intervention in the economy, whatever form that intervention might take; or
 - c. at its broadest, all mechanisms of social control or influence affecting all aspects of behaviour from whatever source, whether they are intentional or not.
- 4 The first two above definitions conceptualise regulation as a state activity whereas the third breaks the connection with the state.³ The approach in a. above has been said to be consistent with the ordinary understanding of the word:⁴

People intuitively understand the word 'regulation' to mean government intervention in liberty and choices – through legal rules that define the legally available options and through legal rules that manipulate the incentives.
- 5 In contrast, the broader definition of regulation in c. above also includes 'non-legal forms of norm-making, along with the idea that private sovereignty over such norm-making matter[s] to regulatory outcomes'.⁵ Under this definition, 'the state becomes part of a network of regulation in which the tasks of regulation are redistributed in various ways among actors within the network'.⁶
- 6 How regulation is conceptualised will often depend on the problem or issue that the writer is focussed on.⁷

Different forms of action available to the state

- 7 Legislation is a mechanism which the state may use to regulate an aspect of society.
- 8 Legislation can be regarded as the result of converting policy into law. The more detailed and complex the policy becomes, the more detailed and complex the law tends to become.
- 9 Where regulation by way of legislation is appropriate, two broad issues need be addressed. The first is how the legislation will be designed to achieve its regulatory objectives. The second

is how compliance with it can be secured, particularly in circumstances where government is keen to maximise compliance and minimise the resources employed to attain that compliance. The different theoretical approaches that inform each of those issues are discussed below.

Different theoretical conceptions of regulation

- 10 Different theories of regulation can be used to explain the way that the regulated and other interest groups will behave, respond to and intervene in the state's regulatory activities based on different assumptions concerning their power, motivation and assertiveness. These theories are generally categorised into normative and positive theories. Normative theories refer to the circumstances and reasons that lead to regulation with the assumption that the regulators aim to increase economic welfare while positive theories explain the observable behaviour of regulators, the regulated and other interest groups, without concern on welfare effects.
- 11 The normative free market theory assumes that regulation only restricts the available set of contracts between parties and hence hinders the market and leads to inefficiencies. It posits that regulatory interventions are generally not required as market competition brings about appropriate incentives and efficiencies. However, market failures (which might result from monopoly, asymmetric information, externalities etc) reveal that the assumptions underlying free market theory do not always hold true. Public interest theory posits that regulation is a legitimate response to market failures where public benefits of regulation exceed the costs to those being regulated. It can reallocate resources and thereby increase efficiency and public benefit. It assumes that regulators are altruistic and act in the public interest. Critics of public interest theory argue that its assumptions may promote excessive use of regulation, particularly where reliance on impartial courts and tort rules resorted to at the choices of parties may be more efficient than regulation.⁸
- 12 Positive approaches focus on how regulation emerges and adopt a procedural perspective in their analysis. The capture theory focusses on the interaction between regulators and regulated entities, and their conflicting interests. Capture refers to attempts of the regulated entities to gain control over the bureaucrats, shift agencies' and politicians' interests, and thus influence regulatory policy. The theory makes assumptions as to regulators' behaviour, including that they may have an interest in job opportunities within the regulated industry, budget concerns, or a desire to avoid litigation costs. Based on capture theory, the economic theory of regulation views regulation as a product subject to rules of supply and demand. It assumes that regulation will be supplied to the group that will pay the highest price, while each group will act rationally to maximise its own utility.⁹

Interrogating regulatory activity

- 13 One insight from the theoretical approaches summarised above is that it cannot be assumed that regulations, or the manner in which they are enforced, will always be in the public interest. Instead, government must actively review the regulatory activities to ensure they are fit for purpose.
- 14 In 2004, the House of Lords Select Committee on the Constitution (**Select Committee**) considered the role of governmental regulators and how to ensure their accountability. It considered that the work of regulators could relevantly be divided into three broad categories:¹⁰
 - a. economic regulation aimed at controlling the abuse of monopoly power;
 - b. regulation of public goods and external effects, such as environmental pollution; and
 - c. social regulation.

- 15 This reflects the role of the regulatory state, as the Select Committee understood it, in not only regulating business decisions, but also promoting public goods regardless of whether their absence or inadequacy are caused by market or non-market conduct failures. The issue of non-market conduct failures can be said to arise whenever there is too little of a good thing (for example, charitable works) and too much of a public bad (for example, theft, racial abuse etc).¹¹ The concept of market failure may be directed to a situation where the market does not operate at all. But it is usually directed to negative conduct, such as anti-competitive behaviour by a company, or external effects on third parties, such as environmental pollution. It can also include positive elements which are needed to make the market work more effectively, such as correcting information asymmetries between producers and consumers.¹²
- 16 The Select Committee considered that regulation was achieved by controlling or influencing specific elements of the regulated activity and implemented by the setting, monitoring and enforcement of standards designed to achieve chosen objectives.¹³ This understanding emphasises the extent to which regulation, or the manner in which it is undertaken, can be seen to be a choice of the regulator. It emphasises the accountability of regulators, and suggests they should be judged 'against the purpose for those decisions and actions (that is, the why of regulation)', and 'the appropriateness of those decisions (that is, the how of regulation)'.¹⁴ Regulation can be critiqued on the basis that it is not directed at the appropriate goals or that it is not being pursued in accordance with certain values ('values critique'). It can also be critiqued on the basis that it is not 'working' at all or as well as it might.¹⁵
- 17 Holding regulators accountable for their effectiveness may raise the following questions:¹⁶
- a. What are the purposes, or outcomes, to be achieved by regulation in terms of addressing market or non-market conduct failures?
 - b. How has the regulation been carried out to achieve those outcomes?
 - c. Was regulation done well or badly?
 - d. If regulation was done badly, why? Was it the fault of a specific regulator or a systemic fault in the design of the regulatory system?
- 18 The issue of the effectiveness of regulation invites a consideration of different forms of regulation, regulatory models and theories which may be used as a benchmark for assessment.

Part Two: legislating regulatory objectives

Specifying regulatory obligations: rules-based vs non rules-based approaches

- 19 Theorists commonly articulate one set of models or approaches to describe how regulatory obligations, standards or objectives are *specified* and another to describe the ways that regulators might *act* to ensure compliance with those obligations, standards or objectives.
- 20 As to the way in which regulatory obligations, standards or objectives might be specified, commentators generally identify a rules-based regulatory approach as one such option and then contrast that approach to alternatives that might variously be labelled standards-based, performance, outcome or goals-based, or principles-based regulation.
- 21 The extent to which these alternatives are truly distinct is debated.¹⁷ There is a lack of any authoritative categorisation or taxonomy of all regulatory approaches.¹⁸ However, common to all these repetitious approaches is that they involve a shift away from an

approach based on compliance with specific and prescriptive rules (being the rules-based approach) towards a framework in which fewer rules are articulated and the obligations of the regulated code set by other means. In his submission to the PCRC, Professor Arie Frieberg AM (**Frieberg**) are noted that all of these alternative approaches are 'premised on a degree of trust between the regulator and the duty holder' and that where trust has been eroded more prescriptive requirements may be needed as well as more regulatory scrutiny and accountability.¹⁹

Rules-based regulatory approach

- 22** The attributes of a rules-based or prescriptive approach are widely recognised and generally not contentious. The approach relies on the promulgation of a comprehensive body of rules to codify the obligations or standards which regulated entities must thereafter observe: 'government imposes bright-line requirements on regulated entities, and then uses the power of the state to enforce those requirements'.²⁰ This approach is sometimes referred to as a 'command and control' mode of regulation. It was, and is, the dominant regulatory mode.²¹
- 23** The rules on which the approach relies are precisely drafted and highly particularised. They give advance notice to regulated entities about how to comply and provide no, or only limited, exceptions and limited flexibility when applying the rule to a specific factual context. They entail the advance determination of what conduct is permissible by a regulator. Accordingly, regulated entities make largely mechanical decisions by applying the facts to a formulated directive. Enforcers of the rules make largely mechanical decisions and collect facts for the purposes of determining whether the regulated entity has complied with the rules.²²
- 24** The perceived advantages of a rules-based approach relate largely to the degree of certainty or predictability it can provide. Setting defined rules enables all regulated entities to understand what actions are permissible or prohibited. This gives regulated entities a degree of comfort in organising their activities and affairs. It makes them more willing to enter into specific activities or markets as they have a clear understanding of how the regulatory regime applies to them. Prescriptive rules reduce the potential scope of regulatory bias or arbitrariness by reducing regulatory discretion. The approach may be more cost effective as it eliminates the need for the regulatory officer to make investigations and exercise judgment.²³
- 25** However, the rules-based approach has also been criticised for numerous reasons. Critics argue that rules may not be suitable for new situations which arise in the future. They are never perfectly congruent with their purpose – they are always over-inclusive (catching things that the legislator does not want to capture) or under-inclusive (failing to capture things that the legislature intended to capture).²⁴ A rules-based approach may also constrain regulators and reduce their flexibility to engage in risk-based regulation, which is discussed below. Further, significantly, such an approach can increase incentives to engage in creative compliance. That is, it may encourage forms of strategic behaviour on the part of the regulated entity which rests on plausible, literal distinctions that ignore the substance of the law's concerns.²⁵
- 26** Professor Elise Bant (**Bant**) argues that once rules are set in place their parameters are resistant to change and may become outdated, inefficient and unjust (with courts and regulators having little discretion to ameliorate those problems). She expresses concern that a rules-based approach encourages formalistic reasoning on the part of those administering and enforcing the law, rather than requiring them to look to the substance of the law's concern. Bant suggests that the benefits which a rule-based approach might be argued to confer will not be realised in the absence of excellent definitional and structural drafting choices.²⁶

Performance-based regulatory approach

- 27** In broad terms, performance-based regulation, also sometimes referred to as goals-based regulation, specifies the desired outcomes or objectives of regulation, but not the means by which they are to be secured.²⁷ Instead, the decision on how to achieve the relevant objective is left for the regulated entity to determine. For the present purposes, the term performance-based regulation is intended to encompass outcomes-based regulation.²⁸
- 28** A performance-based approach was generally recommended by the Council of Australian Government's *Best Practice Regulation Guide 2007*, which suggested that 'regulation should have clearly identifiable outcomes ... performance-based requirements that specify outcomes rather than inputs or other prescriptive requirements should be used'.²⁹
- 29** The performance standard or goal can be either loosely or tightly specified. Loosely specified standards or goals will often require qualitative judgments from regulators. Tightly specified standards or goals generally employ quantitative measure of performance.³⁰ Performance standards can also be distinguished based on the types of problems that they are designed to solve. Key characteristics include the severity, likelihood and frequency of the problem, the regulated entities affected and other affected persons. Performance standards dealing with high-consequence, low-probability events (for example, pipeline explosion) will differ to standards dealing with low consequence, high-probability events (for example, traffic infractions).³¹
- 30** From a compliance perspective, attention is focused on the substantive achievement of the performance standard or goal. The enforcement task involves assessing whether or not the actions of the regulated entity accord with the required standard or goal and, if not, imposing penalties. Practically speaking, a regulator may determine what constitutes an acceptable or desired level of achievement and assess that as against the actions of the regulated entity.³²
- 31** The use of a performance-based system does not necessarily reduce regulatory burdens. Establishing such a scheme requires the specification of desired outcomes and, potentially, a complex system of assessment, accreditation and monitoring to ensure they are met.³³
- 32** The perceived advantages of the performance-based approach are suggested to include:³⁴
- a. By shifting the focus to the achievement of an objective or goal (rather than compliance with a rule), a regulated entity is more likely to think about how best to achieve a particular regulatory objective rather than mechanically following the rules that have been laid out. This will require regulated entities to think through the consequences of their actions and how they correspond to the relevant objective or goal.
 - b. The flexibility allowed to a regulated entity to satisfy objectives may enable them to seek out better and more innovative methods to meet the regulatory objective. Such experimentation may be to the benefit of an entire industry or sector through development of best practice approaches to regulation.
 - c. It can accommodate changes in market conditions or the emergence of new risks and so may be particularly well suited to contexts where there is considerable change and flux (such as industries where technology is changing rapidly).
 - d. Since it discourages checklist style approaches to compliance, it can reduce the incentives for loophole behaviour by requiring that regulated entities comply with the spirit or purpose of the regulatory objective or goal.
- 33** The perceived disadvantages of a performance-based approach include:³⁵
- a. The imprecision or potential vagueness of the approach: regulated entities cannot make predictions about the permissibility of their conduct, fostering conservatism among regulated entities and stifling away from what may be desirable behaviours.

- b. The cost of compliance may increase as regulated entities may need to seek external advice as to whether their actions are consistent with the regulatory objectives or goals.
- c. By leaving regulatory compliance decisions to regulated entities, regulators are increasingly reliant on the judgment of industry, trade associations and experts to determine the content of the regulation.
- d. Firms differ in their regulatory capacities to be able to comply with regulatory objectives: larger firms may benefit under this regime when compared to smaller firms.
- e. There is a risk that arbitrary or biased decisions may be made (for example, actions may be examined retrospectively with some degree of hindsight bias).

Principles-based regulatory approach

- 34** Principles-based regulation relies on more high-level, broadly stated directives to set the standards of conduct by which regulated entities must conduct their business.³⁶ A principles-based system looks to principles first rather than detailed rules. When confronted with a new situation, a principles-based system first determines whether it can be regulated under existing principles; it resists the temptation to build new, purpose-built rules.³⁷
- 35** Professor Mike Daube's (**Daube**) submission to the PCRC noted an example of principles-based regulation in the *WHO Framework Convention on Tobacco Control*, art 5(3) which states that '[i]n setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law'.³⁸
- 36** The perceived advantages of principles-based regulation as compared to a rules-based approach include the following:³⁹
- a. Principles focus attention on the purpose behind the rule. This can lead to a greater degree of substantive consideration and compliance with that purpose, rather than a 'box-ticking' approach characteristic of rules-based regulation.
 - b. By communicating regulatory objectives and promoting behaviour that will achieve those objectives, principles-based regulation reduces the scope for 'creative compliance'.
 - c. A smaller number of principles may reduce complexity, which can otherwise impede compliance (as few regulated entities can absorb and remember the information that detailed rules seek to communicate).
 - d. Principles can provide a basis for dialogue between regulator and regulated entity, facilitating a co-operative and educative approach (particularly where the latter are well intentioned but either ill-informed or confused as to regulatory requirements).
- 37** Bant submitted that principles-based regulation can usefully be coupled with soft law guidelines that show how these principles operate in different contexts. This may provide a better means of satisfying demands for certainty than through highly articulated rules in the legislation itself.⁴⁰
- 38** The perceived disadvantages of a principles-based approach, particularly when compared to a rules-based approach, include:⁴¹
- a. Uncertainty or less certainty about what is required for compliance.
 - b. Uncertainty over compliance requirements, creates the potential for an unpredictable regulatory environment in which regulators might act retrospectively (in that they might apply their current understanding of principle to past acts or omissions, even if their understanding was different at the earlier time).

- c. Detailed rules may empower a regulator to persuade recalcitrant entities to change their behaviour. By contrast, such entities may debate the interpretation and requirement of principles in an attempt to get away with the minimum possible. Similarly, detailed rules are more useful for regulators dealing with ill-intentioned and ill-informed firms than more broadly defined principles.
- d. The greater scope for interpretation afforded to regulators in a principles-based approach may not lead to consistency of interpretation and application by officials. Such an approach may also be less useful for regulators as it does not facilitate the quick processing of a large number of cases.

Hybrid regulatory approach

- 39 Identifying differences between rules-based and non-rules-based regulation should not be thought to suggest that regulatory frameworks can use only one or the other. A regulatory system is often an amalgam of approaches.⁴²
- 40 The application of a hybrid approach can, in principle, combine the positive attributes of each approach within a single regulatory strategy. A prudently designed blend of approaches can have significant benefits by allowing for limitations of each approach to be compensated by the benefits of other approaches.⁴³ Frieberg in his submission to the Commission also supported this proposition, succinctly stating that ‘the most effective regulatory approaches require a combination of approaches and regulatory tools.’⁴⁴
- 41 The particular mix of approaches in a hybrid approach requires choices to be made, and public priorities to be established. For instance, principles-based regulation reflects legislative faith in regulatory expertise, objectivity, fairness and capacity.⁴⁵ A legislature concerned to enable a regulator to keep pace with developments is more likely to give principles for the regulator to work with and devolve substantial decision-making power to the regulator. But if the legislature is concerned about regulatory overreach or lack of transparency, it is more likely to leave the regulator with as little discretion as possible under a rules-based approach.⁴⁶

Part Three: approaches to attaining regulatory compliance

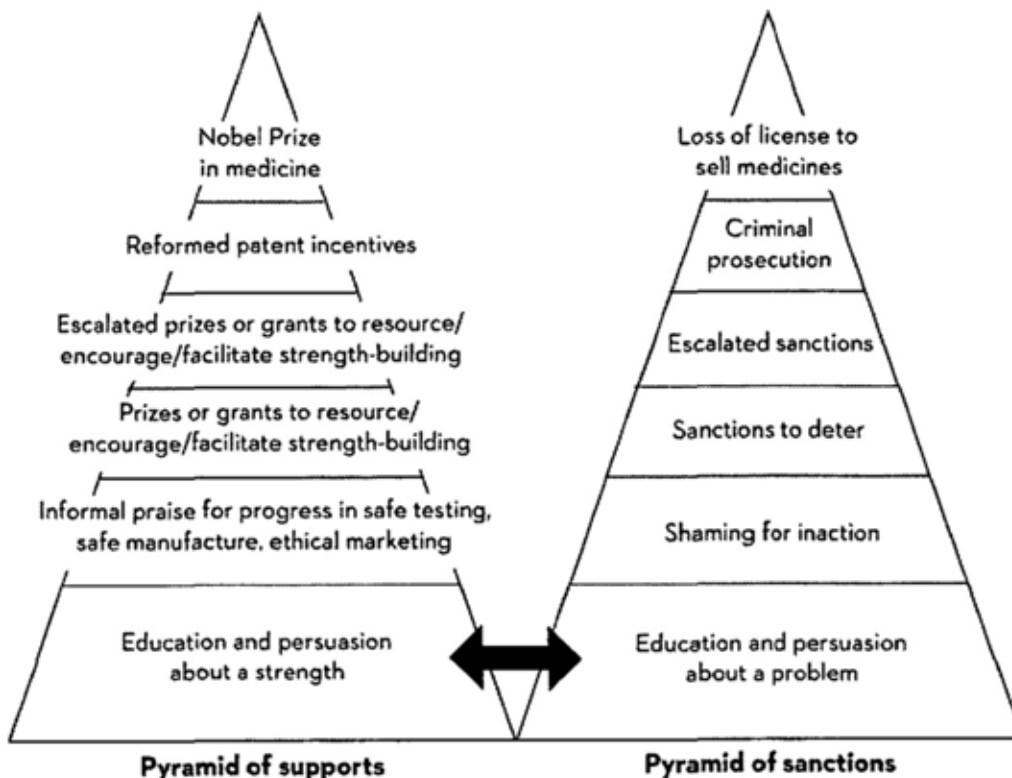
Enforcing regulatory objectives: the regulator’s approach

- 42 Rules-based, performance-based and principles-based approaches provide different models for the way in which obligations may be specified and standards set. A further set of models then deal with the way in which regulators might approach enforcing those obligations.
- 43 The traditional enforcement model takes the view that amoral and calculating regulated entities will seek to evade or breach the costs of regulation unless those costs are exceeded by anticipated penalties for non-compliance. Regulations adopt a deterrence strategy with sanctions applying for violations. However, experience shows that most regulated entities do comply with regulations most of the time. This lends support for a compliance model in which a regulator treats the regulated entity as if it were ordinarily inclined to comply out of belief in the law and long-term self-interest. Compliance is encouraged through informal strategies of negotiation and conciliation. A third model configures the regulator as consultant providing, in effect, an educational and advisory role to regulated entities.⁴⁷
- 44 The need to develop more sophisticated compliance and enforcement approaches has become apparent as researchers have become aware of the limitations of purely punitive and

deterrence-based approaches.⁴⁸ Two of the significant modern approaches are responsive regulation and risk-based regulation, both of which are contrasted against a command and control style of regulation. Some commentators have attempted to provide a framework that synthesises these two approaches, such as ‘really responsive risk-based regulation’. Such attempts point to the fact that the different approaches are not mutually exclusive.

