



WESTERN AUSTRALIA

Perth Casino Royal Commission

Discussion Paper on the Regulatory Framework

12 November 2021

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Contents

DISCUSSION PAPER – REGULATORY FRAMEWORK	3
PURPOSE	3
RESPONSE PERIOD	3
PART ONE.....	4
INTRODUCTION: REGULATORY THEORY	4
Principles-based approach	4
Rules-based or prescriptive approach	5
Performance or compliance-based approach	6
Risk-based method of compliance with a regulatory framework	7
Application to casino regulation	8
Rules-based approach: Japan	9
Conclusion	10
PART TWO.....	10
CONTEXT: AN OVERVIEW OF THE CURRENT FRAMEWORK FOR THE REGULATION OF CASINOS IN WESTERN AUSTRALIA	10
The Regulator - Gaming and Wagering Commission Act	10
Casinos - Casino Control Act	11
The State Agreement - Casino (Burswood Island) Agreement Act	11
Consideration: Potential frameworks going forward.....	12
Model 1 – Retain current model, with or without alterations.....	12
Model 2 – GWC with a new legislative framework.....	13
Model 3 – Stand-alone casino regulator	14
Model 4 – Absorb casino regulation into the Department.....	15
Conclusion	15
PART THREE	16
CONSIDERATION OF SPECIFIC TOPICS AND AREAS OF REGULATION	16
Objects and principles clauses	16
Risks	17
Review of the licensee	18
Delegation of powers of the GWC	19
Harm minimisation and the responsible service of gaming within the casino environment.....	21
Inspectors	23
Ministerial powers.....	24
GWC financial systems and resources	26
Junkets	27

Discussion Paper on the Regulatory Framework

Purpose

1. Term of Reference 11 specifically requires the Perth Casino Royal Commission (**PCRC**) to report on any policy, legislative, administrative or structural reforms or changes which might enhance the existing regulatory framework. The purpose of this discussion paper is to explore, at a high level, the changes which might form a recommendation in respect of enhancing the current regulatory framework and seek comment from interested parties and the public in respect of those possible changes.
2. This paper is split into three parts. Part 1 outlines concepts of regulatory theory that might underpin any future recommendations as to enhancement of the regulatory framework. Part 2 explores possible future models of regulating the casino environment in Western Australia. Part 3 examines aspects of regulation in more detail.
3. Before reaching any decisions in respect of Term of Reference 11, the PCRC wishes to provide the interested parties and the public the opportunity to express their views (positive or negative) in respect of the four proposed models set out in Part 2 and the miscellany of aspects of regulation outlined in Part 3.
4. Equally, the PCRC is interested to hear from any person or party as to any other regulatory models.
5. In Part 3, questions are posed which are designed to provoke focused deliberation and elicit targeted submissions from the interested parties and from the public. However, to the extent a party wishes to respond outside the bounds of those questions, the PCRC welcomes any further submissions provided they are within the bounds of Term of Reference 11.

Response period

6. A response to this discussion paper is not mandatory, however the PCRC requires any response to be submitted in writing and it must be received via email by no later than close of business on **Monday, 29 November 2021**. A response should be directed as follows:
 - a. For interested parties with leave to appear: solicitorsassisting@pcrc.wa.gov.au
 - b. Any other person or entity: contact@pcrc.wa.gov.au

Part One

Introduction: Regulatory theory

7. The intention of this part is not to give an exhaustive review of what is a large body of academic work, but instead to set the models posited in Part 2 in their theoretical context.
8. Regulation provides a framework for almost all forms of economic activity. It has been defined as being:

An intentional form of intervention by public sector actors in the economic and social activities of a target population with the aim of achieving a public policy objective or set of objectives. The intervention can be direct and/or indirect, the activities can be economic and/or non-economic and the regulatee may be a public or private sector actor.¹
9. To assist with consideration of the posited models, this paper will broadly outline three theoretical approaches to regulation which could inform which regulatory model is implemented. They are: principles-based regulation; rules-based regulation; and performance or compliance-based regulation. Those theories are informed by relevant economic scholarship which is beyond the scope of this discussion paper.
10. It is within those regulatory frameworks that regulators will deploy regulatory tools such as licences, registration, standards, labelling and inspection.² One such tool is a risks-based method which is also discussed in at the end of Part One.
11. The underlying theory (whether rules-based, principles-based or performance-based) informs the model of regulation, the focus of a regulatory framework and how a regulator deploys its regulatory tools. A regulatory framework can contain elements of more than one model and regulatory tools may be common to more than one model.

Principles-based approach

12. Principles-based regulation involves 'moving away from reliance on detailed prescriptive rules and relying more on high-level, broadly stated rules or principles to set the standards by which regulated entities must conduct business'.³
13. Instead of prescribing rigid rules, a suite of principles conveys the regulatory objectives and promotes the behaviour which will achieve those objectives. This is thought to ameliorate the tendency for businesses to practice 'creative compliance'.⁴ It can also offer flexibility to achieve regulatory outcomes in rapidly changing contexts.

¹ Arie Freiberg, *Regulation in Australia* (The Federation Press, 2017) 2.

² Arie Freiberg, *Regulation in Australia* (The Federation Press, 2017) 467 – 468.

³ Julia Black, 'Principles based regulation: risks, challenges and opportunities, Principles-based Regulation' (presentation, Banco Court, Sydney, 27 March 2007).

⁴ Black J, 'Making a success of Principles-based regulation' (2007) *Law and Financial Markets Review*. May 2007, 193.

14. A principles-based approach is often utilised concurrently with a risks-based approach where the material risks are assessed by reference to overarching principles or objectives. The task of identifying material risks may fall to Parliament, the regulator or the operator.
15. A regulatory system predicated on a principles-based approach may require additional compliance officers or inspectors to ensure the operator is adhering to overarching legislative principles or objects.
16. *The Environmental Protection Act 1986 (WA)* is an example of a principles-based approach, which also incorporates some aspects of a compliance-based approach, in the Western Australian jurisdiction. Section 4A contains a single regulatory objective to protect the environment of Western Westralia. It lists five principles by which that objective is to be met. It is described in more detail in Part 3.

Rules-based or prescriptive approach

17. Rules-based regulation is comparatively rigid. That inflexibility can result in overly detailed rules which inadvertently:
 - a. impose requirements that are not always appropriate for all regulated entities;
 - b. are deficient in that the intention of the rule does not, in practice, always have the desired reach;⁵or
 - c. become obsolete with the passage of time.
18. An advantage of a rules-based approach is that it can provide greater clarity, making it easier for a regulated entity to determine the rules with which it must comply and the standard or level of compliance. This approach results in the regulatory responsibility shifting away from the regulated entity and towards the regulator.
19. However, as observed by Professor Julia Black of the London School of Economics:

...[prescriptive] rules can lead to gaps, inconsistencies, rigidity and are prone to "creative compliance", so the need for constant adjustment to new situations and to the ratchet syndrome, as more rules are created to address new problems or close new gaps, creating more gaps and so on.⁶
20. In circumstances where there is no opportunity for 'creative compliance', detailed rules can assist regulators in their efforts to:
 - a. discourage non-compliant behaviour; and
 - b. persuade recalcitrant or sceptical entities to change their behaviour.⁷
21. An example of the rules-based approach is discussed below (at paragraphs 44 to 46) in the context of the Japanese regulation of casino operators.

⁵ Krackhardt O, 'New Rules for Corporate Governance in the United States and Germany – A Model for New Zealand' (2005) 36 Victoria University of Wellington Law Review 319, 330 - 331.

⁶ Julia Black, 'Principles based regulation: risks, challenges and opportunities, Principles-based Regulation' (presentation, Banco Court, Sydney, 27 March 2007) 7.

⁷ Julia Black, 'Principles based regulation: risks, challenges and opportunities, Principles-based Regulation' (presentation, Banco Court, Sydney, 27 March 2007) 12.

Performance or compliance-based approach

22. A performance-based approach to regulation specifies the desired outcomes or objectives, but not the means by which they must be met.⁸
23. This model emerged in the 1980s in the building industries of the United Kingdom and Japan, and Australia followed suit in the mid-1990s when, after a review by the Australian Building Codes Board, the Australian Building Code was reformed into a performance-based document.⁹
24. Standards imposed in performance-based regulations vary as to their degree of specificity – they can be qualitative or quantitative, and may be proximate or distant to the ultimate regulatory outcome.
25. Generally, outcomes and goals will be outlined in either legislation, regulations or standards or in specified contracts or grants. The degree of the outcome generality will determine the extent to which the performance is quantified and identify the means of monitoring or enforcing it.¹⁰
26. This type of regulation enables operators to choose the most cost-effective means of compliance to achieve the objective or standard, and to vary their approach over time in line with changes to technology.
27. An example of this approach is seen in the *National Construction Code (NCC)*, the most recent version of which was published in 2019. As a performance-based code, this document sets the minimum required standards for the safety, health, amenity, accessibility, and sustainability of certain buildings.¹¹
28. The operator has the ability to choose the method by which those standards are met through either a:
 - a. 'Deemed-To-Satisfy Solution', which follows a set recipe of what, when and how to do something, including materials, components, design-factors, and construction methods; or
 - b. 'Alternative Solution' which is a unique solution for each individual situation and encourages innovation in design and technology use.¹²
29. There are different verification methods deployed depending on which method an operator chooses. If an operator deploys a 'Deemed-To-Satisfy Solution' that complies with the relevant sections, no further independent verification is required by the NCC.¹³ By contrast, if an operator uses an Alternative Solution, that solution must be further assessed using a prescribed assessment method under the NCC.¹⁴