Responsive Regulation

- 45 The model or theory of responsive regulation has played an important role in shifting the rules based regulation debate about business regulation from two fixed positions: on the one hand and removing rules and allowing as much freedom and rationality as possible in the business world on the other.⁴⁹
- 46 Responsive regulation proposes a dynamic model of enforcement premised on an ongoing relationship between the regulator and regulated entity.⁵⁰ It argues that a private or public regulator concerned to improve the performance of a regulated entity should first look to that entity’s strengths, and then seek to expand them. It assumes that most problems can be solved by expanding the managerial capacities of regulated entities to solve them, with the consequence that regulators should not rush to law enforcement solutions to problems before considering a range of approaches that support capacity building.⁵¹ The theory holds that regulatory objectives will be best achieved by catalysing continuous improvement in the behaviour of the regulated entity.⁵²
- 47 Conceptually, the theory (as it has been developed by its original proponents over time) relies on twin pyramids of supports and sanctions.⁵³ Ideally, the regulator will assist the regulated entity to move up a pyramid of supports that allows its strengths to expand to address the regulator’s concerns. If supports fail to resolve those concerns, the regulator moves to the base of the pyramid of sanctions. This involves a restorative, dialogue-based approach. If that approach is not successful, the regulator can move up the pyramid of sanctions to adopt increasingly demanding interventions. An example of the application of these pyramids to the regulation of medicine is set out below.⁵⁴



- 48** The regulator should resist first categorising problems and then determining where they sit on the pyramid. Instead, the theory posits that a regulator should presume that it is better to start with dialogue at the base of the pyramid: the first response should be dialogue regardless of the how serious the matter unless there are compelling reasons to the contrary. It is only when dialogue fails to elicit reform and repair that the regulator considers other sanctions.⁵⁵ Critical to the success of the approach is successfully convincing the regulated entities that increasingly onerous regulatory steps will inevitably be taken if (and only if) the regulated entity does not voluntarily comply.⁵⁶
- 49** The theory holds that if a regulated entity perceives a responsive regulatory system, it will realise that game-playing to avoid legal obligations, and a failure to listen to arguments about the harm its actions are doing which must be addressed, will inexorably lead to regulatory escalation. The deterrence of the pyramid is argued to be superior to the passive deterrence of penalties. Paradoxically, if the regulator guarantees to escalate if steps are not taken to prevent the recurrence of lawbreaking then escalation beyond lower levels will rarely be required.⁵⁷
- 50** Responsive regulation has been influential in Australia. It informed the introduction of the civil penalty regime for contraventions of the statutory duties of company directors and officers,⁵⁸ as has been judicially recognised.⁵⁹ One of the reasons it has been influential is that it offers a way of reconciling empirical evidence that sometimes punishment works and sometimes it backfires. The pyramid gives a cheaper and more respectful regulatory option a chance to work first. Costly and punitive attempts of control are held in reserve for those minority of cases where persuasion fails. Escalation through progressively more deterrent penalties will lead to the point where it is rational to comply. However, it may be the case that business regulators try this approach and impose more punitive sanctions which fail to deter. There are multiple reasons for this. One is that it may be that no level of financial deterrence will make compliance economically rational. Another, and perhaps the most important reason, is management may simply not have the competence to comply.⁶⁰
- 51** Ideally, public interest groups will also be involved in regulatory decisions. Their presence at the negotiating table changes the dynamics between the regulator and the regulated entity. The dedication to purpose of public interest groups mean they are unlikely to be co-opted, which lessens the risk of regulatory capture. They may also cost-effectively play a 'watchdog' role. Further, involving the community in a monitoring role is likely to enhance corporate citizenship through what some commentators have characterised as 'reintegrative shaming'.⁶¹
- 52** Criticisms of responsive regulation fall mainly into three groups: the policy or conceptual; the practical; and the principled. Policy criticisms include:⁶²
- a. Step by step escalation up to the pyramid may not always be appropriate (such as where potentially catastrophic risks are being controlled).
 - b. Use of punitive sanctions may prejudice relationships between regulators and the regulated entities, and the constant threat of sanctions may actually stand in the way of voluntary compliance at the bottom of the pyramid.
 - c. The approach presupposes that regulated entities respond to pressures imposed by regulators when corporate behaviour is often driven by the culture prevailing in the sector or the pressing forces of competition.
 - d. It assumes the clear transmission of messages between the regulated and the regulated entity which may not be the case.
- 53** Practical limitations include that regulators may prove excessively tied to compliance approaches due to organisational resources, tools, cultures, practices and constraints within the broader environment. This may include the agency fearing the political consequences of progression and not having the necessary political, industry or public

support for escalation.⁶³ Environments in which there are large numbers of regulatees may not be well suited to responsive regulation as there may not be enough ongoing contact between regulator and regulatee to build the relationship that the model assumes.⁶⁴ Principled criticisms include that responsive strategies sometimes do not achieve fairness, proportionality and consistency. They may equally be criticised for a lack of formalism and undermining both the rule of law and broader constitutional values.⁶⁵

Risk-based regulation

- 54** The Organisation for Economic Cooperation and Development defines a risk-based regulatory approach as a 'systematised decision-making framework and procedures that prioritise regulatory activities and deploy supervisory resources, in particular those of inspection and enforcement, based on an assessment of the risks that activities pose to a regulator's objectives'.⁶⁶ In its idealised form, a risk-based approach offers an evidence-based means of prioritising attention to the highest risks in accordance with a transparent, systematic and defensible framework.⁶⁷
- 55** A risk-based approach differs from pyramidal approaches by emphasising analysis and targeting rather than a process of responsive escalation.⁶⁸
- 56** It is the dominant, if not the paramount approach to regulation in Australia, the UK, New Zealand and Canada.⁶⁹ In the United Kingdom, regulators are under a statutory duty to develop and use risk-based frameworks for organising all aspects of their regulatory activities. Risk-based regulation has been adopted in a wide range of jurisdictions particularly in respect of the environment, food safety, occupational health and safety, and financial services.⁷⁰
- 57** A significant reason for the increasing adoption of risk-based regulatory strategies is that they are seen as enabling a more efficient allocation of resources and a reduction of administrative burdens. A risk-based approach assumes that regulators will not only identify high (and low) risks, but will apply a cost-benefit analysis to determine the extent to which their own resources should be expended in regulating that risk. For example, regulators may choose not to routinely send inspectors to premises at which there have been no instances, or no recent instances, of non-compliance.⁷¹ It is assumed this will assist regulators to do more with less and manage finite resources.⁷² However, a countervailing concern is that risk-based regulation may often mean less regulation.⁷³
- 58** Risk-based frameworks tend to have five common core elements.⁷⁴
- 59** First, they require a determination by the regulator of its objectives; that is, of the risks that it is concerned to control.
- 60** Secondly, they require a determination of the regulator's own risk appetite – what type of risks it is prepared to tolerate and at what level. Regulators face the challenge that what they consider to be an acceptable level of risk may be higher than that which will be tolerated by politicians, the media and the public, and that the uncertainties they face will not be recognised or tolerated.⁷⁵
- 61** Thirdly, risk-based frameworks involve an assessment of the hazard or adverse event and the likelihood of it occurring. There are two broad categories of risks:
- a. inherent risks arising from the nature of the business activities; and
 - b. management and control risks, including compliance record. In broad terms, regulators are concerned with the effect of management and control in either exacerbating the inherent risk or mitigating it.
- 62** The nature of the risk may make this task more challenging. Probabilistic calculations are difficult for low frequency events and some risks are not susceptible to probabilistic

- assessment. Risk assessments may be highly quantitative (such as in environmental regulation) or mainly qualitative (such as in financial supervision). Quantitative assessments involve less judgment. Qualitative assessments allow for more flexibility and judgment but critically rely on the skill and experience of regulatory officials who are making the subjective judgments.
- 63** Fourthly, regulators assign scores and (or) ranks to regulated entities or activities based on these assessments. The expression of subjective judgments in numerical form can lead observers to misconstrue all risk-based systems as purely quantitative whereas in practice their character varies considerably among regulators.
- 64** Fifthly, risk-based frameworks provide a means of linking the regulator and its enforcement resources to the risk scores which are assigned to individual regulated entities or system-wide issues. In practice, while resources do not always follow the risks suggested by the framework, resource allocation remains a key rationale for the development of risk-based frameworks.
- 65** A risk-based approach is attended with certain challenges including:⁷⁶
- a. An inclination on the part of regulators to focus on 'known risks' resulting in new or developing risks going undetected;
 - b. By prioritising certain risks, regulators must necessarily deprioritise others. Neglecting areas that are determined to be lower risk may ultimately result in considerable cumulative damage. The result may be that risk-based regulation does not reduce the overall risk, but substitutes widely spread risk for lower numbers of larger risks;
 - c. A focus on individual entities, rather than on the strategic issue of how to improve compliance across the regulated industry as a whole;
 - d. There may be significant resource demands on both industry and regulators to accumulate and analyse information necessary to determine risks;
 - e. There may be an inefficient allocation of resources if they are targeted to the highest risks or risk creators, rather than to those where the highest risk reduction can be achieved for any given expenditure of resources: addressing the highest order risks may require impose enforcement and compliance costs; and
 - f. There may be a lack of accountability given that regulators tend to assume that their systems for setting up and applying risks measures and criteria are technical and uncontentious.
- 66** To those challenges can be added the fact that risk-based regulation assumes the regulator will be able to identify areas of greatest risk. A regulator's capacity to do so depends on the quality of the information available to it regarding the activities of the regulated entity. As a result, a risk-based approach relies heavily on transparency, responsiveness and collaboration with regulated entities.⁷⁷
- 67** It is important to emphasise risk-based regulation starts from the premise of identifying risks to be managed, rather than rules to be complied with. The focus on risks and outcomes may cut across the requirement for compliance. Officials may find non-compliance with certain rules does not have an impact on the risk or outcome they are concerned with. The mismatch between risks and compliance may produce significant lacunae in the regulatory regime at the point of implementation and enforcement.⁷⁸ This is perhaps an undesirable corollary of the capacity constraints of regulators. But it also highlights that regulated entities have a role in ensuring compliance when regulators are incapable of monitoring and enforcing non-compliance. This is inextricably intertwined with the regulated entity's attitude to regulation (that is, its culture).

Really-responsive regulation and a really-responsive approach to risk-based regulation

- 68** Some commentators suggest that theories of regulatory enforcement, including risk-based and responsive theory, do not provide a complete answer to the challenges that regulators face. They urge that there is a need for further engagement with those challenges in the form of a 'really responsive' approach to regulation.⁷⁹ This approach posits that regulators must flexibly and sensitively respond not merely to the compliance responses of regulated entities but also to:⁸⁰
- a. the attitudinal settings of regulated entities;
 - b. the broader institutional framework of the regulatory regime;
 - c. the different logics of regulatory tools and strategies;
 - d. the regime's own performance; and
 - e. changes in regulatory priorities, circumstances and objectives.
- 69** Each of those elements merit some brief additional comment.
- 70** The first matter to which regulators should respond is the behaviour, attitude and culture of the regulated entity. This is the broader context which shapes a regulated entity's response to the regulatory regime. Of particular importance is its motivational posture, which can range from committed to the regulatory agenda through to disengagement. This will heavily influence the regulatory relationship and the regulator's capacity to influence or regulate behaviour. This includes that regulators and firms can interact differently across the various tasks of regulation. So, for example, an entity may be resistant and uncooperative in relation to detection work by a regulator but be very compliant once its behaviour is placed into issue. Alternatively, a regulated entity may be competent and serious about its own risk management but be highly resistant to interference from regulators.⁸¹
- 71** The institutional setting is the second matter to which regulators should respond. The position the regulator and regulated entity occupies with respect to other institutions can have a critical effect on the actual and practical operation of regulation. The actions of a regulator are shaped by the distribution of resources, powers and responsibilities between it and other organisations, including those that oversee the entity.
- 72** The third matter is the different logics of regulatory tools and strategies. Most regulators have a variety of control tools and strategies. Command and sanction-based instruments operate differently to educative or economic incentive systems of control. There may be harmony or dissonance among those tools and strategies. Applying a sanctions-based deterrent approach might undermine the strategy of 'educate and persuade' by damaging the relationship between the regulator and regulated entity. Regulators need to manage their tool and strategy interactions accordingly.⁸²
- 73** Fourthly, the regulators should respond to the regulatory regime's own performance over time. If regulators cannot assess that performance, they will not know if their efforts are furthering their objectives.⁸³
- 74** The fifth matter is the changes in regulatory priorities, challenges and objectives. Regulatory challenges shift constantly as: events occur; knowledge develops; technology or market changes; political and legal obligations change; or public expectations and preferences evolve. A central challenge is uncovering new risks and risk creators. In a risk-based regime the inherent danger is 'model myopia', in which officials become committed to a historically captured set of risk indicators and criteria which inhibits response to an unpredicted future.⁸⁴

- 75 Once regulators have established their regulatory objectives, a really responsive approach to risk-based regulation involves the following enforcement steps:⁸⁵
- a. regulators need to detect undesirable and noncompliant behaviour;
 - b. regulators need to respond to that behaviour by developing tools and strategies;
 - c. regulators should enforce those tools and strategies on the ground;
 - d. regulators should assess their success or failure; and
 - e. regulators should modify their approach accordingly.
- 76 A really responsive approach to risk-based regulation takes a nuanced approach to risk assessments. For example, a risk-based framework may, for the purpose of detection, accord a high-risk score to a regulated entity because of the inherent risks it poses and because of management's lackadaisical attitude.⁸⁶ The high-risk score which demonstrates the need for urgency does not mean that the risks posed by the regulated entity are best addressed through deterrence-based command and control instruments. Incentive-based, educative or escalating sanctions strategies may be more effective. The intervention required by the regulator is not correlative to the level of risk. Instead, the optimal style of intervention is likely to depend on the responsiveness of the firm to different stimuli (which is evident in the discussion about the theory of responsive regulation). Regulators may need to depart from an overly rigid risk-based system and draw on other theories such as responsive regulation for an appropriate response. In essence, a risk-based assessment does not necessarily identify the appropriate form of intervention.⁸⁷ A regulator may use a combination of strategies to reduce risk, cognisant that responding to non-compliance with a deterrence-based approach may cut across the regulator's ability to detect that non-compliance in the first place.⁸⁸
- 77 A potential criticism of a really responsive approach is that the level of analysis it demands is so excessive as to mean it cannot be applied in the real world. Further, that it offers an eclectic mix of strategies but does not indicate (for example) whether risk-based systems are to be preferred to responsive or random or other systems. Proponents answer by arguing that it is not possible to identify a preferred strategy divorced from the context, and that each strategy has strengths and weaknesses. Risk-based regulation may be less effective in detection, response development and modification, for example, while random approaches may excel at these tasks. Really responsive regulation eschews any fixed perspective. It is argued to be a means of coordinating a number of the insights from influential current theories of regulatory enforcement. A really responsive approach to regulation (including risk-based regulation) does not lie so much in providing answers to difficult regulatory questions but rather for the reframing of its endeavour. Regulation is really responsive when it knows its regulated entities, its institutional environments, is capable of deploying different and new regulatory logics coherently, when it is performance sensitive and when it grasps shifting challenges. This framework provides an evaluation of the approaches to risk-based regulation and responsive regulation.⁸⁹

Endnotes

- 1 The Macquarie Dictionary '(revised 3rd ed, 2001) 'regulation' suggests 'a rule or order, as for conduct, prescribed by authority; a governing direction or law', while the Shorter Oxford English Dictionary (6th ed, 2007) 'regulation' offers 'a rule or principle governing behaviour or practice; esp. such a directive established and maintained by an authority'.
- 2 J Black, 'Critical Reflections on Regulation' (2002) 27 Australian Journal of Legal Philosophy 1 [PUB.0033.0021.0212] 11.
- 3 J Black, 'Critical Reflections on Regulation' (2002) 27 Australian Journal of Legal Philosophy 1 [PUB.0033.0021.0212] 11.
- 4 P Drahos, M Krygier, 'Regulation, institutions and networks', in Drahos (ed) *Regulatory Theory: Foundations and Applications* (2017) [PUB.0033.0021.0519] 12.
- 5 P Drahos, M Krygier, 'Regulation, institutions and networks', in Drahos (ed) *Regulatory Theory: Foundations and Applications* (2017) [PUB.0033.0021.0519] 3 – 4.
- 6 P Drahos, M Krygier, 'Regulation, institutions and networks', in Drahos (ed) *Regulatory Theory: Foundations and Applications* (2017) [PUB.0033.0021.0519] 3 – 4.
- 7 J Black, 'Critical Reflections on Regulation' (2002) 27 Australian Journal of Legal Philosophy 1 [PUB.0033.0021.0212] 9.
- 8 N Bledow, R Sassen, S Ooi Sil Wei, 'Regulation of enterprise risk management: a comparative analysis of Australia, Germany and the USA' (2019) 2(2) International Journal of Comparative Management 96 [PUB.0033.0022.2526] 101 – 102.
- 9 N Bledow, R Sassen, S Ooi Sil Wei, 'Regulation of enterprise risk management: a comparative analysis of Australia, Germany and the USA' (2019) 2(2) International Journal of Comparative Management 96 [PUB.0033.0022.2526] 102 – 103.
- 10 Select Committee on the Constitution, House of Lords, *The Regulatory State: Ensuring its Accountability* (2004) [PUB.0033.0021.0421] 12 [17] – [19].
- 11 Select Committee on the Constitution, House of Lords, *The Regulatory State: Ensuring its Accountability* (2004) [PUB.0033.0021.0421] 12 [19] – [20].
- 12 Select Committee on the Constitution, House of Lords, *The Regulatory State: Ensuring its Accountability* (2004) [PUB.0033.0021.0421] 12 [19] – [20].
- 13 Select Committee on the Constitution, House of Lords, *The Regulatory State: Ensuring its Accountability* (2004) [PUB.0033.0021.0421] 13 [22]. This definition is somewhat narrower than that offered at paragraph [5] above. Contemporary theorists suggest that a focus on standard setting is limiting in that it detracts from what should be the end goal of continual improvement by regulated entities, beyond the baseline standards provided for by legal standards: J Kolieb, 'When to Punish, When to Persuade and When to Reward: Strengthening Responsive Regulation With the Regulatory Diamond' (2015) 41(1) Monash University Law Review 136 [PUB.0033.0018.0640] 145.
- 14 Select Committee on the Constitution, House of Lords, *The Regulatory State: Ensuring its Accountability* (2004) [PUB.0033.0021.0421] 13 [25].
- 15 J Black, 'Critical Reflections on Regulation' (2002) 27 Australian Journal of Legal Philosophy 1 [PUB.0033.0021.0212] 21 – 22.
- 16 Select Committee on the Constitution, House of Lords, *The Regulatory State: Ensuring its Accountability* (2004) [PUB.0033.0021.0421] 14 – 15 [30].
- 17 C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 14.
- 18 P May, 'Regulatory regimes and accountability' (2007) 1 Regulation & Governance 8 [PUB.0033.0018.0695] 9.
- 19 A Freiberg, Submission to PCRC (30 November 2021) [PCRC.0012.0002.0025] 4. See also A Freiberg, *Regulation in Australia* (2017) 241, 243.
- 20 J Walsh, 'Institution-Based Financial Regulation: A Third Paradigm' (2008) 49(2) Harvard International Law Journal 381 [subscription only] 381.
- 21 A Freiberg, *Regulation in Australia* (2017) 201 – 202, 234.
- 22 C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 16.

- 23 C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 22.
- 24 J Black, M Hopper, C Band, 'Making a success of principles-based regulation' (2007) *Law and Financial Markets Review* 191 [PUB.0033.0021.0292] 193 – 194.
- 25 A Godwin, V Brand, R Teele Langford, 'Legislative Design – Clarifying the Legislative Porridge' (2021) 38 *Company and Securities Law Journal* 280 [PUB.0033.0021.0001] 286; E Bant, Submission to Discussion Paper on the Regulatory Framework (29 November 2021) [PCRC.0012.0002.0052] 2.
- 26 E Bant, Submission to Discussion Paper on the Regulatory Framework (29 November 2021) [PCRC.0012.0002.0052] 2.
- 27 A Freiberg, *Regulation in Australia* (2017) 235; J Black, M Hopper, C Band, 'Making a success of principles-based regulation' (2007) *Law and Financial Markets Review* 191 [PUB.0033.0021.0292] 192 – 193.
- 28 Outcomes-based regulation is generally considered to focus on the achievement of a specific regulatory outcome. By contrast, performance-based regulation has been described as an approach where a regulated entity is directed to achieve, or avoid, a specific outcome *related to* a regulatory goal, or where a regulator sets performance goals for the outcome of behaviour: C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (2018) [PUB.0033.0021.0308] 15.
- 29 E Stoney, 'Risk-based regulation: Examination of the adoption of risk-based regulation reforms in Western Australia' (2017) 34 *Environmental and Planning Law Journal* 59 [subscription only] 60; Australian Government, *Best Practice Regulation Handbook* (August 2007) [PUB.0033.0021.0044].
- 30 C Coglianese, J Nash, T Olmstead, 'Performance-Based Regulation: Prospects and Limitation in Health, Safety and Environmental Protection' (2002) [PUB.0033.0018.0137] 11.
- 31 C Coglianese, J Nash, T Olmstead, 'Performance-Based Regulation: Prospects and Limitation in Health, Safety and Environmental Protection' (2002) [PUB.0033.0018.0137] 12.
- 32 C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 17.
- 33 A Freiberg, *Regulation in Australia* (2017) 236 – 237.
- 34 C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 20 – 22.
- 35 C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 24 – 26.
- 36 J Black, M Hopper, C Band, 'Making a success of principles-based regulation' (2007) *Law and Financial Markets Review* 191 [PUB.0033.0021.0292] 191.
- 37 C Ford, 'Principles-Based Securities Regulation in the Wake of the Global Financial Crisis' (2010) 55 *McGill Law Journal* 1 [PUB.0033.0021.0242] 9.
- 38 Daube, Submission to Discussion Paper on the Regulatory Framework (24 December 2021) [PCRC.0012.0002.0108] 4 [20].
- 39 J Black, M Hopper, C Band, 'Making a success of principles-based regulation' (2007) *Law and Financial Markets Review* 191 [PUB.0033.0021.0292] 195.
- 40 E Bant, Submission to Discussion Paper on the Regulatory Framework (29 November 2021) [PCRC.0012.0002.0052] 4.
- 41 J Black, M Hopper, C Band, 'Making a success of principles-based regulation' (2007) *Law and Financial Markets Review* 191 [PUB.0033.0021.0292] 195; A Godwin, V Brand, R Teele Langford, 'Legislative Design – Clarifying the Legislative Porridge' (2021) 38 *Company and Securities Law Journal* 280 [PUB.0033.0021.0001] 287.
- 42 See C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 42 – 44; C Coglianese, J Nash, T Olmstead, 'Performance-Based Regulation: Prospects and Limitation in Health, Safety and Environmental Protection' (2002) [PUB.0033.0018.0137] 15; C Ford, 'Principles-Based Securities Regulation in the Wake of the Global Financial Crisis' (2010) 55 *McGill Law Journal* 1 [PUB.0033.0021.0242] 7.
- 43 C Decker, 'Goals-Based and Rules-based Approaches to Regulation – BEIS Research Paper Number 8' (May 2018) [PUB.0033.0021.0308] 44.
- 44 Daube, Submission to Discussion Paper on the Regulatory Framework (24 December 2021) [PCRC.0012.0002.0025] 4.
- 45 C Ford, 'Principles-Based Securities Regulation in the Wake of the Global Financial Crisis' (2010) 55 *McGill Law Journal* 1 [PUB.0033.0021.0242] 12 – 13.

- 46 C Ford, 'Principles-Based Securities Regulation in the Wake of the Global Financial Crisis' (2010) 55 McGill Law Journal 1 [PUB.0033.0021.0242] 7 – 8.
- 47 L Hill, L Stewart, "'Responsive Regulation' Theory and the Sale of Liquor Act' (1998) [PUB.0033.0018.0570] 5.
- 48 For example, some studies suggest that while deterrence can sometimes be an effective regulatory tool, in some cases excessive reliance on deterrence can be counter-productive if regulated entities respond in an emotional and resentful way to what they consider to be excessive or stigmatising regulation: T Makkai, J Braithwaite, 'The Dialectics of Corporate Deterrence' (1994) 31 Journal of Research in Crime and Delinquency 347 [PUB.0033.0018.0667] 362.
- 49 P Drahos, M Krygier, 'Regulation, institutions and networks', in Drahos (ed) *Regulatory Theory: Foundations and Applications* (2017) [PUB.0033.0021.0519] 5.
- 50 A Freiberg, *Regulation in Australia* (2017) 443.
- 51 J Braithwaite, 'The Essence of Responsive Regulation' (2011) 44(3) University of British Columbia Law Review 475 [PUB.0033.0021.0375] 480 – 481. Among other things, regulatory approaches which stigmatise a regulated entity can lead to disengagement and still worse compliance: T Makkai, J Braithwaite, 'The Dialectics of Corporate Deterrence' (1994) 31 Journal of Research in Crime and Delinquency 347 [PUB.0033.0018.0667] 365.
- 52 J Kolieb, 'When to Punish, When to Persuade and When to Reward: Strengthening Responsive Regulation With the Regulatory Diamond' (2015) 41(1) Monash University Law Review 136 [PUB.0033.0018.0640] 140.
- 53 Some commentators have suggested extensions or enhancements to this design, such as the notion of a 'regulatory diamond': J Kolieb, 'When to Punish, When to Persuade and When to Reward: Strengthening Responsive Regulation With the Regulatory Diamond' (2015) 41(1) Monash University Law Review 136 [PUB.0033.0018.0640] 137.
- 54 J Braithwaite, 'The Essence of Responsive Regulation' (2011) 44(3) University of British Columbia Law Review 475 [PUB.0033.0021.0375] 482.
- 55 J Braithwaite, 'The Essence of Responsive Regulation' (2011) 44(3) University of British Columbia Law Review 475 [PUB.0033.0021.0375] 483.
- 56 L Hill, L Stewart, "'Responsive Regulation' Theory and the Sale of Liquor Act' (1998) [PUB.0033.0018.0570] 6.
- 57 J Braithwaite, 'The Essence of Responsive Regulation' (2011) 44(3) University of British Columbia Law Review 475 [PUB.0033.0021.0375] 488 – 489.
- 58 Senate Economics References Committee, Commonwealth of Australia, *Performance of the Australian Securities and Investments Commission* (2014) [PUB.0033.0018.0845] 62 – 63 [4.10].
- 59 Finkelstein J in *ASIC v HLP Financial Planning (Aust) Pty Ltd* [2007] FCA 1868 [PUB.0033.0021.0017] 581 referred to the pyramid of enforcement in V Comino, 'Towards better corporate regulation in Australia' (2011) 26 Australian Journal of Corporate Law 6 subscription only.
- 60 J Braithwaite, 'The Essence of Responsive Regulation' (2011) 44(3) University of British Columbia Law Review 475 [PUB.0033.0021.0375] 484 – 485,
- 61 L Hill, L Stewart, "'Responsive Regulation' Theory and the Sale of Liquor Act' (1998) [PUB.0033.0018.0570] 8.
- 62 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 62 – 64.
- 63 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 64. Some commentators suggest that an excessive focus on compliance results from the fact that responsive regulation, at least in its original conception, was overly focussed on compliance with the result that it nurtures obedience to law rather than encouraging continuous improvement: J Kolieb, 'When to Punish, When to Persuade and When to Reward: Strengthening Responsive Regulation With the Regulatory Diamond' (2015) 41(1) Monash University Law Review 136 [PUB.0033.0018.0640] 145.
- 64 A Freiberg, *Regulation in Australia* (2017) 448.
- 65 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 64.
- 66 E Stoney, 'Risk-based regulation: Examination of the adoption of risk-based regulation reforms in Western Australia' (2017) 34 Environmental and Planning Law Journal 59 [subscription only] 61.
- 67 J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 181. Highest risks might either be those with a high risk of occurrence or a potentially high-impact outcome: E Stoney, 'Risk-based regulation: Examination of the adoption of risk-based regulation reforms in Western Australia' (2017) 34 Environmental and Planning Law Journal 59 [subscription only] 60.
- 68 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 64.
- 69 A Freiberg, *Regulation in Australia* (2017) 456.

- 70 J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 181 – 182.
- 71 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 66.
- 72 A Freiberg, *Regulation in Australia* (2017) 455 – 456.
- 73 E Stoney, 'Risk-based regulation: Examination of the adoption of risk-based regulation reforms in Western Australia' (2017) 34 Environmental and Planning Law Journal 59 [subscription only] 61.
- 74 J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 184 – 185; See also, to similar effect, E Stoney, 'Risk-based regulation: Examination of the adoption of risk-based regulation reforms in Western Australia' (2017) 34 Environmental and Planning Law Journal 59 [subscription only] 61.
- 75 This risk is also discussed in the context of environmental regulation in E Stoney, 'Risk-based regulation: Examination of the adoption of risk-based regulation reforms in Western Australia' (2017) 34 Environmental and Planning Law Journal 59 [subscription only] 65.
- 76 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 66 – 67. These criticisms by Black and Baldwin are further discussed by V Comino, 'Towards better corporate regulation in Australia' (2011) 26 Australian Journal of Corporate Law 6 subscription only.
- 77 GWC, Submission to Discussion Paper on the Regulatory Framework (29 November 2021) [PCRC.0012.0002.0001_R] 7 [23].
- 78 J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 199.
- 79 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 61 – 62; V Comino, 'Towards better corporate regulation in Australia' (2011) 26 Australian Journal of Corporate Law 6 subscription only.
- 80 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 69 – 75.
- 81 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 69 – 70; J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 189 – 193.
- 82 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 71 – 72; J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 199 – 199.
- 83 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 72 – 73; J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 200.
- 84 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 73 – 76; J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 205 – 206.
- 85 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 76; J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 183.
- 86 J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 189 – 190, 198.
- 87 J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 181, 190, 198.
- 88 J Black, R Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181 [subscription only] 198 – 199.
- 89 R Baldwin, J Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 59 [PUB.0033.0018.0060] 93 – 94.

APPENDIX G

List of Parties granted leave to appear

Name	Representative
Crown Resorts Limited	Allens
Burswood Limited	Allens
Burswood Nominees Ltd	Allens
Burswood Resort (Management) Limited	Allens
Crown Sydney Gaming Pty Ltd	Allens
Southbank Investments Pty Ltd	Allens
Riverbank Investments Pty Ltd	Allens
Crown Melbourne Limited	Allens
The Hon Helen Coonan	Arnold Bloch Leibler
Jane Halton AO	Arnold Bloch Leibler
Antonia Korsanos	Arnold Bloch Leibler
Nigel Morrison	Arnold Bloch Leibler
John Horvath AO	Arnold Bloch Leibler
James Packer	Ashurst Australia
CPH Crown Holdings Pty Ltd	Ashurst Australia
Consolidated Press Holdings Pty Ltd	Ashurst Australia
Rowen Craigie	Baker McKenzie
Jessica Ottner	Gandhi & Shaw
Danielle Slattery	Gandhi & Shaw
Steve Blackburn	Gandhi & Shaw
Rachel Murray	Gandhi & Shaw
Vasula Kessell	Gandhi & Shaw
Richard Smith	Gandhi & Shaw
Melanie Strelein Faulks	Gandhi & Shaw
Brian Lee	Gandhi & Shaw
Lonnie Bossi	Gandhi & Shaw
James Sullivan	Gandhi & Shaw
Derek Burling	Gandhi & Shaw
Christo Theodoropoulos	Gandhi & Shaw
Kelly Townson	Gandhi & Shaw
Anthony Godfrey	Gandhi & Shaw
Deloitte Touche Tohmatsu (Partnership)	Gilbert + Tobin
Victoria Whitaker	Gilbert + Tobin
Joshua Preston	Grondal Bruining

Name	Representative
Denise Vanderklau	Hall & Wilcox
Melissa Smith	Hall & Wilcox
Travis Costin	Hall & Wilcox
Alan McGregor	Hall & Wilcox
David Brown	Hall & Wilcox
Sonja Bauer	Hall & Wilcox
Jarrod Campbell	Hall & Wilcox
Claude Marais	In person
John Poynton AO	Jones Day
Kenneth Barton	K&L Gates
Maryna Fewster	Kingston Reid
Michael Neilson	Logie-Smith Lanyon
Barry Felstead	McNally & Co
Michael Connolly	Pragma Lawyers
The Gaming and Wagering Commission of Western Australia	Quinn Emanuel Urquhart & Sullivan
The Department of Local Government, Sport and Cultural Industries	State Solicitor's Office
Deputy Commissioner Col Blanch	WA Police Legal Services
Tim Roberts	Warburton Group

APPENDIX H

List of public hearings

Date	Name	Representative
10/05/2021	Duncan Ord	State Solicitor's Office
11/05/2021	Duncan Ord	State Solicitor's Office
11/05/2021	Barry Sargeant	Quinn Emanuel Urquhart & Sullivan
12/05/2021	Michael Connolly	Pragma Lawyers
13/05/2021	Mark Beecroft	State Solicitor's Office
13/05/2021	Katie Hodson-Thomas	Quinn Emanuel Urquhart & Sullivan
17/05/2021	Steve Dobson	Quinn Emanuel Urquhart & Sullivan
17/05/2021	Tilly Prowse	Quinn Emanuel Urquhart & Sullivan
17/05/2021	Carmelina Fiorentino	Quinn Emanuel Urquhart & Sullivan
17/05/2021	Jodie Meadows	Quinn Emanuel Urquhart & Sullivan
18/05/2021	Helen Cogan	Quinn Emanuel Urquhart & Sullivan
18/05/2021	Helen Dullard	Quinn Emanuel Urquhart & Sullivan
18/05/2021	Trevor Fisher	Quinn Emanuel Urquhart & Sullivan
18/05/2021	Kevin Harrison	Quinn Emanuel Urquhart & Sullivan
19/05/2021,	Professor Colleen Hayward	Quinn Emanuel Urquhart & Sullivan
24/05/2021	The Hon Jeffrey Carr	n/a
24/05/2021	David Halge	State Solicitor's Office
25/05/2021	Nicholas Toyne	State Solicitor's Office
26/05/2021	Janine Belling	State Solicitor's Office
26/05/2021	Andrew Duckworth	Quinn Emanuel Urquhart & Sullivan
27/05/2021	Andrew Duckworth	Quinn Emanuel Urquhart & Sullivan
27/05/2021	Leigh Radis	State Solicitor's Office
28/07/2021	John Poynton	Jones Day
29/07/2021	Maryna Fewster	Kingston Reid
30/07/2021	Tim Roberts	Warburton Group
02/08/2021	Joshua Preston	Grondal Bruining
03/08/2021	Joshua Preston	Grondal Bruining
4/08/2021	Lonnie Bossi	Gandhi and Shaw
5/08/2021	Claude Marais	n/a
6/08/2021	Barry Felstead	McNally & Co
9/08/2021	James Sullivan	Gandhi and Shaw
10/08/2021	Kenneth Barton	K&L Gates
11/08/2021	Alan McGregor	Hall & Wilcox
12/08/2021	The Hon Helen Coonan	Arnold Bloch Leibler
18/08/2021	Paul Hulme	n/a
19/08/2021	John Alexander	John de Mestre & Co
30/08/2021	Carmelina Fiorentino	Quinn Emanuel Urquhart & Sullivan

Date	Name	Representative
30/08/2021	Jodie Meadows	Quinn Emanuel Urquhart & Sullivan
30/08/2021	Professor Colleen Hayward	Quinn Emanuel Urquhart & Sullivan
30/08/2021	Andrew Duckworth	Quinn Emanuel Urquhart & Sullivan
31/08/2021	Katie Hodson-Thomas	Quinn Emanuel Urquhart & Sullivan
31/08/2021	Trevor Fisher	Quinn Emanuel Urquhart & Sullivan
31/08/2021	Kevin Harrison	Quinn Emanuel Urquhart & Sullivan
01/09/2021	Terry Ng	State Solicitor's Office
01/09/2021	Shanaeya Sherdiwala	State Solicitor's Office
02/09/2021	Lanie Chopping	State Solicitor's Office
02/09/2021	Germaine Larcombe	State Solicitor's Office
06/09/2021	Duncan Ord	State Solicitor's Office
09/09/2021	Barry Sargeant	Quinn Emanuel Urquhart & Sullivan
10/09/2021	Barry Sargeant	Quinn Emanuel Urquhart & Sullivan
20/09/2021	Anthony Godfrey	Gandhi and Shaw
20/09/2021	Christo Theodoropoulos	Gandhi and Shaw
21/09/2021	Richard Smith	Gandhi and Shaw
21/09/2021	Melissa Smith	Hall & Wilcox
21/09/2021	Denise Vanderklau	Hall & Wilcox
22/09/2021	Brian Lee	Gandhi and Shaw
22/09/2021	Kelly Townson	Gandhi and Shaw
22/09/2021	Travis Costin	Hall & Wilcox
23/09/2021	Rachel Murray	Gandhi and Shaw
23/09/2021	DC Col Blanch	Legal Services - WA Police Force
23/09/2021	Michael Neilson	Logie-Smith Lanyon
24/09/2021	Vasula Kessell	Gandhi and Shaw
24/09/2021	Melanie Strelein Faulks	Gandhi and Shaw
28/09/2021	David Brown	Hall & Wilcox
29/09/2021	Derek Burling	Gandhi and Shaw
29/09/2021	Sonja Bauer	Hall & Wilcox
29/09/2021	Jarrod Campbell	Hall & Wilcox
30/09/2021	Joshua Preston	Grondal Bruining
21/10/2021	Alan McGregor	Hall & Wilcox
22/10/2021	Lonnie Bossi	Gandhi and Shaw
25/10/2021	Dr Ziggy Switkowski	Arnold Bloch Leibler
25/10/2021	Danielle Slattery	Gandhi and Shaw
26/10/2021	Steve McCann	Arnold Bloch Leibler
26/10/2021	Jessica Otner	Gandhi and Shaw
27/10/2021	Nigel Morrison	Arnold Bloch Leibler
27/10/2021	Anne Ward	Arnold Bloch Leibler
29/10/2021	Bruce Carter	Arnold Bloch Leibler
29/10/2021	James Packer	Ashurst Australia