⁸ Arie Freiberg, *Regulation in Australia* (The Federation Press, 2017) 235.

⁹ *Australian Building Code 1996*.

¹⁰ Arie Freiberg, *Regulation in Australia* (The Federation Press, 2017) 236.

¹¹ *National Construction Code 2019*, Building Code of Australia, Volume One, Amdt No. 1, 9; for minimum standards see Section Two.

¹² *National Construction Code 2019*, Building Code of Australia, Volume One, Amdt No. 1, cl 1.0.5.

¹³ *National Construction Code 2019*, Building Code of Australia, Volume One, Amdt No. 1, cl 1.0.7.

¹⁴ *National Construction Code 2019*, Building Code of Australia, Volume One, Amdt No. 1, cl 1.0.8.

30. An example of a compliance-based approach in the Western Australian jurisdiction can be found in the *Occupational Safety and Health Act 1984* (WA). Section 5 outlines the objects of the Act as follows:
- a. to promote and secure the safety and health of persons at work;
 - b. to protect persons at work against hazards;
 - c. to assist in securing safe and hygienic work environments;
 - d. to reduce, eliminate and control the hazards to which persons are exposed at work;
 - e. to foster cooperation and consultation between and to provide for the participation of employers and employees and associations representing employers and employees in the formulation and implementation of safety and health standards to current levels of technical knowledge and development;
 - f. to provide for formulation of policies and for the coordination of the administration of laws relation to occupational safety and health; and
 - g. to promote education and community awareness on matters relation to occupational safety and health.
31. It is the duty of the Commission for Occupational Safety and Health to work for the attainment of the objects.¹⁵

Risk-based method of compliance with a regulatory framework

32. Risk-based methods are used by modern regulators in a range of sectors from fishing to aged care. It is one of the key tools employed by regulators to achieve regulatory outcomes, whether they be underpinned by rules, objectives, principles or a combination of all three.
33. At a high level, this regulatory method involves identifying material risks and developing risk management plans. The method is usually implemented in one of two ways:
- a. the regulator determines the material risks the operator needs to manage and develops and mandates plans to mitigate the risks; or
 - b. the regulatee determines the material risks and develops its own plans to mitigate the risks which are then submitted to the regulator for approval.

The regulator then focuses its supervision on auditing the plans and their implementation to identify gaps and failures to mitigate the material risks. In some cases, the task of identifying risks is informed by an overarching purpose or objective of regulation.

¹⁵ *Occupational Safety and Health Act 1984* (WA) s 13(10).

34. The primary benefit of this method is that it provides greater flexibility and 'future--proofing', enabling the regulatory regime to respond to new issues as they arise without having to create new rules.¹⁶
35. Regulatory models which employ a risk-based method rely heavily on a culture of transparency, responsiveness and collaboration with regulated entities so it can identify areas of greatest risk. That in turn ultimately guides the regulator's supervisory activities.
36. For those risks that are not the subject of supervisory scrutiny, the regulator relies on the entity's own controls of those risks. This selective approach to supervision can be due to the need for the regulator to manage the tension between finite resources and its responsibilities for oversight or supervision.¹⁷
37. An example of the risk-based method in the Australian legislative context can be seen in Part 5 of the *Gene Technology Act 2000* (Cth). That Act requires (amongst other things) the regulator to prepare a risk assessment and risk management plan for licensees and prospective licensees.¹⁸

Application to casino regulation

38. The above discussion of regulatory models and tools is limited in that theories of regulation are usually formulated in the context of markets with multiple operators. The extent to which the pros and cons of each approach can be applied to a single-operator landscape, such as the one in which Perth Casino operates, is debatable and the PCRC invites any submissions on this point.
39. A review of the regulatory framework in other jurisdictions reveals the uptake of all three approaches to varying degrees.
40. Legislative regulation is also supplemented by ministerial directions pursuant to the *Gambling Regulation Act 2003* (Vic), such as the one issued in February 2020 for additional oversight of responsible service of gaming.¹⁹
41. There is a detailed comparative analysis of regulatory responses to extant and emerging risks in casino operations contained within Chapter 5 of the Interim Report.²⁰ From the perspective of regulatory theory, the Bergin Report²¹ identified Singapore as a jurisdiction which is perceived to have a highly prescriptive regulatory framework.²²
42. There is also an analysis of gambling regulation in Victoria in Part 1, Chapter 2 of the Victorian Royal Commission into the Casino Operator and Licence (**Victorian RCCOL**) Report.²³

¹⁶ Julia Black, 'Principles based regulation: risks, challenges and opportunities, Principles-based Regulation' (presentation, Banco Court, Sydney, 27 March 2007) 8.

¹⁷ Counsel Assisting, Closing Submission, Royal Commission into the Casino Operator and Licence, 26 July 2021 [COM.0500.0001.0418] 39 [2.20].

¹⁸ *Gene Technology Act 2000* (Cth) s 47.

¹⁹ Victoria, Government Gazette, No S 63 (21 February 2020).

²⁰ PCRC, Interim Report, 75 – 92.

²¹ Bergin Report vol 2 [BGN.0001.0001.0334] 606.

²² Bergin Report vol 2 [BGN.0001.0001.0334] 606.

²³ RCCOL, Final Report vol 1 [PUB.0030.0001.0001] 27 – 58.

43. An additional international example that exemplifies a rules-based approach to regulation is Japan.

Rules-based approach: Japan

44. In 2020, Japan legislated to allow for the establishment of three casinos against a backdrop of public resistance and concern about gambling addiction.
45. The approach to regulation of casino activity in the *Specified Tourist Complex District Development Act*²⁴ (**Development Act**) can be described as tight. For example:
- a. As to applying for a casino licence:
 - i. individuals applying for a casino licence must prove that they are able to appropriately carry out the business and have sufficient social credibility;
 - ii. social credibility will also be determined by a Casino Administration Committee upon application;
 - iii. several listed individuals are statutorily barred from approval, including those who had previously revoked casino business licence or who have served as officers for a casino and have previously violated provision of the Act;
 - iv. the officers and individuals who have influence over the organisation through contribution, financing transactions or other relationships will also have to pass a standard of social credibility; and
 - v. licences are valid for ten years and renewable every five years thereafter with approval.²⁵
 - b. As to harm minimisation:
 - i. the casino must restrict use of access to a visitor upon the request of that visitor, their family or other persons concerned;
 - ii. limitation of 3 visits per week and 10 visits per 28 days; and
 - iii. provision of a mandatory 'My number ID' cards to patrons to track visitation.²⁶
46. The Japanese government also passed a separate act entitled *The Basic Act on Countermeasures Against Gambling Addiction*²⁷ which requires licensees to develop policies to counteract problems with gambling and to fund addiction programmes.

²⁴ Hugo Hernandez-Diaz, 'Gaming in Japan: Combating the Fears and Concerns of the People' (2020) 10(2) UNLV Gaming Law Journal 235 237 – 238 describing *Specified Tourist Complex District Development Act* (Japan) Act No 115 of 2016.

²⁵ Hugo Hernandez-Diaz, 'Gaming in Japan: Combating the Fears and Concerns of the People' (2020) 10(2) UNLV Gaming Law Journal 235, 237 – 238 describing *Specified Tourist Complex District Development Act* (Japan) Act No 115 of 2016, art 8 – 9, 40 – 41.

²⁶ Hugo Hernandez-Diaz, 'Gaming in Japan: Combating the Fears and Concerns of the People' (2020) 10(2) UNLV Gaming Law Journal 235 describing *Specified Tourist Complex District Development Act* (Japan) Act No 115 of 2016, art 68 – 70.

²⁷ *Basic Act on Countermeasures Against Gambling Addiction* (Japan) Act No 74 of 2018.

Conclusion

47. An enhanced model of regulation of the casino industry in Western Australia might see a blend or overlap of the three theories described above, together with the use of different tools to attain compliance with the regulatory model. The potential models of casino regulation for Western Australia, outlined below, exemplify that possibility.