APPENDIX H List of public hearings

Date	Name	Representative
01/11/2021	Jane Halton	Arnold Bloch Leibler
02/11/2021	Sandy Del Prete	State Solicitor's Office
05/11/2021	Victoria Whitaker	Gilbert + Tobin
05/11/2021	Elizabeth Arzadon	n/a
11/11/2021	Rachel Waldren	n/a
16/11/2021	Dr Kahlil Philander	n/a
16/11/2021	Professor Matthew Rockloff	n/a
17/11/2021	Steven Blackburn	Gandhi and Shaw

APPENDIX I

List of Key People

Name	Position
Alexander, John	Crown, Former Executive Chair, CRL Crown, Former Chief Executive Officer, CRL Crown, Former Director, BL
Antoniou, Armina	Crown, Group Executive General Manager Financial Crime Risk and Money Laundering Risk Officer
Arbib, Mark	CPH, Director Strategy/Business Development
Arzadon, Elizabeth	Kiel Advisory Group, Managing Director
Bant, Elise (Prof.)	Academic, University of Western Australia
Barton, Kenneth (Ken)	Crown, Former Chief Executive Officer, CRL Crown, Former Chief Financial Officer, CRL Crown, Former Director, CRL Crown, Former Director, BL
Bauer, Sonja	Crown, Former Group General Manager Responsible Gaming
Beecroft, Mark	Department, Former Chief Casino Officer
Belling, Janine	Department, Former Chief Casino Officer
Bennett, Steve	CPH, Treasurer
Blackburn, Steven	Crown, Chief Risk Officer, CRL Crown, Former Group Chief Compliance and Financial Crime Officer, CRL
Blanch, Colin (Deputy Commissioner)	Western Australia Police Force, Deputy Commissioner
Blaszczynski, Alexander (Emeritus Prof.)	Academic, University of Sydney Responsible Gaming Advisory Panel Chair
Bossi, Lonnie	Crown, Former Chief Executive Officer, Perth Casino Crown, Former Director, BL Crown, Former Chief Operating Officer, Perth Casino Crown, Former Chief Operating Officer – Gaming, Perth Casino
Bovell, Robert	GWC, Former Member
Brown, David	Crown, Former General Manager – Cage and Count, Perth Casino
Burling, Derek	Crown, Investigations and Compliance Manager, Perth Casino
Campbell, Jarrod	Crown, General Manager Cage & Count, Perth Casino March 2021 to 28 February 2022
Carr, Jeffrey (Hon)	GWC, Former Member
Carter, Bruce	Crown, Director, CRL Crown, Chair, BL

Name	Position
Chan, Yan To	Neptune (Guangdong) Group, Junket Operator
Chau, Alvin (Cheok Wa)	Suncity, Junket Operator
Chen, Michael	Crown, Former President of International Marketing
Cheung, Chi Tai	Neptune (Guangdong) Group
Chopping, LanieMaree	Department, Current Acting Director General GWC, Current Chair
Cogan, Helen	GWC, Former Member
Connolly, Michael	Department, Former Chief Casino Officer and Deputy Director General Regulation
Coonan, Helen	Crown, Former Chair, CRL Crown, Former Non-executive director, CRL
Costin, Travis	Crown, Former General Manager Corporate Finance and Treasury
Craigie, Rowen	Crown, Former Chief Executive Officer, CRL Crown, Former Director, CRL Crown, Former Director, BL
Daube, Mike (Emeritus Prof.)	Academic, Curtin University Public Health Association of Australia President, 2010
De Lima, Neil	Crown, Former Senior Vice President International and Interstate Business
Deans, Peter	Consultant, Risk Management
Del Prete, Sandrino (Sandy)	Department, Deputy Director Licensing
Delfabbro, Paul (Prof.)	Academic, University of Adelaide Responsible Gaming Advisory Panel Member
Demetriou, Andrew	Crown, Former Director, CRL
Dixon, Geoffrey	Crown, Former Director, CRL
Dobson, Steven	GWC, Current Member
Duckworth, Andrew	GWC, Former Member
Dullard, Helen (OAM)	GWC, Former Member
Egan, Michael	Crown, Former Senior Manager Gaming Regulations, Perth Casino Crown, Former Executive General Manager – Legal Services, Perth Casino Department, Former CCO
Emery, Nicolas	Crown, Former Officer
Felstead, Barry	Crown, Former Chief Executive Officer – Australian Resorts, CRL Crown, Former Director, BL Crown, Former Chief Executive Officer, Perth Casino
Fewster, Maryna	Crown, Director, BL
Fielding, Michelle	Crown, Former Group Executive General Manager – Regulatory and Compliance

Name	Position
Fiorentino, Carmelina	GWC, Current Member
Fisher, Trevor	GWC, Former Member
Gleeson, Amy	Crown, External Consultant, Risk Uplift Plan
Halge, David	Department, Former CCO
Halton, Jane	Crown, Non-executive Director, CRL
Hart, Chrissie	Crown, Financial Crime Analyst – Investigations, Perth Casino
Harrison, Kevin	GWC, Former Member
Hayward, Colleen (Prof.) (AM)	GWC, Former Member
Hodson-Thomas, Katina	GWC, Current Member
Hulme, Paul	Crown, Former Gaming & Regulatory Compliance Manager, Perth Casino
Jacob, Ashok	Crown, Former Director, CRL CPH, Former employee
Jalland, Guy	Crown, Former Director, CRL CPH, Employee
Jeans, Neil	Initialism, Principal
Johnston, Michael	Crown, Former Director, CRL CPH, Finance Director
Kady, Brad	CPH, Group Investment Manager
Kessell, Vasula	Crown, Financial Controller, Perth Casino
Korsanos, Antonia	Crown, Former Director, CRL
Lane, Louise	Crown, Former Group General Manager AML, CRL
Larcombe, Germaine	Department, Former Chief Casino Officer and Former Executive Director – Racing, Gaming and Liquor
Lee, Brian	Crown, General Manager of Security and Surveillance, Perth Casino
Lin, Cheuk Chiu	Neptune (Guangdong) Group, Junket Operator
Livingstone, Charles (Dr.)	Academic, Monash University Associate Professor
Maguire, Jacinta	Crown, Former General Manager of Commercial, CRL
Manos, Mary	Crown, Former Company Secretary, CRL Crown, Former General Counsel, CRL
Marais, Claude	Crown, General Manager – Legal and Compliance, Perth Casino
McCann, Stephen	Crown, Chief Executive Officer, CRL Crown, Director, CRL Crown, Director, BL
McKern, Robyn	McGrathNicol Advisory, Partner
McGregor, Alan	Crown, Chief Financial Officer, CRL Crown, Company Secretary, BL Crown, Former Chief Financial Officer – Australian Resorts

Name	Position
Meadows, Jodie	GWC, Current Member
Moo, Roy	Junket Operator
Morrison, Nigel	Crown, Non-executive Director, CRL
Murray, Rachel	Crown, Internal Audit Manager, Perth Casino
Neilson, Michael	Crown, Former General Counsel and Company Secretary, CRL
Ng, Chi Un	Hot Pot Junket, Junket Operator
Ng, Kin Wing (Terry)	Department, Former Chief Financial Officer
Nichols, Jon	Crown, Former Officer
Niglio, Nicholas	Neptune (Guangdong) Group, Junket Operator
Nower, Lia (Prof.)	Academic, Rutgers University Responsible Gambling Advisory Panel member
O'Bryan, Stephen (QC)	Special Manager, Victorian Government (RCCOL)
O'Connor, Jason	Crown, Former Group Executive General Manager of VIP International Gaming
Ord, Duncan	Department, Former Director General GWC, Former Chair
Ottner, Jessica	Crown, Group General Manager – Internal Audit, CRL
Packer, James	Crown, Former Executive Chair, CRL Crown, Former Director, BL
Perry, Nicola	Department, Current Director – GWC Compliance Department, Former Director Licensing and Industry Services
Philander, Kahlil (Asst. Prof.)	Academic, Washington State University
Poynton, John (AO)	Crown, Former Director, CRL Crown, Former Non-executive Director, BL
Preston, Joshua	Crown, Former Executive General Manager Legal Services, Perth Casino Crown, Former Chief Legal Officer – Australian Resorts Crown, Former Company Secretary, BL
Prowse, Matilda (Tillie)	GWC, Former Member
Radis, Leigh	Department, Manager Industry Regulation and Education
Rankin, Robert	Crown, Former Chair, CRL
Ratnam, Ishan	Crown, President of VIP Development
Roberts, Timothy	Crown, Former Non-executive Director, BL
Rockloff, Matthew (Prof.)	Academic, CQ University Australia
Salomone, John	Crown, Chief Financial Officer – Australian Resorts
Sargeant, Barry (PSM)	Department, Former Director General GWC, Former Chair and Former Member
Seevathian, Kavitree	Crown, Group Executive Manager Financial Crime Assurance and Testing - CRL
Shelton, Jennifer	Department, Chief Casino Officer

Name	Position
Siegers, Anne	Crown, Former Group General Manager Risk and Audit, CRL Crown, Former Chief Risk Officer, CRL
Slattery, Danielle	Crown, AML & Compliance Manager, Perth Casino
Smith, Richard	Crown, Director of Premium Gaming – Gaming Machines, Perth Casino
Song, Zezhai	Song Junket, Junket Operator
Spence, Craig	Crown, Former Chief Financial Officer, Perth Casino
Strelein Faulks, Melanie	Crown, General Manager Responsible Gaming, Perth Casino
Sullivan, James	Crown, Gaming Product Manager – Gaming Machines, Perth Casino
Switkowski, Zygmunt (Ziggy) (AO)	Crown, Chair, CRL Crown, Director, BL
Tegoni, Debra	Crown, General Counsel, CML
Theiler, Roland	Crown, Senior Vice President of International Business
Theodoropoulos, Christo	Crown, Former AML & Compliance Officer, Perth Casino
Townson, Kelly	Crown, General Manager – Marketing, Perth Casino
Vanderklau, Denise	Crown, Former AML & Compliance Officer
Waldren, Rachel	Murray Waldren Consulting, Partner
Walsh, Xavier	Crown, Former Chief Executive Officer, Melbourne Casino Crown, Former Chief Operating Officer, Melbourne Casino
Wang, Chi Hung	Neptune (Guangdong) Group, Junket Operator
Ward, Anne	Crown, Director, CRL
Weir, Bronwyn	Crown, Group Company Secretary, CRL
Weston, Tony	Crown, Chief People and Culture Officer, CRL
Whitaker, Victoria	Deloitte, Partner Risk Advisory
Williamson, Jan	Crown, Legal Team Member, Melbourne Casino
Younger, Raymond	Department, Former Senior Manager

APPENDIX K

Significant provisions in the Trust Deed for the Burswood Property Trust

- 1 Authorised Investments include:
 - a. the estate in fee simple in the Site;
 - b. the Hotel-Casino Complex to be constructed on the Site and Burswood Park to be constructed in accordance with the Formal Agreement;
 - c. a casino licence to be granted pursuant to the CC Act in respect of the Casino forming part of the Hotel-Casino Complex together with any other arrangement, licence right, privilege or concession entered into with or granted by any Government or Authority supreme, municipal, local or otherwise in respect of the Site or the Hotel-Casino Complex.
- 2 Resort Complex means the hotel, convention centre/theatre restaurant, exhibition centre, recreational facilities and Casino to be constructed on the Site pursuant to and in accordance with the provisions of the Formal Agreement and includes, if and when constructed, Stage 2.
- 3 Casino means the Burswood Casino proposed to be built on the Site and more particularly the building or room in which games are conducted and played and in which money counting, surveillance, storage and other activities related to the conduct and playing of games are carried out.
- 4 Hotel-Casino Complex means the Resort Complex to be constructed on the Site in accordance with the Formal Agreement.
- 5 The Manager is to use its best endeavours to carry on and conduct its business in a proper and efficient manner and will ensure that any undertaking scheme or enterprise to which the Trust Deed relates is carried out on and conducted in a proper and efficient manner.
- 6 The Manager shall not without the Trustee's prior consent engage, conduct or be in any way interested whether directly or indirectly in any business undertaking, venture, investment or other activity other than as Manager pursuant to this Deed and in a separate capacity as project manager in connection with the development of the Resort Complex or any part thereof.
- 7 Subject to the prior approval in writing of the Minister, the Trustee and the Manager are entitled by deed supplemental to the Trust Deed to alter, modify, add to or cancel the provisions of the Trust Deed or any supplemental deed.
- 8 Subject to the prior approval in writing of the Minister the Trustee and the Manager shall take all reasonable steps to cause the Trust Deed to be amended from time to time to satisfy the requirements of any statute, ordinance, rule, regulation or by-law provided that if the Trustee or the Manager is of the opinion that, as a result of such requirements, the assets of the Fund or any part thereof are to be invested or deposited otherwise than freely in accordance with the discretion given to the Trustee by the Deed or if, as a result of any law, it appears to the Trustee and the Manager to be in the best interests of the Unit

Holders to do so, the Trustee or the Manager may terminate the Trust.

- 9 A Unit Holder shall be entitled as herein provided to a beneficial interest in the Trust Fund but such interest shall not confer any interest in any particular part of the Fund and shall not entitle the Unit Holder other than as herein provided to interfere with the rights or powers of the Manager or the Trustee in their dealings with the Trust Fund or any part thereof.
- 10 A Unit Holder shall not be entitled, other than as herein provided, to exercise any rights power or privileges in respect of any Authorised Investment.
- 11 Subject to the provisions of the Trust Deed, the Trustee has all the powers over and in respect of the assets and investments of the Trust Fund which it could exercise if it were the absolute and beneficial owner of such assets and investments.
- 12 Subject to the provisions of the Trust Deed, such powers are to be exercised only pursuant to the directions of the Manager as provided in the Trust Deed and upon the request and in accordance with the directions of the Manager.
- 13 The Manager, which is to manage the Fund for the benefit of the Unit Holders with full and complete powers of management subject to the provisions of the Trust Deed, agrees to manage and carry out and perform the duties and obligations on its part which are contained in the Trust Deed during the period of the Trust.
- 14 The Manager is under a duty itself or by its agents to manage and supervise all land and real estate investments and personal property investments comprising the Fund including, but not limited to the Casino and the Resort Complex.
- 15 The Manager is to use its best endeavours to ensure that all land and real estate investments and personal property investments are kept in good repair, that all valid notices from and requirements of the proper authorities in relation thereto are observed and completed with and that they are let and otherwise dealt with to the best advantage.
- 16 The Manager is to conduct any business constituting part of the Trust Fund for and on behalf of the Unit Holders.
- 17 The duties and function of the Manager include to manage the Resort Complex for the benefit of the Unit Holders.
- 18 The Trustee, by direction of the Manager, has full and absolute powers to perform various acts including opening any account or accounts with any bank or banks and operating upon such account or accounts in all usual ways.
- 19 The principal investment policy of the Trust shall be: (a) the acquisition of the Resort Site and the design and development thereon of the Resort Complex and the design and development of the Resort as provided for in the Formal Agreement; and (b) the management and operation of the Resort Complex and businesses associated therewith.
- 20 The Fund shall only be invested in Authorised Investments and subject to the terms of this Deed and shall at all times be vested in the Trustee.
- 21 All notices, instructions, consents and requests required by this Deed to be given by the Manager to the Trustee or the Gaming Commission or by the Trustee to the Manager or the Gaming Commission shall be given in writing and signed by a duly authorised person on behalf of the party giving the same.

APPENDIX L

Directors of Crown Entities: September 2004 – 2022

	CRL	BL	BRML	BNL	CML	Barangaroo	Riverbank	Southbank
Alan McGregor ¹	2021–(s)	2007-2013 (s); 2021–(s)	2007-2013; 2020– 2007-2013 (s); 2021–(s)	2007-2013; 2020– 2007-2013 (s); 2021–(s)	2021–(s)		2007-2013 2007-2013 (s)	
Andrew Demetriou	2015-2021				2020-2021			
Andrew Roberts	2018-2021	2004-2005						
Anne Ward	2022–				2021–	2022–		
Antonia Korsanos	2018-2021				2018-2021	2021-2021		
Ashok Jacob	2007-2014				1999-2011			1999-2008
Barry Felstead ²		2007-2021	2007-2021	2007-2021	2013-2021		2007-2021	2013-2021
Benjamin Brazil	2009-2017							
Betty Ivanoff					2021-2021			
Bronwyn Weir						2021–(s)	2021–(s)	2021–(s)
Bruce Carter	2021–	2021–	2021–	2021–	2021–			
Christopher Anderson	2007-2009							
Christopher Corrigan	2007-2013							
Christopher Mackay	2007-2008							
Craig Spence ³		2013-2014 (s)	2013-2014; 2013- 2014 (s)	2013-2014; 2013- 2014 (s)			2013-2014 (d/s)	
David Courtney		2004-2011	2004-2007	2004-2007	2007-2011		2004-2007	2008-2011
David Gynnell	2010-2010							
David Lowy	2007-2010							
Debra Tegoni					2008-2017 (s)			2007-2017 (s)
Geoffrey Dixon	2007-2019							
Geoffrey Kleemann	2007-2007	2004-2007; 2008	2005-2007	2005-2007; 2008	1999-2007			1999-2007

¹ McGregor was the Chief Financial Officer of BL (2007-2013), the Chief Financial Officer of Australian Resorts (2014-2020) and the current Chief Financial Officer of CRL (since 2020).

² Felstead was the Chief Executive Officer of BL (2007-2013) and Chief Executive Officer of Australian Resorts (2013-2020).

³ Spence was the Chief Financial Officer – Crown Perth (2013-2014).