Part Two

Context: An overview of the current framework for the regulation of casinos in Western Australia

48. The current regulatory framework is set out in detail in Chapter 6 of the Interim Report.²⁸
49. The regulator, the *Gaming and Wagering Commission* (GWC), is a statutory agency and has the jurisdiction conferred on it by the *Gaming and Wagering Commission Act 1987* (WA) (GWC Act), *Casino Control Act 1984* (WA) (CC Act) and *Casino (Burswood Island) Agreement Act 1985* (WA) (CBIA Act).
50. The GWC's responsibilities are not limited to regulating casinos. Its remit extends to monitoring all gaming and wagering activities within Western Australia, including activities such as senior citizen's bingo and community fundraising activities like raffles.

The Regulator - Gaming and Wagering Commission Act

51. The GWC is a part-time board which consists of a chairperson and five to seven other members appointed by the Minister for Racing and Gaming. The chairperson is *ex officio* the chief executive officer of the Department of Local Government, Sport and Cultural Industries (**Department**), known as the Director-General.²⁹ Members are appointed by the Minister for a maximum of three years and can be reappointed after their term expires.³⁰
52. Properly constituted, the GWC is required to administer the GWC Act, subject to any directions of the Minister.³¹ It has the duties and powers as set out in sections 7 and 8 of the GWC Act. By resolution, the GWC can delegate all its powers and duties, except the power of delegation.³²
53. Since 2017 and following the Western Australian machinery of government changes which saw the amalgamation of various government departments, executive support to the GWC has been provided by the Department. That support extends to the management of its financial operations.

²⁸ PCRC, Interim Report 93 – 121.

²⁹ *Gaming and Wagering Commission Act 1987* (WA) s 12(1).

³⁰ *Gaming and Wagering Commission Act 1987* (WA) s 12(6).

³¹ *Gaming and Wagering Commission Act 1987* (WA) s 6(2).

³² *Gaming and Wagering Commission Act 1987* (WA) s 16(1).

Casinos - Casino Control Act

54. The duties and powers of the GWC in relation to casinos are scattered throughout the CC Act and regulations made under the Act.³³ They include the power to grant a casino licence and conduct any preliminary investigations prior to the issue (or refusal) of that grant in accordance with the Minister's decision.³⁴ There is also the power to advise the Minister if a close associate (as defined in the CC Act)³⁵ of the licensee is not, or is no longer, a suitable person to be concerned in or associated with casino gaming operations.³⁶
55. The GWC also has extensive inquiry and investigative powers relating to premises, property and persons the subject of a casino complex agreement and the casino complex.³⁷
56. Part VB of the CC Act empowers the GWC to authorise the issue of monetary infringement notices. As a corporate body³⁸ the GWC can also commence proceedings for any offence under the CC Act.³⁹
57. The GWC authorises all games and gaming equipment which are utilised at the casino.⁴⁰ It can also direct the licensee as to its 'gaming operations'⁴¹ which are defined as: the conduct and playing of games in the casino; the management, supervision or surveillance of the conduct and playing of games in the casino; money counting, accounting or advertising in relation to the conduct and playing of games in the casino; the use of storage areas in relation to the conduct and playing of games in the casino; or any other activities incidental to or connected with the conduct and playing of games or the provision of facilities or services in relation to the conduct and playing of games in the casino.⁴²
58. The CC Act also provides for the appointment of a Chief Casino Officer and government inspectors under and subject to Part 3 of the *Public Sector Management Act 1994* (WA).⁴³

The State Agreement - Casino (Burswood Island) Agreement Act

59. The CBIA Act has been in operation since 25 March 1985 when, as required by s 19 of the CC Act, it ratified the Casino (Burswood Island) Agreement between the State of Western Australia, Western Australian Trustees Limited and Burswood Management Limited which was entered into on 20 February 1985. As described in Chapter 3 of the Interim Report,⁴⁴ there have been numerous amendments to the CBIA Act.

³³ Casino Control Regulations 1999 (WA).

³⁴ *Casino Control Act 1984* (WA) s 19, 21.

³⁵ *Casino Control Act 1984* (WA) s 18(1).

³⁶ *Casino Control Act 1984* (WA) s 19B.

³⁷ *Casino Control Act 1984* (WA) s 21A.

³⁸ *Gaming and Wagering Commission Act 1987* (WA) s 2.

³⁹ *Casino Control Act 1984* (WA) s 36.

⁴⁰ *Casino Control Act 1984* (WA) s 22.

⁴¹ *Casino Control Act 1984* (WA) s 24.

⁴² *Casino Control Act 1984* (WA) s 3(1).

⁴³ *Casino Control Act 1984* (WA) s 9.

⁴⁴ PCRC, Interim Report [179] – [199].

60. The CBIA Act and the State Agreement confer some duties and powers on the GWC, including: the issue and cancellation of probity approval notices⁴⁵ to a person who wishes to become the holder of an interest of more than 10% of the voting shares of the 'approved company' (as defined in the Act); and the provision of consent to provide credit to a casino player.⁴⁶

Consideration: Potential frameworks going forward

Model 1 – Retain current model, with or without alterations

61. The first model posited is that the current legislative framework be retained, with the adoption of some, all or none of the following modifications:
- a. There be clarification of the purpose of the regulatory framework by the inclusion of an objects clause in the GWC Act and CC Act.
 - b. The powers of the GWC be consolidated into one legislative instrument, with the GWC retaining responsibility for the casino industry and other forms of gaming and wagering.
 - c. The chairperson of the GWC be a government appointee, independent of the Department (i.e., removal of the *ex officio* position currently held by the Director-General of the Department).⁴⁷
 - d. The deputy chairperson 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. Administrative and investigative staff and support be provided by the Department under formalised service agreements.
 - h. The Chief Casino Officer:
 - i. be engaged full time on GWC matters (i.e., does not hold another role within the Department);
 - ii. attend and report to the GWC at each monthly meeting on all matters within the GWC's remit; and
 - iii. be contactable by the public should anyone wish to raise any concerns about casino gaming.

⁴⁵ *Casino (Burswood Island) Agreement Act 1985 (WA)* s 13 – 17.

⁴⁶ *Casino (Burswood Island) Agreement Act 1985 (WA)* sch 1, cl 21(d).

⁴⁷ *Gaming and Wagering Commission Act 1987 (WA)* s 12(1)(a).

- i. Financially resourced from levies such as the casino tax and licence fee, supplemented by the government if necessary.
- j. The funds of the GWC be administered separately to those of the DGLSC. The Department would remain responsible for the preparation and submission of budgets and accounts, the budget and funding of the GWC be separate from that of the Department.
- 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).

Model 2 – GWC with a new legislative framework

62. The second model posited is the formation of an independent statutory body (similar to that of the current Victorian Commission for Gaming, Liquor and Racing (VCGLR)) with the following characteristics:
- a. The powers of the GWC be consolidated into one legislative instrument.
 - b. There be clarification of the purpose of the regulatory framework by the inclusion of an objects clause and/or a principles clause.
 - c. The chairperson be 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 chairperson be elected by the board members from among their number.
 - e. 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.
 - f. There be, as a minimum, the following employees of the GWC:
 - i. A full time Chief Executive Officer (CEO) who is also the Chief Casino Officer, who shall attend and report to the GWC 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 GWC. This position may not necessarily be required on a full-time basis.
 - iii. An administrative/executive assistant with regulatory experience (such as a policy officer) to support the CEO, CFO, and GWC members, lessening any requirement for assistance from a government department.
 - iv. Any other necessary employees such as inspectors or experts for the provision of advice or training retained on a contract basis.
 - g. There be a clear regime for delegating the powers of the GWC and a register of delegations maintained.

- h. Financially resourced from levies such as the casino tax and licence fee, supplemented by direct funding from government appropriations if necessary.
- i. Prescriptively legislate the functions of the regulator and build into the legislation an ability for the regulator to identify and regulate emerging risks which may arise in future, as it sees fit. This feature of the model embraces a risk-based method (as discussed at paragraphs 32 to 37 above) and anticipates the regulator's need to be adaptable to new risks which may arise because of, for example, advancements in technology.

Model 3 – Stand-alone casino regulator

63. The third model posited is to create an entirely independent regulator dedicated to casino oversight and other gambling activities, excluding wagering. This is the type of model which the Victorian government has signalled will be adopted in Victoria.⁴⁸ A stand-alone casino regulator currently⁴⁹ operates in Singapore (where there are only two casinos),⁵⁰ namely the Casino Regulatory Authority established under its Casino Control Act.⁵¹
64. Characteristics of this proposed model could include:
- a. The powers of the regulator be consolidated into one legislative instrument.
 - b. There be 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 chairperson be 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. The deputy chairperson be elected by the board members from among their number.
 - e. Members of the board be appointed according to legislated criteria to ensure that it is representative of the Western Australian community and covers appropriate fields of expertise.
 - f. There be a full suite of staff, including:
 - i. A full time Chief Executive Officer who is also the Chief Casino Officer, who shall attend and report to the board of the regulator at each monthly meeting on all matters within the regulator's remit.