	CRL	BL	BRML	BNL	CML	Barangaroo	Riverbank	Southbank
Gregory Hawkins					2012-2013			2012-2013
Guy Jalland	2018-2021	2005-2007 (s)	2005-2007 (s)	2005-2007 (s)			2005-2007 (s)	
Harold Mitchell	2011-2021							
Helen Coonan ⁴	2011-2021	2021-2021	2021-2021	2021-2021	2021-2021	2021-2021	2021-2021	2021-2021
James Packer ⁵	2007-2015; 2017-2018	2004-2016			1999-2016			
John Alexander ⁶	2007-2020	2006-2020	2017-2020	2017-2020	2004-2020	2017-2020	2017-2020	2017-2020
John Horvath	2010-2021				2010-2021			
John Poynton	2018-2021	2004-2021						
Joshua Preston ⁷		2014-2021 (s)	2014-2021 (s)	2014-2021 (s)	2017-2021 (s)	2017-2021 (s)	2014-2021 (s)	2017-2021 (s)
Justine Henwood		2004-2007 (s)	2005-2007	2005-2007			2004-2007	
Kenneth Barton ⁸	2020-2021	2010-2021	2014-2021	2010-2021	2010-2021	2013-2021	2014-2021	2017-2021
Kerry Packer					1999-2005			
Laurence Muir					2003-2010			
Lonnie Bossi ⁹		2021-2021	2021-	2021-				
Mary Manos	2008-2021 (s)	2017-2021 (s)	2017-2021 (s)	2017-2021 (s)	2017-2021 (s)	2017-2020	2017-2021 (s)	2017-2021 (s)
Maryna Fewster		2019-				2017-2021 (s)		
Michael Egan		2000-2004 (s)	2004-2005; 2000-2005 (s)	2004-2005; 2000-2005 (s)			2003-2004 (s)	
Michael Johnston	2007-2021							
Michael Neilson	2007-2007; 2007-2017 (s)	2007-2017 (s)	2007-2017 (s)	2007-2017 (s)	2005-2017 (s)	2013-2017	2007-2017 (s)	2008-2017
Nigel Morrison	2021-				2021-	2013-2017 (s)		2005-2017 (s)
								2021-2022

4 Coonan was the Non-executive Chair of CRL (2020) and the Executive Chair of CRL (2021).

5 Packer was the Chair of CRL (2007-2015), Executive Chair of BL (2004-2016) and Chairman of PBL.

6 Alexander was the Executive Deputy Chair of BL (2006-2016), the Executive Chair of BL (2016-2020), the Executive Deputy Chair of CRL (2007-2017), and the Executive Chair and CEO of CRL (2017-2020).

7 Preston was the Executive General Manager of Legal Services – Crown Perth (2007-2017) and the Chief Legal Officer of Australian Resorts (2017-2020).

8 Barton was the Chief Financial Officer of CRL (2010-2020), and the Chief Executive Officer of CRL (2020-2021).

9 Bossi was the Chief Operating Officer (Gaming) of BL (2011-2013), the Chief Operating Officer – Crown Perth (2013-2020) and the Chief Executive Officer – Crown Perth (2020-2022).

	CRL	BL	BRML	BNL	CML	Barangaroo	Riverbank	Southbank
Richard Gosper					1996-2017			
Richard Turner	2007-2011				2003-2011			
Robert Rankin	2015-2017							
Robert Turner ¹⁰		2008-2010		2008-2010	2008-2010			2005 (s)
Rowen Craigie ¹¹	2007-2017	2004-2017	2004-2017	2004-2017	2002-2017	2013-2017	2008-2017	2002-2017
Rowena Danzinger	2007-2017				2003-2021			
Sarah Halton	2018–				2021–	2020–	2021-2022	
Stephen McCann ¹²	2021–	2021–			2021–	2021–	2022–	2022–
Stephen Wright		2005-2005 (s)	2005-2005 (s)	2005-2005 (s)	1999-2005 (s)		2005-2005 (s)	1999-2005 (s)
Timothy Roberts		2005-2019						
Xavier Walsh					2021-2021			
Zygmunt Switkowski ¹³	2021–	2021–			2021–	2022–		

¹⁰ Turner was the Chief Financial Officer of CRL (2008-2010).

¹¹ Craigie was the Chief Executive Officer and Managing Director of CRL (2007-2017).

¹² McCann is the current Chief Executive Officer of CRL (since 2021).

¹³ Switkowski is the current Non-executive Chair of CRL (since 2021).

APPENDIX M

Chronology of Gaming and Wagering Commission delegations

Date	Delegation to holder of position of	Signed by	Description of powers delegated	Recommendation	Comment
23 Mar 2010	Director Licensing ¹ Deputy Director Licensing ²	Chair and five other members	<ul style="list-style-type: none"> • approve permits • provisionally approve junket operator/junket representative applications • approve one-off junket applications • other licencing approvals • approve permitted trading hours for the casino liquor licence • grant applications for casino employee/key employee licences 	19 Mar 2010 Agenda paper to delegate authority for exempting betting operators from providing an annual audited return to licencing staff ³	Delegation to Deputy Director Licencing is marginally the same as to the Director on the same date, but Director can withdraw infringement notices under s 36(7) of the GWC Act and authorise replacement of video lottery terminals that have GWC approval Repealed 22 June 2010
22 Jun 2010	Director Licensing ⁴	Chair and four other members	<ul style="list-style-type: none"> • removal of the power to approve junket operators/representatives and one-off junket applications 	15 Jun 2010 Agenda paper ⁵ stated the delegation is no longer applicable after the Regulations were amended to remove the requirement that the GWC approve junket operators and representatives ⁶	Repealed previous delegation to Director Licensing 23 March 2010 Repealed by delegation to Director Licensing 29 July 2011
24 Apr 2012	CCO ⁷ Deputy Director General ⁸	Chair and five other members.	<ul style="list-style-type: none"> • declare a game an authorised game under s 22 of the CC Act • approve amendments to approved rules of games • issue a direction or amendment direction under s 24 of the CC Act • affix the Commission's seal to the instruments to effect (a)–(c) • Deputy Director General to issue a direction or amendment direction under s 109G of the GWC Act and affix the Commission's seal to the relevant instrument 	12 April 2012 Agenda paper ⁹ indicated delegation in the context of Departmental restructure and to facilitate timely and efficient processes	Replaced previous delegation to Director Licensing dated 29 July 2011 To take effect 22 June 2012 This delegation was rescinded by subsequent delegation 18 Dec 2012 to the Deputy Chair ¹⁰

Date	Delegation to holder of position of	Signed by	Description of powers delegated	Recommendation	Comment
22 Jun 2012	Director Gambling Regulation ¹¹	Chair and five other members	<ul style="list-style-type: none"> withdraw infringement notices direct configuration of table games, EGMs, count rooms, cages and facilities approve purchase requests for gaming and chips approve variations to casino policy and procedures and employee licences approve permitted trading hours of the casino liquor licence approve gaming permits 	<p>22 May 2012</p> <p>Agenda paper¹² does not contain new authorisations – only reflects new position titles</p>	<p>Repealed previous delegations to:</p> <ul style="list-style-type: none"> Deputy Director Licensing 29 July 2011 Director Compliance 26 June 2007
18 Dec 2012	Chair ¹³ and Deputy Chair ¹⁴	Deputy Chair and five other members	<p>All GWC powers (other than the power of delegation itself) with respect to:</p> <ul style="list-style-type: none"> <i>Betting Control Act 1954</i> <i>Gaming and Wagering Commission Act 1987</i> <i>Casino Control Act 1985</i> <i>Racing and Wagering Western Australia Act 2003</i> 	<p>6 Dec 2012</p> <p>Agenda paper¹⁵ consistent with the merging of the Departmental areas of licencing and regulation with racing and gaming</p>	<p>Repealed previous delegation dated 2 Feb 2004 and increases the previous delegation by adding the <i>Racing and Wagering WA Act 2003</i></p> <p>Repealed delegation to Deputy Director General dated 24 April 2012</p>
16 Dec 2014	CCO ¹⁶	Chair and five other members	<p>Suite of delegations in same terms as delegation dated 22 June 2012</p> <p>The only new power is to approve suppliers of gaming equipment to Crown Perth casino</p>	<p>4 Dec 2014</p> <p>Agenda paper¹⁷ stated it was left out of the previous delegation that took effect 22 June 2012¹⁸</p>	<p>Repealed previous delegation to Chief Casino Officer 22 June 2012</p> <p>Repealed by subsequent delegation to Chief Casino Officer 27 June 2017</p>
27 Jun 2017	CCO ¹⁹ Director Industry Regulation and Education ²⁰ Director Licensing and Industry Services ²¹ Customer Service Officer ²²	Chair and three other members	<p>Suite of delegations including:</p> <ul style="list-style-type: none"> revoke EGMs that fail 90% RTP declaring a game to be an authorised game issue directions to alter approved rules of a game issue directions regarding casino licensee's system of internal controls affix seal with respect to instruments/documents issue directions to vary positions and configurations of table games 	<p>13 June 2017</p> <p>Agenda paper²³ necessary to amend position titles and spread the delegations between positions affected by the Departmental restructure²⁴</p>	<p>Replaces previous delegation 16 Dec 2014</p> <p>Replaces previous delegation to Director Liquor and Gambling 24 March 2015 the powers in this delegation have been significantly reduced</p> <p>Repealed previous delegation to Director Liquor & Gambling 24 March 2015 substantially the same but removes power to withdraw infringement notices under s 36(7) GWC Act</p>

APPENDIX M Chronology of Gaming and Wagering Commission delegations

Date	Delegation to holder of position of	Signed by	Description of powers delegated	Recommendation	Comment
27 Jun 2017			<ul style="list-style-type: none"> • approve purchase requests for gaming chips/ equipment • grant employee licences (under probity assessment policy) • powers under reg 9(4) of the <i>Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985</i> <p>For the Customer Service Officer, including:</p> <ul style="list-style-type: none"> • grant issue and amending permits under the GWC Act • powers under reg 8(1) (a) of the <i>Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985</i> 		Replaces previous delegation to Customer Service Officer Gambling Regulation 29 April 2014
23 Oct 2018	Director (and Deputy) Licensing and Industry Services ²⁵	Deputy Chair and one member	<ul style="list-style-type: none"> • issue directions for the configuration of table games, pit configurations, EMGs, count rooms, cages, facilities and IT services • approve purchase requests for gaming equipment and chips • approve permitted trading hours for the casino liquor licence • grant, issue and amend permits and employee licences 	16 September 2018 Agenda paper ²⁶ stated reason was to streamline processes ²⁷	Repealed previous delegation to Director Licensing and Industry Services 27 June 2017 with the addition of the s 104(3)(k) GWC powers In all other ways this delegation was the same as the previous delegation made 27 June 2017
28 Apr 2020	Deputy Director General ²⁸	Chair and six other members	All GWC powers (other than the power of delegation itself) with respect to: <ul style="list-style-type: none"> • <i>Betting Control Act 1954</i> • <i>Gaming and Wagering Commission Act 1987</i> • <i>Casino Control Act 1985</i> • <i>Racing and Wagering Western Australia Act 2003</i> 	8 April 2020 Agenda paper ²⁹ to facilitate new wagering licensee to operate WA TAB operation and approvals outside of scheduled GWC meetings	
16 Feb 2021	Director Strategic Regulation ³⁰	Chair and four other members	All the GWC powers (other than the power of delegation itself) with respect to: <ul style="list-style-type: none"> • <i>Betting Control Act 1954</i> • <i>Casino Control Act 1985</i> • <i>GWC Act 1987</i> 	16 Feb 2021 Agenda paper ³¹	Reason for delegation – Deputy DG standing aside (deputy DG currently held all the delegations as CCO)

Endnotes

- 1 Delegation instrument: GWC, Delegation of Powers (Section 16) (23 March 2010) [GWC.0004.0003.0022].
- 2 Delegation instrument: GWC, Delegation of Powers (Section 16) (23 March 2010) [GWC.0004.0003.0014] 1.
- 3 GWC, agenda papers (19 March 2010 meeting) [GWC.0002.0016.0002_R] 2.
- 4 Delegation instrument: GWC, Delegation of Powers (Section 16) (23 March 2010) [GWC.0004.0003.0021].
- 5 GWC, agenda papers (15 June 2010 meeting) [GWC.0002.0016.0006_R] 419.
- 6 GWC, agenda papers (15 June 2010 meeting) [GWC.0002.0016.0006_R] 420.
- 7 Delegation instrument: GWC, Delegation of Powers (Section 16) (22 June 2012) [GWC.0004.0003.0005] 1.
- 8 Delegation instrument: GWC, Delegation of Powers (Section 16) (22 June 2012) [GWC.0004.0003.0012] 3.
- 9 GWC, agenda papers (12 April 2012 meeting) [GWC.0002.0016.0056_R] 349.
- 10 Delegation instrument: GWC, Delegation of Powers (Section 16) (24 April 2012) [GWC.0002.0016.0082_R] 204.
- 11 Delegation instrument: GWC, Delegation of Powers (Section 16) (29 July 2012) [GWC.0004.0003.0018].
- 12 GWC, agenda papers (22 May 2012 meeting) [GWC.0002.0016.0058_R] 698.
- 13 Delegation instrument: GWC, Delegation of Powers (Section 16) (18 December 2012) [GWC.0001.0007.0175].
- 14 Delegation instrument: GWC, Delegation of Powers (Section 16) (18 December 2012) [GWC.0004.0003.0011].
- 15 GWC, agenda papers (18 December 2012 meeting) [GWC.0002.0016.0082_R] 201.
- 16 Delegation instrument: GWC, Delegation of Powers (Section 16) (23 April 2012) [GWC.0004.0003.0004].
- 17 GWC, agenda papers (16 December 2014 meeting) [GWC.0002.0016.0121_R] 207.
- 18 GWC, agenda papers (16 December 2014 meeting) [GWC.0002.0016.0121_R] 207.
- 19 Delegation instrument: GWC, Delegation of Powers (Section 16) (16 December 2014) [GWC.0004.0003.0006].
- 20 Delegation instrument: GWC, Delegation of Powers (Section 16) (27 June 2017) [GWC.0004.0003.0020].
- 21 Delegation instrument: GWC, Delegation of Powers (Section 16) (27 June 2017) [GWC.0004.0003.0025].
- 22 Delegation instrument: GWC, Delegation of Powers (Section 16) (27 June 2017) [GWC.0004.0003.0009].
- 23 GWC, agenda papers (27 June 2017 meeting) [GWC.0002.0016.0223] 100.
- 24 GWC, agenda papers (27 June 2017 meeting) [GWC.0002.0016.0208] 5.
- 25 Delegation instrument: GWC, Delegation of Powers (Section 16) (23 October 2018) [GWC.0004.0003.0024].
- 26 GWC, agenda papers (23 October 2018 meeting) [GWC.0002.0016.0256_R] 282.
- 27 GWC, agenda papers (23 October 2018 meeting) [GWC.0002.0016.0256_R] 282.
- 28 Delegation instrument: GWC, Delegation of Powers (Section 16) (28 April 2020) [GWC.0004.0003.0013].
- 29 GWC, agenda papers (28 April 2020 meeting) [GWC.0002.0016.0298_R] 351.
- 30 Delegation instrument: GWC, Delegation of Powers (Section 16) (16 February 2021) [GWC.0004.0003.0027].
- 31 GWC, agenda papers (16 February 2021 meeting) [GWC.0002.0016.0349_R] 5.

APPENDIX N:

Comparative regulatory framework analysis – Australian jurisdictions

Jurisdiction	Principal Act regulating casinos	Casino regulator	Legislation constituting casino regulator
WA	<i>Casino Control Act 1984 (WA)</i>	Gaming and Wagering Commission	<i>Gaming and Wagering Commission Act 1987 (WA)</i>
New South Wales	<i>Casino Control Act 1992 (NSW)</i>	Independent Liquor and Gaming Authority	<i>Gaming and Liquor Administration Act 2007 (NSW)</i>
Victoria	<i>Casino Control Act 1991 (Vic)</i>	Victorian Gambling and Casino Control Commission (formerly Victorian Commission for Gambling and Liquor Regulation)	<i>Victorian Gambling and Casino Control Commission Act 2011 (Vic)</i> (formerly <i>Victorian Commission for Gambling and Liquor Regulation Act 2011 (Vic)</i>)
Queensland	<i>Casino Control Act 1982 (Qld)</i>	Queensland Office of Liquor and Gaming Regulation	Not applicable
South Australia	<i>Casino Act 1997 (SA)</i>	Office of the Liquor and Gambling Commissioner	<i>Gambling Administration Act 2019 (SA)</i>
Tasmania	<i>Gaming Control Act 1993 (Tas)</i>	Tasmanian Liquor and Gaming Commission	<i>Gaming Control Act 1993 (Tas)</i>
Australian Capital Territory	<i>Casino Control Act 2006 (ACT)</i>	ACT Gambling and Racing Commission	<i>Gambling and Racing Control Act 1999 (ACT)</i>
Northern Territory	<i>Gaming Control Act 1993 (NT)</i>	Northern Territory Racing Commission	<i>Racing and Betting Act 1983 (NT)</i>

APPENDIX O

Summary of themes discussed in AML expert focus groups with Perth casino employees.¹

Theme	PCRC AML experts findings and observations	Focus Group Quotes
AML Risk Level	<ul style="list-style-type: none"> Participants discussed that the AML risk level has decreased since the introduction of new AML policies and procedures. However, they believe it will never be eradicated entirely. It appears cash structuring activities have not decreased. Mandatory carded play would decrease the risk of money laundering attempts, by enabling Crown to track its patrons. This is already evident in the Pearl Room. The Pearl Room presents a lower risk for money laundering. The risk of money laundering will likely increase again when the international borders reopen. 	<ul style="list-style-type: none"> <i>"Any cash business it's going to be susceptible, it's very hard to try and prevent that without disadvantaging somebody else."</i> <i>"Crown has a bit of a conundrum of balancing our anti-money laundering versus our RSG/Responsible Gambling obligation."</i> <i>"The Pearl Room is a private area, so you [the patron] need to provide at least 100 points of ID to even be considered."</i> <i>"Its [structuring] pretty much the same, people just think that they can get away without being reported by doing it under the threshold limit--people are very aware of the limit."</i>
Employee Awareness of Money Laundering Risk and AML/CTF Obligations	<ul style="list-style-type: none"> Participants were able to provide examples of money laundering and it demonstrated what appears to be an adequate knowledge of basic methods used to launder money in a casino and what to look out for. It appears that employees have an increased awareness of money laundering since the Bergin Inquiry due to increased training and communication. 	<ul style="list-style-type: none"> <i>"Structuring is a money laundering technique-- I've seen it on the floor-sometimes easy to pick up."</i> <i>"It sometimes is money laundering, and we're just going to report either way i guess, we don't know what they're doing."</i> <i>"Previously they would just report and that's the end of it, but now I think the education piece around AML... that's probably raised everybody's awareness--- before that [the last 18 months] it was just cross the t's and dot the i's and know their obligations, but now they're thinking a little bit more, 'maybe that is a bit odd ... i think it's in the back of their heads a lot more. "</i>

¹ McGrathNicol Advisory and Murray Waldren Consulting, 'PCRC AML Forensic Report,' expert report (28 October 2021) [PCRC.0021.0001.0121_R] 168 – 171 [11.4.5].