⁴⁸ The Hon Melissa Horne MP, 'New Regulator To Strengthen Casino Oversight' [media release] Victoria State Government, 3 August 2021, accessed 21 October 2021.

⁴⁹ Noting that in April 2020 the Ministry of Home Affairs announced the Casino Regulatory Authority will be reconstituted to become the Gambling Regulatory Authority to regulate all gambling products in Singapore and a period of transition is currently underway.

⁵⁰ For 10 years after the date of issue of the second casino licence, only two casino licences may be in force at any one time: *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 41.

⁵¹ *Casino Control Act* (Singapore, cap 33A, 2007 rev ed) s 5.

- ii. A Chief Financial Officer solely dedicated to the work of the regulator. This position may not necessarily be required on a full-time basis.
 - iii. Administrative/executive assistants with regulatory experience (such as a policy officer) to support the CEO, CFO, and board members.
 - iv. Any other necessary employees such as inspectors or experts for the provision of advice or training retained on a contract basis.
- g. There be a clear regime for delegating the powers of the GWC and a register of delegations maintained.
 - h. Financially resourced from levies such as the casino tax and licence fee, supplemented by direct funding from government appropriations if necessary.
 - i. Prescriptively legislate the functions of the regulator and build into the legislation an ability for the regulator to identify and regulate emerging risks which may arise in future, as it sees fit. This feature of the model embraces a risk-based method and anticipates the regulator's need to be adaptable to new risks which may arise because of, for example, advancements in technology.

Model 4 – Absorb casino regulation into the Department

- 65. The fourth model posited is to abolish the GWC and have the casino industry and other gaming and wagering regulated entirely by the Department.
- 66. In this model the powers of the GWC would be transferred to the Director-General, 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.
- 67. The revamp of the legislative instruments would see the inclusion of an objects clause and/or a principles clause to clarify the purpose of the regime.
- 68. There be a clear regime for delegating the powers of the GWC and a register of delegations maintained.
- 69. This proposal is similar to what currently occurs in Queensland, where a dedicated Office of Liquor and Gaming Regulation, sits within the Department of Justice and Attorney-General and administers the liquor and gaming legislation. The Office has:
 - a. an Executive Director; and
 - b. three divisions – compliance, licensing and organisational services.

Conclusion

- 70. The PCRC encourages the interested parties and the public to provide written comment on the proposed models.

Part Three

Consideration of specific topics and areas of regulation

Objects and principles clauses

71. An objects clause in a legislative context can be regarded as a rule expressed at a high level of generality or abstraction. It can also be understood as an inversion of a particular risk – shifting the focus onto what the regulator should promote or attain during the course of regulation, instead of what it should prevent.
72. The purpose of a preamble and 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.⁵² A construction of an Act which promotes the objects or purpose of an Act must be preferred to one which does not promote the objects or purpose.⁵³
73. An objects clause may relate to the general aspirations of the legislation or provide decision-makers with general guidance as to how to apply the legislation.⁵⁴ While it is accepted that objects clauses must be understood in their context, they arguably remain as useful aids to interpreting legislation. Courts have stated that objects clauses give 'practical content' to abstract terms.⁵⁵
74. Legislative principles provide a form of guidance within an Act that may provide more detailed and comprehensive coverage of a wide range of activities in a particular field.
75. None of the legislative instruments used to regulate the Perth Casino (described in paragraph 49 above) contain preamble, objects or principles clauses.
76. There is no uniform approach to how principles are used in legislation. Compared with purely rule-based regulation, which commands strict adherence to detailed requirements, it is left to a court or some other body to measure the regulated conduct against a broad criterion such as 'reasonableness', 'reasonable protection', 'so far as is reasonably practicable', 'good faith', 'unconscionability', 'suitability' and others.⁵⁶ A principles clause has the effect of constraining administrative decision-making powers.
77. Some examples of objects clauses in Australian regulatory legislation include: the *Liquor Control Act 1988 (WA)*,⁵⁷ *Environmental Protection Act 1986 (WA)*,⁵⁸ and the *Biodiversity Conservation Act 2016 (WA)*.⁵⁹

⁵² Arie Freiberg, *Regulation in Australia* (The Federation Press, 2017) 239.

⁵³ *Interpretation Act 1984 (WA)* s 18.