Theme	PCRC AML experts findings and observations	Focus Group Quotes
<p>Employee AML/CTF Training</p>	<ul style="list-style-type: none"> While a selection of employees said they are receiving the same amount of training they did prior to COVID-19, the general consensus was that the amount of AML training has increased and there has been a heavier focus on AML since the Bergin Inquiry. Crown has shifted to a focus on risk management with improvements in AML risk awareness training within the last 6 months, providing more ongoing and updated training as opposed to 'set-and-forget' training. Crown has also provided training around CTF (not just AML). However, CTF training does not have the same amount of detail as the AML training. 	<ul style="list-style-type: none"> <i>I think the training from the knowledge base around AML has increased tenfold... I think we're probably seeing more ongoing training ... I think that education process is probably a lot better than it was."</i> <i>"During that time frame [the last 18 months] the business has shifted in its awareness, education... you can see that there is more of a risk focus... there has definitely been a shift, especially amongst managers and people (floor) around what to look for."</i> <i>"We're trying to do more mindset shift rather than hard skill training, it's more around that ethical side... does that feel right/look right."</i>
<p>Employee Due Diligence</p>	<ul style="list-style-type: none"> On the floor (OTF) staff and AML staff have differing opinions on the current employee disciplinary processes for non-compliance with AML/CTF rules at Crown. OTF staff seemed concerned about being disciplined by Human Resource offices or even that their jobs are at risk for noncompliance. Conversely, AML staff did not think staff were being disciplined for such things and viewed it more as performance management in an educative sense (a more positive intervention). 	<ul style="list-style-type: none"> <i>"The ramifications in the Cage for making a mistake are huge."</i>
<p>Communication of AML/CTF policies</p>	<ul style="list-style-type: none"> The volume of memos and SOPs received by OTF staff and the ever-changing Crown rules make real-time AML/CTF compliance difficult. There continue to be many changes occurring. Requirement for better communication between Melbourne and Perth regarding policy changes. 	<ul style="list-style-type: none"> <i>"When something changes, it gets communicated straight away... almost every time there's a change, there's information going out."</i> <i>"When that [SPR Policy] first came in... a lot of it's driven by Melbourne and there's times where things change, you really don't know about it straight away... there's a couple of times where things have happened and /you think/ 'oh, when did that happen?'"</i>

Theme	PCRC AML experts findings and observations	Focus Group Quotes
CML Culture On The Floor	<ul style="list-style-type: none"> Participants discussed a higher level of accountability among employees regarding AML, and the recent changes have increased an appetite within staff to detect and report OTF staff discussed being faced with difficulty in balancing their AML obligations and responsible gambling obligations to customers. OTF staff find that the pressure to comply with AML/CTF policies can be stressful, and serious disciplinary consequences are set for non-compliance. 	<ul style="list-style-type: none"> <i>"In the Cage we are very heavily regulated, so if I see something... if any of us see anything going on we will immediately step in and say 'hey I think this is what we should be doing or have you done this.'"</i> <i>"Everyone is accountable, before it was 'I wasn't accountable because I did as I was told'. But now I can say I don't think this is correct."</i> <i>"I maybe thought I was wasting my time... because you'd report on the same person all the time, you'd see them walk through the door... and they're still a customer 10 years later."</i>
AML Team Function/ Effectiveness	<ul style="list-style-type: none"> Second line staff indicated that there have been improvements in shared resources across the different properties over the past 12 months. External parties such as Law Enforcement Agencies could communicate better with Crown regarding AML/CTF. 	<ul style="list-style-type: none"> <i>"We are all communicating and working together... everyone is so helpful... it's so much better now."</i> <i>"I feel like we [OTF staff] do our informative parts and the guys downstairs [the AML team] do their best to put that information together."</i>
AML Conduct of On The Floor Personnel	<ul style="list-style-type: none"> It appears that the most significant change for floor staff has been the Source of Funds Policy, which requires a patron to complete a Source of Funds form for transactions totalling more than \$25,000 in a particular day. OTF staff (particularly dealers or Cage staff) are trying to juggle multiple responsibilities simultaneously. 	<ul style="list-style-type: none"> <i>"Everyone is focused on AML but that's not our sole responsibility, we have RSG and RSA as well. We need to make sure that we're not focusing on one thing to the detriment [of another responsibility]. We have to look after our patrons, and their welfare... make sure they're safe and doing the right thing... it's not just about money laundering."</i>
KYC – Significant Player Review (SPR)	<ul style="list-style-type: none"> Currently, staff do not have access to all systems, and it is time consuming to build a profile on a patron due to their reliance on other departments for information. SPRs will be more challenging once international borders reopen. 	
KYC – Mandated Carded Play	<ul style="list-style-type: none"> Mandatory carded play would decrease the risk of money laundering attempts, by enabling Crown to track its patrons. Mandated carded play would enable staff to enforce a two-pronged approach by assisting with AML/CTF and RSG obligations. Membership may not be appropriate/ necessary for all patrons. Some patrons, particularly the elderly, view Crowns a safe venue for them to socialise and only occasionally gamble. 	<ul style="list-style-type: none"> <i>"It [mandatory carded play] would have a dual purpose because, we've always been quite big on the responsible service of gambling but being carded would have that two-pronged AML and RSG attack. We could track them from both areas if they're all carded."</i> <i>"A lot of concern about privacy from our customers..."</i>

Theme	PCRC AML experts findings and observations	Focus Group Quotes
KYC – Source of Funds	<ul style="list-style-type: none"> It appears staff are aware of their current obligations to complete a Source of Funds form on patrons transacting more than \$25,000 in a day. However, Cage staff can request a patron complete a Source of Funds form at any time, if they have reasonable belief that the patron is attempting to avoid completing the same. Staff noted that eventually, most patrons do complete the Source of Funds form. While they might initially be irritated, most simply wish to gamble. 	<ul style="list-style-type: none"> <i>“They [patrons who have been asked to complete a Source of Funds] are usually quite resistant. They are quite hesitant to fill it in sometimes.”</i>
Avenues for Reporting AML Concerns (On The Floor Personnel)	<ul style="list-style-type: none"> Cage staff raised concerns over the complexity and number of systems used, noting that multiple systems (which did not communicate effectively) were required to complete UARs which delayed front line customer service. Other participants, albeit not specifically from the Cage, did not hold the same view and indicated the UAR reporting process via the AML portal was easy to use. It appeared that front line/OTF staff participants were unclear what happened to UARs after being submitted since they received minimal communication/response beyond that point, suggesting a feedback loop would be valued. 	<ul style="list-style-type: none"> <i>“We need a better [AML reporting] system, I shouldn’t have to open up four systems to do one transaction.”</i> <i>“Just to know if an investigation [into a UAR submitted] has gone underway even if they [the AML team] can’t tell us the full information, sort of some indication that there has been action.”... “Also so that we don’t have to keep reporting the same [AML] incident.”</i>
Technical Functionality – Transaction Monitoring	<ul style="list-style-type: none"> It also appears that transaction monitoring has become more effective since the introduction of Sentinel. 	
Technical Functionality - Systems	<ul style="list-style-type: none"> Staff believe a universal system would be practical, but permission levels would need to be assessed to uphold confidentiality (i.e. when dealing with patrons’ information regarding responsible gaming issues). 	<ul style="list-style-type: none"> <i>“We have to go through so many systems just to look at one patron... we’ve got 5-6 different places to go to look for information ... it’s just hours of trying to find data.”</i> <i>“Unfortunately there is nothing actually designed specifically for the casino industry so we keep trying to take something and adapt it, and we really kind of need to start again.”</i>
Technical Functionality - Surveillance	<ul style="list-style-type: none"> It appears that Crown has extensive surveillance systems which assist the AML team. Crown has extensive surveillance systems, however, surveillance staff indicated it was difficult to perform multiple surveillance obligations (i.e. money laundering, patron cheating, RSG, and staff performance) simultaneously. 	<ul style="list-style-type: none"> <i>“On table games we’ve always been very-very strong on dobbing ourselves in, because surveillance more than likely are watching anyway.”</i>

Summary of themes arising from PCRC AML expert survey completed by Perth Casino employees¹

* denotes that the number of respondents in the sub-category was small (<10)

Theme	Questions	PCRC AML experts findings and observations	Comments from employee (verbatim)
Money laundering at Perth casino	<p>Q1: In your own words, please describe your understanding of the term “money laundering”</p> <p>Q2: If money laundering is defined as an activity engaged in by organised crime, in your own opinion how likely is it that money laundering is currently occurring at Crown Perth? <i>[Extremely likely, highly likely, likely, unlikely, very unlikely.]</i></p> <p>Q3: If money laundering is defined as an activity engaged in by individuals other than in organised crime in your own opinion how likely is it that money laundering is currently occurring at Crown Perth? <i>[Extremely likely, highly likely, likely, unlikely, very unlikely.]</i></p> <p>Q4: Thinking back to the times before COVID-19 (early 2020), in your opinion, how likely is it that money laundering activities were then being undertaken at Crown? <i>[Extremely likely, highly likely, likely, unlikely, very unlikely.]</i></p> <p>Q5: Select the statement with which you most agree:</p> <p>a) Although Crown always took the risk of financial crime including money laundering seriously, it really has stepped up its focus in the last 6-12 months</p>	<ul style="list-style-type: none"> • Respondents indicated a good sound understanding of what money laundering is with the dominant sentiment in their descriptions identifying, it as the legitimatisation of illegitimate funds. • Overall, 73% of respondents believe money laundering by organised crime at least likely to be occurring currently at Perth Casino <ul style="list-style-type: none"> o 40% said it is extremely or highly likely o 33% said it is likely o More than 80% of respondents from table games, gaming machines and premium games rated thought it was likely/highly/extremely likely compared to 45% of cage & count respondents. • This difference may be accounted for by the cage employees operating in a highly regulated environment with maximum surveillance and less visibility of the range of on the floor activity. • The responses were very similar when respondents were asked about the likelihood of money laundering by individuals. 	<ul style="list-style-type: none"> • <i>“It is inevitable and in my opinion, impossible to stamp out completely and still have gaming operations.”</i> • <i>“My observations seem to indicate robust Policies and procedures and I find it highly unlikely it could happen in a significant way.”</i> • <i>“As we are more aware of learning and understanding what to look for.”</i> • <i>“Unless the individual has some link to organised crime of some sort, there’s generally no need to launder money.”</i> • <i>“Cash in hand businesses largish regular buying.”</i> • <i>“With restrict control and monitor of patrons, less possibility of money laundering happening but cannot say totally none.”</i> • <i>“Everywhere that has large money movement there will opportunity for money laundering.”</i> • <i>“Easy and fast way to wash money. Its open 24 hours a day. Plenty of opportunities to do it with multiple people and across shifts so it’s not noticed as much.”</i>

1 McGrathNicol Advisory and Murray Waldren Consulting, ‘PCRC AML Forensic Report,’ expert report (28 October 2021) [PCRC.0021.0001.0121_R2] 172 - 181 [12.2].

Theme	Questions	PCRC AML experts findings and observations	Comments from employee (verbatim)
	<p>b) Any change in Crowns approach to financial crime in the past 6-12 months has been for the inquiries; I don't expect it will last.</p> <p>c) Crown didn't really emphasise financial crime including money laundering as an issue until about 6 – 12 months ago, but it does now.</p> <p>d) Crown has always taken the risk of financial crime including money laundering very seriously and continues to do so.</p> <p>Q31: I have felt pressured by Crown employees to ignore, overlook or not report potentially suspicious behaviour which may indicate money laundering or other financial crime. You may provide a comment with your answer.</p> <p><i>[Never; Rarely; Sometimes; Often]</i></p> <p>Q32: I have felt pressured by Crown customers to ignore, overlook or not report potentially suspicious behaviour which may indicate money laundering or other financial crime. You may provide a comment with your answer.</p> <p><i>[Never; Rarely; Sometimes; Often]</i></p> <p>Q39: By dragging the circle along the line to the appropriate place between 0 (not at all likely) and 5 (highly likely), please indicate your opinion as to how likely it is that money laundering activity currently occurs in each of these areas of the Perth Casino.</p>	<ul style="list-style-type: none"> When asked how likely they thought money laundering was at Perth Casino before COVID (in early 2020), a higher proportion of respondents (80%) overall and cage and count respondents (52%) indicated that it was within the range of likely to extremely likely. 70% of respondents agreed with statements that Crown has always taken the risk of financial crime seriously with 49% of these respondents recognising that the focus has really been stepped up in the last 6-12 months. 13% agreed with the statement 'Any change in Crowns approach to financial crime in the past 6-12 months has been for the inquiries; I don't expect it will last'; table games and gaming machines respondents were the most sceptical (15% -16% agreeing with the statement). Whilst more than 20% of respondents said that they had felt pressured by Crown customers to ignore, overlook or not report potentially suspicious behaviour, the majority reported this was rare. The risk of money laundering occurring was identified by respondents as being most likely in premium and private gaming areas. 	<ul style="list-style-type: none"> <i>"I'm sure big or small there could be a possibility it happens in every casino."</i> <i>"Money laundering is hard to stop completely but with the processes in place it is very hard to launder large amounts of money making it an inorganic way of laundering large amounts of money."</i> <i>"Casinos will always be the place of choice for anyone (organized crime or individual) to launder money. Crown casino is no exception."</i> <i>"Crown consistently displayed an arrogant disregard for all "anti money laundering laws" and aided and abetted criminal activity."</i> <i>"The focus Pre-COVID was heavily focused on customer service."</i> <i>"It might have happened here or there, but if it happened at a large scale it would have been reported up the chain, so long as people did their job, the government inspectors would know about any serious breaches."</i> <i>"If there was any corruption in the casino I would expect it to be from positions of higher influence such as the former junket incidents, not on the gaming floor where the staff has nothing to gain from allowing it to go on."</i>

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		<p>Observations</p> <ul style="list-style-type: none"> • Key themes that are noted within the respondents' answers were: <ul style="list-style-type: none"> ○ A consensus that money laundering is occurring and that casinos will always attract money laundering due to the volume of cash ○ Multiple employees said that they have witnessed potential money laundering activity occurring. Small transactions are hard to catch ○ Money laundering activity was more likely pre-COVID which respondents attribute to: <ul style="list-style-type: none"> - No junkets and international patrons since COVID - Fewer VIP players and utilisation of salons - Previously there was a focus on reporting, now it is on investigating and reporting - The AML team were under-resourced - Money laundering was accepted as part of running a Casino - Action was not taken when reports were made - Awareness amongst staff was lower than it now is • Threshold limits were higher pre-COVID 	<ul style="list-style-type: none"> • <i>"Without the Royal Commissions and focus on AML and Financial Crimes this would have continued."</i> • <i>"I have yet to see the Federal Police investigate any instances of Money Laundering at Crown Perth, so assume it's not that serious to them."</i> • <i>"I don't see how Covid has changed money laundering risks really. I see it is as unlikely happening by organised crime, and more likely individual cases are happening undetected."</i> • <i>"Crown has tightened transaction requirements."</i> • <i>"I have never been pressured by Crown customers to ignore, overlook or not report suspicious behaviour."</i> • <i>"I will never let myself be affected by customers as / am only here to do my job and they should not be telling me what to do."</i> • <i>"As a main gaming floor employee, I feel I have the support of my supervisors in rejecting any such pressure."</i> • <i>"At worst a player might have gotten annoyed at the delay when completing a threshold transaction. Some would try to take \$50- 100 back but understood why we would not allow it"</i> • <i>"Sometimes patrons are in a hurry to bet and feel the process is unnecessary."</i>

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<p>Experience of money laundering indicative activity</p>	<p>Q35: Have you witnessed behaviour that was suspicious and may have been indicative of money laundering at Crown Perth.</p> <p><i>[No; Yes – rarely; Yes and a number of times; No but I have heard about incidents from others; Yes and many times its common]</i></p> <p>Q36: Have you witnessed behaviour that was suspicious and may have been indicative of money laundering at Crown Perth in the last 3 months?</p> <p><i>[No; Yes – rarely; Yes – Occasionally; No but I have heard incidents from others; Yes and many times it is common]</i></p> <p>Q39: By dragging the circle along the line to the appropriate place between 0 (not at all likely) and 5 (highly likely), please indicate your opinion as to how likely it is that money laundering activity currently occurs in each of these areas of the Perth Casino.</p>	<ul style="list-style-type: none"> • When asked if they had witnessed behaviour that was suspicious and may have been indicative of money laundering in the last 3 months: <ul style="list-style-type: none"> ○ 70% of respondents said No, including 15% who said they had heard of it from others ○ 25% said Yes - rarely or occasionally ○ 5% responded yes, many times, it is common • Asked the same question without limiting the period to 3 months and only 50% said No. • 77% of respondents who indicated they had witness money laundering activity said they had reported it. 	<p><i>Examples of incidents:</i></p> <ul style="list-style-type: none"> • <i>“A patron buying in for chips repeatedly with cash, despite having ample chips in front of him (for the amount he was betting) and playing only minimal hands for minimum wagers before leaving the table.”</i> • <i>“Multiple people converting chips to cash then pooling funds or leaving together, reported.”</i> • <i>“Patron splitting cash to other patron’s to ensure it is less than \$ 10,000.”</i> • <i>“Way patron was buyin in and small gambling. Notified surveillance.”</i> • <i>“Buy in without identification. UAR.”</i> • <i>“Punter has come in with large sum of chips and wanting a cheque but with not much ratings.”</i> • <i>“Had to people buying 5,000 each on a 25 dollar bj. Took money from the same hand-bag reported bosses said it wasn’t an issue as they were two different people even though they took the money from the same hand bag.”</i> • <i>“Patron asking how much cash can they bring in and whether there will be any reports.”</i> • <i>“Player reduced the buy-in to not be reported form 5K to 4K. A UTR was completed.”</i>

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Training	<p>Q6: When did Crown most recently provide you with formal AML/CTF training? <i>[This year; earlier than 2019; in 2020; in 2019, I can't remember any such training]</i></p> <p>Q7: What was the format of the AML/CTF training most recently provided to you? <i>[E learning including a test that I passed; E-learning with no test; Face to face training less than 2 hours; Face to face training more than 2 hours but less than full day; N/A; Other]</i></p> <p>Q8: If your most recent AML/CTF training was in the form of e-learning, approximately how long did it take to complete? <i>[30 minutes; 15 minutes; 1 hour; more than 1 hour]</i></p> <p>Q9: How would you rate the quality and quantity of the AML training provided to you by Crown? <i>[Good; average; excellent; poor]</i></p> <p>Q10: Crown keeps me up-to-date with changes in money laundering laws, typologies, indications of these typologies and changes in Crown's policies and practises to the extent necessary for me to do my job. <i>[Agree; Strongly agree; Neither agree nor disagree; Disagree; Strongly disagree]</i></p>	<ul style="list-style-type: none"> • 56% of survey respondents indicated that they have received AML/CTF training this year (2021) and a further 14 % in 2020. • 22% said they had not had AML training since earlier than 2019 including 23% of cage and count respondents, 24% of gaming machine respondents and 26% of table games respondents. • 26% reported face to face training and 64% e-learning. Higher face to face learning was reported by: <ul style="list-style-type: none"> o Cage & count and surveillance 35% o Premium gaming 50%* o Security 57% • e-learning was the dominant training method for table games (74%) and gaming machines (71%). • 45% of respondents rated the quality and quantity of AML training provides as excellent; a further 22% rated it as good; 25% as average and 7% as poor. • 70% of respondents agreed or strongly agreed that Crown keeps them up to date with money laundering information including typologies and changes in Crown's policies. 8% disagreed. • 84% of respondents overall agreed or strongly agreed that they were confident that they could identify indications of money laundering whilst doing their job. Only 2.5% disagreed and the balance neither agreed nor disagreed. By department those who agreed or strongly agreed comprised: 	<ul style="list-style-type: none"> • <i>"I learn on the job, every day, always open to more knowledge, I also attend training provided to other individuals or departments."</i> • <i>"Rather than solely reporting and meeting legal obligations, the training provided over the past 12 months has given me insight into the impact money laundering has on the community, a greater understanding of different methods, obligations of reporting and managing conversations with customers and the function of the AML team as a second line of defence."</i> • <i>Perhaps, operationally like Cage Operations, Gaming Operations, Finance Operations and Compliance Operations should go through more in-depth training on how to spot suspicious matter which requires reporting when they see these occurring on their day to day job requirements.</i> • <i>"Probably the management needs more training, I think me as a person who is working at the bottom had more than enough."</i> • <i>"It does the job. We know the rules, it's those above that don't seem to know them before COVID every year, for a lot of years, crown has ensured we did AML training."</i> • <i>"Funny now we are all rostered to do an hour face to face training, again, reactive, not proactive..."</i>

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Training	<p>Q11: Please use this space to provide comments, if any, on the quality and quantity of the AML training provided by Crown.</p> <p><i>[Agree; Strongly agree; Neither agree nor disagree; Disagree; Strongly disagree]</i></p> <p>Q12: I feel confident that I would be able to identify indications of money laundering or other suspicious behaviour whilst doing my job.</p> <p><i>[Agree; Strongly agree; Neither agree nor disagree; Disagree; Strongly disagree]</i></p>	<ul style="list-style-type: none"> o 88% for table games, gaming machines and security o 85% for cage & count • 100% for surveillance and premium gaming.* 	<ul style="list-style-type: none"> • <i>“Has improved this year when resources were increased in that department, the quantity and quality of training has improved as more industry experts are employed at Crown.”</i> • <i>“An excellent learning program I learned a lot from it. More interaction between Dealers and AML teams to understand behaviours or trends of criminal activities would be valuable to reduce the risk of letting it pass through.”</i> • <i>“...I think this has gone a little too far but the awareness has been heightened and you see transactions differently to before.”</i> • <i>“We did so much on-line training but no criminals left to practice on.”</i>
Capability	<p>Q13: I am confident that I know how to report money laundering or other suspicious behaviour that I may notice at Perth Casino.</p> <p><i>[Agree; Strongly agree; Neither agree nor disagree; Disagree; Strongly disagree]</i></p> <p>Q14: I feel well-equipped with the knowledge I need to effectively identify potential indicators of money laundering or related suspicious behaviour during the course of my work.</p> <p><i>[Agree; Strongly agree; Neither agree nor disagree; Disagree; Strongly disagree]</i></p>	<ul style="list-style-type: none"> • 63% of respondents agreed that they felt well-equipped with the knowledge needed to effectively identify potential indicators of money laundering or related suspicious behaviour. • 90% of respondents agreed or strongly agreed that they know how to report money laundering or suspicious behaviour. • 31% of respondents disagreed that they were aware of and know how to use the AML portal to create a UAR. By key OTF departments this includes: <ul style="list-style-type: none"> o 16% cage and count o 33% gaming machines o 36% table games. 	<ul style="list-style-type: none"> • <i>“I have made multiple reports over the years I have worked at Crown. This year they were taken seriously, previous years I felt they were dismissed”</i> • <i>“I may have the knowledge but I lack confidence in the processes and intentions of management to act on concerns”</i> • <i>“I am at times quite observant and I don’t think it’s necessarily the training that assist. I have a few times seen stuff that seems suspicious, reported it and nothing really has happened”.</i>

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Capability	<p>Q15: I am aware of and know how to use the AML Portal to create a UAR.</p> <p><i>[Agree; Strongly agree; Neither agree nor disagree; Disagree; Strongly disagree]</i></p>	<ul style="list-style-type: none"> 69% of respondents agreed or strongly agreed that OTF staff are well trained and diligent when it comes to identifying and reporting money laundering indicators or suspicious behaviour. 79% of respondents believe that if they make a report in relation to potential money laundering, appropriate action will be taken. 	<ul style="list-style-type: none"> <i>"Basic identifiers are relayed but are usually not acted on due to more importance on playing the games quickly to make more revenue."</i> <i>"There has been a big drive given recent events to identify and report anything suspicious."</i> <i>"I believe I have the knowledge and experience to identify suspicious behaviours within my workplace regardless with regard to but not limited to AML."</i> <i>"In my role I have received a substantial amount of training and have expectations that I can identify potential indicators of money laundering. I have access to subject matter experts and managers to assist me with any queries I may have, if I have any doubts or suspicions I feel comfortable raising these. This comes from experience and not through training."</i>
Employee integrity and vulnerability	<p>Q22: Based on my own experience and my views of the people I work with, I believe employees are adequately screened prior to commencing work at Crown Perth.</p> <p><i>[Yes; No; Unsure]</i></p> <p>Q23: I am comfortable that the risk of corruption of Crown Perth employees is low.</p> <p><i>[Agree; Strongly Agree; Neither agree nor disagree; Disagree; Strongly Disagree]</i></p>	<ul style="list-style-type: none"> on their own experience and their views on the people they work with, they believe that employees are adequately screened before commencing work at Perth Casino, 10.5% said no. the negative responses were highest in cage & count, table games and security. Whilst 63% of respondents agreed that they were comfortable that the risk on corruption of Perth Casino employees was low, 12% were not and 15% responded that they had at some time suspected that an employee was. 	<ul style="list-style-type: none"> <i>"Not pressure but I have brought up suspicious stuff and it gets dismissed but at the same time I have never done the high rollers or salons and I feel there would be different."</i> <i>"The opposite, employees are vigilant in reporting."</i> <i>"Never asked."</i> <i>"I have reported suspicious activity before and know it was immediately followed up."</i>

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<p>Employee integrity and vulnerability</p>	<p>Q24: Have you ever suspected that a Crown employee was corrupt or was supporting cheating or was involved in financial crime related activities? <i>[Yes; No]</i></p> <p>Q25: You selected "Yes" (Q23), did you: a) Ignore it b) Report it and believe your report was acted upon c) Report it but believe nothing happened</p> <p>Q41: Have you been approached by someone who has offered you something or threatened you in order to induce you to 'bend the rules' in your work? <i>[Never; Yes – 2019 or before; Yes - 2021, yes 2019 or before; Yes – 2021; Yes – 2021 and 2020]</i></p> <p>Q42: Do you feel equipped to recognise and rebuff such approaches? <i>[Yes – it is art of my training from Crown; Yes – I have learnt this from colleagues; Not sure but I don't think its much of a risk; No and I do feel a bit vulnerable]</i></p> <p>Q43: If you found yourself getting unwanted attention from people who would seek to use you to facilitate money laundering or other financial crime, what would you do? <i>[Advise my supervisor and be confident that I...; It's never happened to me or anyone I know; Other; Keep it to myself and hope it stops; Do what they say because I don't want trouble]</i></p>	<ul style="list-style-type: none"> • corrupt or was supporting cheating or was involved in financial crime activities This was more strongly reported in table games (22%) and was lowly reported in cage and count (4%) • When asked whether, based Of those who reported that they had suspected an employee 37% did nothing about it, 35% reported it and believed the report was acted on and 28% reported it but believed there was no action taken. • 75% of respondents indicated that they had never experienced pressure by Crown employees to overlook or not report experienced potentially suspicious behaviour which may indicate money laundering or other financial crime. 25% responded that they had experienced this: 12% rarely, 10% sometimes and 2 % often. • 87% of survey respondents either agree or strongly agree that being vigilant and identifying suspicious behaviour is an important part of their jobs. • 69% of survey respondents either agree or strongly agree that on-the-floor employees are well trained and diligent in identifying and reporting suspicious behaviour. 	<ul style="list-style-type: none"> • <i>"Never has it been said "Oh, don't worry about it"."</i> • <i>"We have always been encouraged to report, report, report."</i> • <i>"I'd be shocked if this [pressure not to report] happened and would call it out."</i> • <i>"Always encouraged to present reasons for suspicion and then report."</i> • <i>"On occasion I have been treated as a nuisance when reporting what I consider to be unusual activity or behaviour. The reporting is treated as onerous to some of my supervisors."</i> • <i>"When supervisors don't see it they often just dismiss it."</i> • <i>"Been told that there was nothing suspicious with a patron even though she was clearly bill stuffing."</i> • <i>"Not for money laundering or financial crime, but yes to unacceptable behaviour from a certain tier/ level of patron."</i> • <i>"In private gaming salons, I had raised concerns with multiple managers who would always say we can't prove that's what they are doing."</i>

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Employee integrity and vulnerability		<ul style="list-style-type: none"> • 93% of respondents indicated that they had never been offered something, or threatened in order to be bend the rules a handful of respondents said this had occurred in 2020/21; 5% of respondents said they did not feel equipped to deal with such situations and felt a bit vulnerable. • When asked what they would do if they were put under such pressure, less than 2% said they would go along with it to avoid trouble or would keep it to themselves. 	<ul style="list-style-type: none"> • <i>“Crown Perth has trained employees’ religiously about money laundering year after year and just like H&S risks, the AML/CTF risks are considered in every conversation related to Gaming process, systems and customer service.”</i>
Culture	<p>Q26: Crown staff are encouraged to report any unusual or suspicious behaviour or transactions which may indicate money laundering.</p> <p><i>[Agree; Strongly Agree; Neither agree nor disagree; Disagree; Strongly Disagree]</i></p> <p>Q28: I have noticed an increased emphasis on the identification and reporting of AML activity at Crown over the last 6-12 months (Select ‘not applicable’ if you are not in a position to respond).</p> <p><i>[Agree; Strongly Agree; Neither agree nor disagree; Disagree; Strongly Disagree]</i></p> <p>Q29: In my opinion, the On the Floor (OTF) staff are currently well trained and diligent when it comes to identifying and reporting indicators of money laundering or suspicious behaviour.</p> <p><i>[Agree; Strongly Agree; Neither agree nor disagree; Disagree; Strongly Disagree]</i></p>	<ul style="list-style-type: none"> • 27% of respondents reported that they had observed staff acting or being directed to act on a way that is contrary to AML policies and procedures; 14% rarely; 11% sometimes and 2% often. <ul style="list-style-type: none"> o 69% reported they had never seen this o 14% said they were unsure of the policies and therefore unsure whether directions were against policy • Views were split as to whether VIP customers were treated the same of non-VIP when it comes to how their behaviours are observed and reported. <ul style="list-style-type: none"> o 34% of survey respondents agreed or strongly agreed that VIP customers are treated the same as non-VIP customers. o 40% disagreed. • 40% of survey respondents indicated they are disagreed or strongly disagreed that VIP customers are treated the same as non-VIP customers. 	<ul style="list-style-type: none"> • <i>“In the past, this may have occurred, however not under the current culture and administration.”</i> • <i>“When it was identified a gaming employee directed people under their supervision to breach AML policy, their employment was terminated and other employees received disciplinary action.”</i> • <i>“I have never seen this occur, all employees are instructed to follow AML legislation and procedures without fail.”</i> • <i>“This has never happened, we take our job seriously.”</i> • <i>“I believe issues have been reported, though the outcomes of these situations are never disclosed. It’s one thing to say its privacy or whatever, but it doesn’t I still any confidence in the reporting process.”</i>

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<p>Culture</p>	<p>Q30: Being vigilant and identifying and reporting suspicious behaviour is an important part of my job.</p> <p><i>[Agree; Strongly Agree; Neither agree nor disagree; Disagree; Strongly Disagree]</i></p> <p>Q33: VIP customers are treated just the same as the non-NIP customers when it comes to how their behaviours are observed and reported at the Casino.</p> <p><i>[Agree; Strongly Agree; Neither agree nor disagree; Disagree; Strongly Disagree; Unsure]</i></p> <p>Q34: I have observed staff acting or being directed to act in a way that is contrary to Crown’s AML policies and procedures. You may provide a comment with your answer.</p> <p><i>[Never; Rarely; Sometimes; I am not sure of policies and procedures; Often]</i></p> <p>Q38: If the suspicious activity or behaviour was not reported in accordance with Crown policy, please describe the incident and why it was not reported.</p> <p>Q40: What 2 or 3 words you would use to describe Crown’s commitment to deterring and detecting money laundering?</p>	<ul style="list-style-type: none"> 49% strongly agreed and a further 44% agreed that Crown staff are encouraged to report any unusual or suspicious behaviour or transactions which may indicate money laundering. 	<ul style="list-style-type: none"> <i>“VIP players are treated very differently due to the revenue they bring in. At times it has been a revolving door of observe/report with no action from those that have the power to do so.”</i> <i>“The bigger the player the greater the privileges given.”</i> <i>“Has improved this year but previously they were treated differently.”</i> <i>“There have been no VIP customers at crown for a long time but they were certainly treated differently.”</i> <i>“VIP customers, with known critical risks, have been allowed to remain customers until very recently. There is a lot of kneejerk reactions happening at the moment. I would need to see the attitude that the company in the future to be convinced otherwise.”</i> <i>“It has started to change however it was previously very hard to report RSG concerns and the culture created during that time is hard to get out of now it exists.”</i>

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Reporting and policies	<p>Q16: How often have you reported unusual activity through the AML Portal in the last month?</p> <p><i>[Not at all; Once or twice; Less than once per week; 1 to 5 times per week; At least once per shift (average)]</i></p> <p>Q17: Are you aware of the Significant Cash Transaction Policy, under which players who trigger a daily cash threshold of \$25,000 must complete a declaration identifying their source of funds?</p> <p><i>[Yes; No]</i></p> <p>Q18: The Significant Cash Transaction Policy, under which players who trigger a daily cash threshold of \$25,000 must complete a declaration identifying their source of funds, has:</p> <ol style="list-style-type: none"> been effective overall at reducing the risk of ML despite some drawbacks become standard procedure now and there is not much complaint anymore been difficult to implement – plays gets annoyed cost the casino turnover – players walk away rather than complying. <p>Q19: think the daily cash threshold of \$25,000 in the Significant Cash Transaction Policy to trigger completion of a form, is:</p> <ol style="list-style-type: none"> Set appropriately Effective against organised crime, but not ag... Too high to make a big impact on money laundering. 	<ul style="list-style-type: none"> • 29% of cage and count respondents indicated that they were not aware of the daily cash threshold trigger which requires a source of funds form to be completed. • UAR reports made by respondents in the last month were: <ul style="list-style-type: none"> o Zero (79%) o 1-5 times per week (35)-table games and cage & count reported this frequency o Less than once a week (6%) o Once or twice (12%) • 46% of respondents though the daily cash threshold of \$25,000 was set appropriately • 28% thought it would be effective against organised crime but not at lower value activity • 79% of survey respondents indicated they either agree or strongly agree that if they report suspicious behaviour will be acted upon and an investigation will occur. • 46% of respondents noted that they have witnessed suspicious behaviour which may have been indicative of money laundering in the past 3 months. • 77% of the survey respondents who have witnessed suspicious behaviour indicate that they did report this behaviour. 	

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<p>Reporting and policies</p>	<p>d) Too low and results in an unnecessary loss of income</p> <p>Q27: If I report unusual or suspicious behaviour in relation to potential money laundering I believe appropriate action will be taken to investigate my report.</p> <p><i>[Agree; Strongly Agree; Neither agree nor disagree; Disagree; Strongly Disagree]</i></p> <p>Q37: If you have witnessed behaviour that was suspicious and may have been indicative of money laundering at Crown Perth in the last 3 months. Did you report the behaviour?</p> <p><i>[Yes; No]</i></p>		
<p>Improvements</p>	<p>Q20: Would you support a requirement that all play is to be carded play (i.e. using a Crown Rewards card)?</p> <p><i>[Yes; No; Unsure]</i></p> <p>Q21 If no, why would you not support compulsory carded play?</p> <p>Q44: Do you have observations regarding the approach Crown takes to money laundering risks at Crown Perth or about how this changed over time?</p> <p>Q45: What more do you think Crown could do to improve the deterrence, detection and reporting of money laundering or other financial crime?</p>	<ul style="list-style-type: none"> • 65% of survey respondents indicated that they would support the requirement that all play is carded play. • The general consensus amongst respondents who answered that they do not believe all players should be carded is: <ul style="list-style-type: none"> o Individuals are entitled to a level of privacy o Not all players are conducting illegal activities o This would drive away business, especially casual players o If all players were carded Crown may exploit this via marketing o This would create a lot more work for Crown staff. • To improve Crown’s capabilities in deterring, detecting and reporting 	<ul style="list-style-type: none"> • <i>“ID/card all players.”</i> • <i>Players must use an ID card with photo.</i> • <i>In person training.</i> • <i>More direct specific training to key risk areas in Cage, Finance, Gaming, IT to spot direct examples of money laundering.</i> • <i>“Invest in evidence based strategies and research to develop AML processes.”</i> • <i>“Implement crown rewards card compulsory to play that way we can track how much each individual is spending.”</i> • <i>“Make all customers a ‘member’ and require that the membership card be used every single time that any type of transaction takes place - Hotel, Restaurant, Gaming etc.”</i>

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Improvements		<ul style="list-style-type: none"> • money laundering and other financial crime respondents highlighted the following themes: <ul style="list-style-type: none"> ○ Mandatory identification requirements ○ Implement cashless gaming ○ More face-to-face specific staff training on financial crime and money laundering ○ Member only casino ○ All gaming activity must be carded play • When asked to provide observations regarding Crowns approach to money laundering risks and how this has changed over time the following themes were noted in respondents answers: <ul style="list-style-type: none"> ○ Improving and maturing over time, especially over the last year ○ Changes have been made since the Bergin Inquiry and since junket operations ceased ○ AML is now a top priority at Crown ○ Crown previously prioritised reporting, this focus is shifting to and more responsibility and questions are asked by Crown 	<ul style="list-style-type: none"> • <i>"Introduce cashless play where funds are transferred electronically from a persona! account and require all players to use a card."</i> • <i>"Crown Perth is doing more than it needs to. Crown actions are destroying patronage and therefore tax revenue for the state."</i> • <i>"Make everyone use a crown rewards cards on entering the property and have carded areas for the entire complex."</i> • <i>"Re-establishing a government inspector on site 24hrs a day 7 days a week."</i> • <i>"Crown is already committed and going forward will spare no expense to train and ensure all staff prevent all forms of money laundering."</i> • <i>"Become more apparent in the last 13 months."</i> • <i>"Better with time."</i> • <i>"Crown stepped up its AML policies just before the results of the Sydney Commission was released in 2020."</i> • <i>"Crowns dedication to stopping money laundering has increased 10 fold over the past 2 years. I would say the lack of Federal Police presence is more concerning, with all the allegations of money, where are the people that are actually meant to investigate the crimes?"</i>

Theme	Questions	PCRC AML experts findings and observations	Comments from employee (verbatim)
<p>Improvements</p>			<ul style="list-style-type: none"> • <i>“Things have only changed since the investigations started and the international junkets stopped coming. Previously, groups would come for months to years to gamble when it was obvious they were only interested in turning over.”</i> • <i>“Since the inquiry and Royal commissions things have become tighter and more serious.”</i> • <i>“Money laundering was facilitated in the private gaming rooms, staff knew about these situations and often mentioned them to Pit bosses most have now been given redundancies. On the main gaming floor the practice it was practised as well however since the inquiry things have become more controlled not sure how long it will last.”</i> • <i>“Crown has previously been focused on complying with reporting obligations, recently Crown taken on more of a responsibility to ask where money has come from and refuse transactions if these questions cannot be satisfied.”</i> • <i>“Awareness and training has definitely increased.”</i>

Theme	Questions	PCRC AML experts findings and observations	Comments from employee (verbatim)
<p>Other comments</p>	<p>Q46: Please outline any other matters that you feel would be important or valuable to share with the Commission in relation to money laundering or financial crime at Crown Perth.</p> <p>Q47: Please provide 2 or 3 words you would use to describe what it is like to work at Crown Perth at this time.</p>	<ul style="list-style-type: none"> • Respondents were asked to outline any other matters they believed would be valuable or important to share with the Commission in relation to money laundering at Perth Casino. The below are common themes that were noted amongst responses: <ul style="list-style-type: none"> ○ It is unlikely money laundering can be completely eliminated from a casino ○ The commission should focus more on the actions of management ○ Crown is has learnt from its past mistakes and is changing for the better ○ There should be more co-operation with the regulator and heavier inspector presence within the casino ○ Front line operators do the right thing, management has let the staff down ○ Cashless gaming should be implemented • Respondents were also asked to comment on how they would describe what is like to work at Perth Casino at this time. The most common themes are provided below: <ul style="list-style-type: none"> ○ Stressful ○ Toxic ○ Concerned about job security ○ Experiencing low morale amongst the front-line staff ○ Challenging ○ Atmosphere of high pressure 	<ul style="list-style-type: none"> • <i>Not all cash is handed over at the cage. Some is done in the private rooms but due to our confidentiality contracts we can't talk about that."</i> • <i>"Crown can have the best AML policies and practices in place and abide to them but it is still not a catch-all solution if a patron chooses to lie and cheat. Insisting on carded play will deter most suspicious activity and allow tracking and investigation."</i> • <i>"You need to be a bit harder on them when under oath.. I have witnessed several tell blatant lies... so why bother, I seriously hope some of these managers get what's coming."</i> • <i>"Alluding to the previous answer – solving Crown's IT problems will solve 95% of its compliance problems overnight (no doubt this would take 3 years and probably at least \$100m to accomplish)."</i> • <i>"Casino are notorious for money laundering it's not just crown every other casino the same thing is happening."</i> • <i>"Crown has had a big wake call and SEEM to be moving forward I would have even thought."</i> • <i>"Upper management are generally the only ones privy to the full picture, lower level staff rarely can see much more than their area."</i> • <i>"Crown cares solely about its profits, it</i>

Theme	Questions	PCRC AML experts findings and observations	Comments from employee (verbatim)
		<ul style="list-style-type: none"> o Embarrassing o Enjoyable o Disappointed 	<ul style="list-style-type: none"> • <i>cares little for the patrons and where they got their money previously, if you want an example at how now proving their earnings has effected Crown look at how many patrons were not willing to divulge where they got their money from."</i> • <i>"Too late"</i> • <i>"The stuff we saw in the salons would freak the royal commission and what we saw - put us on the stand."</i>

APPENDIX P

Public Call for Information¹



Perth Casino
Royal Commission

PERTH CASINO ROYAL COMMISSION - REQUEST FOR INFORMATION

The Perth Casino Royal Commission encourages contact from any person who wishes to provide information about improper conduct related to gambling and associated activities at the Crown Casino Perth.

The Commission would like to hear from stakeholders, including:

- patrons and their families;
- current and former Crown Casino Perth employees; and
- current and former Government employees.

The Commission is required to inquire into, report and make any recommendations related to:

- Crown's suitability to hold a casino gaming licence in Western Australia; and
- the appropriateness of the regulatory framework.

Media reports have identified areas of risk to casino operations and the broader community. These include allegations of money laundering, infiltration by criminals, problem gambling and gratuitous rewards programs.

If you have information about these allegations, or any improper practices related to gambling at Crown Casino Perth, we would like to hear from you. Your identity can be kept confidential.

Information should be provided no later than Monday, 2 August 2021.
Please provide a contact email or telephone number.

Contact: Email: contact@pcrc.wa.gov.au or 08 6266 1500

3160

¹ As published in the West Australian on 10 July 2021.

APPENDIX Q

List of Public Submissions

Submission number	Author
Submission 01	Scott McDowell
Submission 02	Crispin Rovere
Submission 03	Jafar Shaban
Submission 04	Michael Rose
Submission 05	Jafar Shaban
Submission 06	Prof. Charles Livingstone
Submission 07	Joe Maroun Karam
Submission 08	Anonymous
Submission 09	Vanessa Grant
Submission 10	Anonymous
Submission 11	Anonymous
Submission 12	Anonymous
Submission 13	Anonymous
Submission 14	Anonymous
Submission 15	United Workers Union
Submission 16	Anonymous
Submission 17	Anonymous
Submission 18	Ray Weir
Submission 19	Vanessa Grant
Submission 20	Vanessa Grant
Submission 21	Anonymous
Submission 22	John Brennan
Submission 23	Joe Maroun Karam
Submission 24	Lennon Matthews-Rowell
Submission 25	Dr Elise Bant
Submission 26	Thomas Dudley
Submission 27	Anthony Pool
Submission 28	John Mascarenhas
Submission 29	Anonymous
Submission 30	Chris Kelly

Submission number	Author
Submission 31	Andrew Harris
Submission 32	Prof. Mike Daube
Submission 33	Steven Tran
Submission 34	Anonymous
Submission 35	Cancer Council
Submission 36	John Brennan
Submission 37	Anonymous
Submission 38	John Mascarenhas
Submission 39	Steven Tran
Submission 40	John Brennan
Submission 41	Graham Riley
Submission 42	Russell Burnett
Submission 43	Anonymous
Submission 44	Anonymous
Submission 45	Anonymous
Submission 46	Clinton Floate
Submission 47	Anonymous
Submission 48	Anonymous
Submission 49	Ian Russell-Brown
Submission 50	Robert Bovell
Submission 51	Ian Russell-Brown
Submission 52	Anonymous
Submission 53	United Workers Union
Submission 54	John Burghardt
Submission 55	Anonymous
Submission 56	Anonymous
Submission 57	Reginald Fernandes
Submission 58	Anonymous
Submission 59	Anonymous
Submission 60	Judith Donnachie
Submission 61	David Tse
Submission 62	Linda Woodroffe
Submission 63	Ehsan Ghasempour
Submission 64	Anonymous
Submission 65	Greg Haig

Submission number	Author
Submission 66	Anonymous
Submission 67	Anonymous
Submission 68	Anonymous
Submission 69	Anonymous
Submission 70	Peter Bartolomei
Submission 71	David Tse
Submission 72	Anonymous
Submission 73	Anonymous
Submission 74	Australian Gambling Alliance
Submission 75	David Tse
Submission 76	Anonymous
Submission 77	Anonymous
Submission 78	Steph Ryan
Submission 79	Julie Hynes
Submission 80	Centrecare
Submission 81	Anglicare
Submission 82	Financial Counselling Australia
Submission 83	Anglicare WA
Submission 84	Anonymous
Submission 85	Anna Tanahu
Submission 86	Filomena Lino
Submission 87	Filomena Lino
Submission 88	Julie Hynes
Submission 89	William Davis
Submission 90	Suzanne Becker
Submission 91	Anonymous
Submission 92	Anonymous
Submission 93	Tim Bryer
Submission 94	Anonymous
Submission 95	Trevor Callaway and Associates Pty Ltd
Submission 96	Elise Bant
Submission 97	United Workers Union
Submission 98	Arie Freiberg
Submission 99	Australian Gambling Alliance
Submission 100	Charles Livingstone

Submission number	Author
Submission 101	Mike Daube
Submission 102	Graham Riley
Submission 103	Elise Bant
Submission 104	Trevor Callaway and Associates Pty Ltd

APPENDIX R

List of Discussion Papers and Responses

Discussion Paper	Date published	Responses
Discussion Paper on the Regulation of Poker Machines and EGM	24 December 2021	Dr Elise Bant ¹ Trevor Callaway & Associates ² Crown ³
Discussion Paper on the Regulatory Framework	12 November 2021	Dr Elise Bant ⁴ United Workers Union ⁵ GWC ⁶ Michael Connolly ⁷ Crown ⁸ Department ⁹ Alliance for Gambling Reform ¹⁰ Prof. Charles Livingstone ¹¹ Prof. Mike Daube ¹²
Discussion Paper on Suitability	23 December 2021	CPH Crown ¹³ Crown ¹⁴ Department ¹⁵
Discussion Paper on Governance Structure and History	23 December 2021	Crown ¹⁶

1 Bant, Submission to PCRC (10 January 2022) [PCRC.0012.0002.0245].

2 Trevor Callaway & Associates, Submission to PCRC (24 December 2021) [PCRC.0012.0004.0001].

3 Letter from Allens to Solicitors Assisting (27 January 2022) [CRW.701.011.9225_R].

4 Bant, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0052].

5 United Workers Union, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0045].

6 Letter from Quinn Emanuel to Solicitors Assisting (29 November 2021) [PCRC.0012.0002.0001_R].

7 Letter from Pragma Lawyers to Solicitors Assisting (29 November 2021) [PCRC.0012.0002.0031_R].

8 Freiberg, Submission to PCRC (November 2021) [PCRC.0012.0002.0025].

9 Letter from Allens to Solicitors Assisting (2 December 2021) [PCRC.0027.0001.0095_R].

10 Department, Submission to PCRC (6 December 2021) [PCRC.0012.0002.0061].

11 Livingstone, Submission to PCRC (December 2021) [PCRC.0012.0002.0098].

12 Daube, Submission to PCRC (24 December 2021) [PCRC.0012.0002.0108].

13 CPH, Submission to PCRC (20 January 2022) [PCRC.0036.0008.0001].

14 Crown, Submission to PCRC (20 January 2022) [CRW.000.001.0001_R].

15 Department, Submission to PCRC (20 January 2022) [DLG.0022.0001.0017].

16 Letter to Allens to Solicitors Assisting (27 January 2022) [CRW.701.011.9232_R].

APPENDIX S

Summary of Responses to Regulatory Models

- 1 On 12 November 2021, the PCRC issued a Discussion Paper on the Regulatory Framework which posited four alternative models for the composition and structure of the casino regulator, and asked interested parties and the public for submissions as to the merit of those models. The PCRC received responsive submissions from ten interested members of the public, including respected experts on regulatory theory and practice.

Responsive submissions: Model One

- 2 Model One was one of the GWC's preferred regulatory models. It stated that depending on the proposed alterations, Model One could take many forms. The GWC's preference as to the structure of Model One would be for the Department to be separate from the GWC, and the relationship governed by a service level agreement.¹
- 3 In support of Model One, GWC submitted that in future, administrative and investigative staff and additional support will be provided by the Department under formalised service agreements, with performance standards and associated costings.² Historically, the services provided to the GWC by the Department were not governed by a service level agreement.
- 4 The GWC submitted that funding should be administered separately to the Department, but that the Department remain responsible for the preparation and submission of budgets and accounts.³
- 5 The Department did not indicate an overall preference for any of the regulatory Models.
- 6 It did, however, submit that the removal of the Director General of the Department as Chair of the GWC would improve the current model.⁴
- 7 Further, the Department submitted that full-time engagement of the CCO on GWC matters, whilst not holding another role within the Department, is problematic. The Department reasoned, in effect, that because the CCO was established specifically under the CC Act, engagement of the CCO on GWC matters more broadly did not appear to be consistent with the intended purpose of the role in the CC Act. The Department suggested an alternative arrangement where the role of the CCO is abolished and a new Gaming and Wagering Chief Officer role is established to provide operational oversight of GWC regulatory functions.
- 8 The Department did not consider that the introduction of an additional oversight function, similar to the Parliamentary Inspector, would be of value. It stated that the GWC is bound by public sector legislation and core public sector rules including as to equal employment, misconduct and disclosures. The inference from its response is that those checks are adequate.⁵
- 9 In relation to maintaining the current regulatory framework, Dr Arie Freiberg (**Freiberg**) stated that good legislation alone does not itself, guarantee good regulation, and the best drafted laws will fail to achieve their objectives, whatever they be, if those charged with their administration, and those subject to those laws, fail to adequately enforce it or respect either the spirit or letter of the laws. He went on to observe that most legislation relating to casinos and gaming contain extensive powers to regulate activities, to enforce the law and impose sanction, either administrative, civil or criminal.⁶

Responsive submissions: Model Two

- 10** Model Two was the GWC's overall preferred Model. It contended for a simplified and consolidated legislative instrument covering all aspects of gaming and wagering activities in Western Australia.
- 11** The Department saw merit in the following aspects of Model Two:
- a. the suggestion that the regulatory framework for the casino would benefit from the consolidation of powers into a single instrument;⁷
 - b. the introduction of a clear purpose, objects and principles in the legislation;⁸
 - c. the chairperson having regulatory and legal experience;⁹ and
 - d. cost recovery from regulated entities when providing regulatory services.¹⁰
- 12** The Department questioned the merit in the formation of an independent statutory body in Western Australia, citing comparatively small gaming and wagering sector.
- 13** The Department disagreed with the proposal in Model Two that the functions of the regulator be prescriptively legislated, but supported a model where the regulator is able to identify and regulate emerging risks which may arise in future.¹¹
- 14** Alliance for Gambling Reform (**AGR**) submitted that it is critical for the regulator to have complete independence from the gambling industry. AGR suggested that there should be time limits in place to restrict people moving jobs from the gambling industry to the statutory body, and vice versa.¹²
- 15** Emeritus Professor Mike Daube (**Daube**) recommended the establishment of a strong, independent and adequately resourced regulator to oversee the Casino and other gambling activities. He submitted that this should be delivered through a discrete government agency, not part of or linked to any other government department, and overseen by an independent board.¹³ This submission appears to disavow Model Four and accord with Models 2 and 3.
- 16** Daube also saw merit in the appointment of a retired judge or senior legal figure to oversee the board.¹⁴

Responsive submissions: Model Three

- 17** Neither Crown, nor the GWC, nor the Department were in favour of Model Three.
- 18** The submissions from those parties, in effect, argued that the circumstances of the Western Australian jurisdiction – of a single casino operator, with no EGM use outside of casinos – did not justify a stand-alone regulator.¹⁵ A stand-alone regulator, in the Western Australian context, would duplicate resources and increase costs.
- 19** The Department submitted that a stand-alone regulator would not address the issues raised before the PCRC in relation to governance, culture and regulatory risk management.
- 20** The Department also submitted that a stand-alone regulator under Model Three would not be able to benefit from leveraging broader contemporary public sector regulatory practice.¹⁶
- 21** The Department noted the current collaborative public sector initiative to reduce the number of stand-alone boards and government entities for the purpose of efficient administration entitled 'Streamline WA'.
- 22** By contrast, Model Three was supported by each of Professor Charles Livingstone (**Livingstone**), Daube, Freiberg and the United Workers Union (**UWU**).
- 23** The UWU submitted that Model Three should be implemented and modelled on WorkSafe.

- 24** Freiberg considered that Model Three was best capable of meeting the requirements that the regulatory model be independent, well-resourced and adequately empowered.
- 25** Daube proposed an independent model (not linked to another government department) with the following attributes;
- a. a senior health representative on the GWC;
 - b. at least one member of the regulator have lived experience of gambling and gambling harms;
 - c. possible regulator oversight of 'educational and other (harm) prevention and support services' or an independent body be established within government with no casino or gaming affiliations to oversee such services; and
 - d. measures be taken by the regulator to 'preclude any industry involvement in policy development or regulatory processes'.
- 26** Livingstone submitted that Model Three appeared to be the best model to meet the criteria of an effective, adequately empowered, well-resourced and independent regulator – characteristics which he sees as integral to instilling public confidence in the regulator.

Responsive submissions: Model Four

- 27** Model Four received no material support from those who responded with the exception of the Department, who pointed to some advantages of the Model without overtly advocating for its adoption.
- 28** The GWC submitted that that the reality of the inevitability of competing priorities within any resource-constrained department principally dependent upon funding by appropriation, is that the garnering of appropriate resources and managing policy and regulatory activities in relation to gambling regulation, is required on a standalone basis.¹⁷
- 29** The Department stated that this model, whereby a public sector department under the direction of a Director General is responsible for the administration of State legislation and supporting regulatory frameworks, is currently the most common regulatory delivery model across the Western Australian public sector.¹⁸
- 30** The Department submitted that the WA public service effectively regulates a range of sectors under this kind of model including the Department of Mines, Industry, Regulation and Safety, the Department of Health and the Department of Transport. The Department stated that progressing this model would enable casino regulation in Western Australia to be informed by broader, more contemporary regulatory practice from different sectors.¹⁹

Endnotes

- 1 GWC, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0001_R] 16.
- 2 GWC, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0001_R] 16.
- 3 GWC, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0001_R] 16.
- 4 Department, Submission to PCRC (6 December 2021), [PCRC.0012.0002.0061] 11 [59].
- 5 Department, Submission to PCRC (6 December 2021), [PCRC.0012.0002.0061] 11 [62].
- 6 Freiberg, Submission to PCRC (13 December 2021) [PCRC.0012.0002.0025] 3.
- 7 Department, Submission to PCRC (6 December 2021), [PCRC.0012.0002.0061] 11 [63].
- 8 Department, Submission to PCRC (6 December 2021), [PCRC.0012.0002.0061] 11 [64].
- 9 Department, Submission to PCRC (6 December 2021), [PCRC.0012.0002.0061] 11 [65].
- 10 Department, Submission to PCRC (6 December 2021), [PCRC.0012.0002.0061] 12 [67].
- 11 Department, Submission to PCRC (6 December 2021) [PCRC.0012.0002.0061] 12 [66].
- 12 Alliance for Gambling Reform, Submission to PCRC (10 December 2021) [PCRC.0012.0002.0089] 3-4.
- 13 Daube, Submission to PCRC (24 December 2021) [PCRC.0012.0002.0108] 4.
- 14 Daube, Submission to PCRC (24 December 2021) [PCRC.0012.0002.0108] 4.
- 15 Department, Submission to PCRC (6 December 2021) [PCRC.0012.0002.0061] 12 [69]; Crown, Submission to PCRC (2 December 2021) [PCRC.0027.0001.0095_R] 2.
- 16 Department, Submission to PCRC (6 December 2021) [PCRC.0012.0002.0061] 12 [70].
- 17 GWC, Submission to PCRC (29 November 2021) [PCRC.0012.0002.0001_R] [63].
- 18 Department, Submission to PCRC (6 December 2021) [PCRC.0012.0002.0061] 12 - 13 [73].
- 19 Department, Submission to PCRC (6 December 2021) [PCRC.0012.0002.0061] 13 [76].

APPENDIX T

Practice Directions

Ten practice directions were issued on various matters of practice and procedure and they are all on the website.

Practice Direction no	Topic	Date
1.	Leave to Appear	13 April 2021
2.	General Information	15 April 2021
3.	Production of documents and document management protocol	19 April 2021
4.	Witness evidence	30 April 2021
5.	Non-publication orders and Production of Documents to the PCRC	1 June 2021
6.	Private Hearings	2 August 2021
7.	Exhibits and documents to be relied upon by the PCRC	8 November 2021
8.	PCRC Programme November 2021 to March 2022	11 November 2021
9.	Closing observations and interested parties' written submissions 17 December 2021	17 December 2021
10.	Oral Closing Submissions	10 January 2022

APPENDIX U

Acknowledgements

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Department of Finance	

Service Providers	
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Redfish Technologies Pty Ltd	Freeway Design Pty Ltd
Franklyn Work Safety	

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