⁵⁴ Ministerial Advisory Committee, Parliament of Victoria, *Independent Inquiry into the Environment Protection Authority* (2016).

⁵⁵ *Russo v Aviello* (2003) 215 CLR 643, cited in *Lynn v New South Wales* (2016) 91 NSWLR 636 (Beazley P) [54].

⁵⁶ Arie Freiberg, *Regulation in Australia* (The Federation Press, 2017) 241.

⁵⁷ *Liquor Control Act 1988 (WA)* s 5.

⁵⁸ *Environmental Protection Act 1986 (WA)* s 4A.

⁵⁹ *Biodiversity Conservation Act 2016 (WA)* s 4.

78. Section 4A of the *Environmental Protection Act 1986* (WA) states that 'the object of this Act is to protect the environment of the State, having regard to the following principles' and proceeds to identify the five principles constraining administrative power as: (1) the precautionary principle; (2) the principle of intergenerational equity; (3) the principle of the conservation of biological diversity and ecological integrity; (4) principles relating to improved valuation, pricing and incentive mechanisms; and (5) the principle of waste minimisation. Similarly, section 3(2) of the *Biodiversity Conservation Act 2016* (WA) states that in the pursuit of the objects of the Act, regard must be had to the principles of ecologically sustainable development set out in section 4.
79. In those two examples, one can see how an objects clause and a principles clause can work together to promote a regulatory outcome – the objects focusing on the broader, desired outcome of the legislation and the principles giving more guidance as to how those outcomes are achieved.
80. Questions
- A. Should the regulatory legislation contain an objects clause?
 - B. Should the regulatory legislation contain a principles clause?
 - C. If so, what key objects should guide the regulation of casinos and, depending on the model adopted, other forms of gaming and wagering in Western Australia?

Risks

81. The preparation of and regular review of risk assessments and enforcement and compliance tools and strategies are required to ensure the effectiveness of a risk-based method of regulation.
82. The Interim Report identifies the following risks to Perth Casino:
- a. money laundering;
 - b. criminal infiltration;
 - c. junkets;
 - d. problem gambling;
 - e. interactive gambling;
 - f. competitive markets; and
 - g. regulatory capture.⁶⁰
83. As to the regulation of risks, neither the GWC Act nor the CC Act specifically prescribes the manner in which the GWC is to identify and regulate risks, although risk assessment has been used as a means of fulfilling its ordinary regulatory duties. The GWC has the power to institute and carry out any necessary investigations before approving a

⁶⁰ PCRC, Interim Report [264] – [327].

recommending a course of action with respect to policies, approvals, prohibitions etc related to casino regulation.⁶¹ Those investigations could include a risk assessment.

84. An example of a prescriptive approach to a risk-based method by a regulator is seen in Part 5 of the *Gene Technology Act 2000*. This legislation prescribes that the regulator undertakes risk assessments and devise risk management plans as part of the licencing process under the Act. The Act prescribes the matters that the regulator must take into account when preparing a risk assessment and a risk management plan.⁶²
85. The extent to which a risk-based method, and specifically, the requirement that the regulator undertake risk assessments and formulate risk management plans at regular intervals, should be prescriptively legislated in the regulatory framework is a matter about which the PCRC seeks input from interested parties and the public.
86. Questions
 - A. Should the regulatory framework prescriptively legislate for the regulator (or an external expert) to undertake risk assessments and devise risk management plans for the Perth Casino? If so:
 - a. At what intervals should that assessment take place?
 - b. How should those tasks be funded?
 - B. Should the regulatory framework prescriptively legislate for the licensee of Perth Casino to undertake risk assessments and devise risk management plans for its own operation subject to approval by the Regulator?
 - C. If so, at what intervals should that assessment take place?
 - D. In relation to B, to what extent should a regulator be involved in the process by which the licensee develops the risk management plan prior to approval and be involved in periodic reviews?

Review of the licensee

87. Under section 15 of the CBIA Act, the GWC can cancel a probity approval notice⁶³ in respect of a person who intends to become the holder of a relevant interest in more than 10% of the voting shares of the licensee, but only before the acquisition of those shares.⁶⁴
88. There is currently no provision in the Western Australian legislation which requires a periodic review of a casino gaming licensee and any associated entities. Likewise, there is no definition of suitability to be a licensee or an associate of a licensee.
89. With the exception of the probity checks completed when ownership of the Perth Casino changed in 2004, since the casino licence was issued there has not been an investigation or review of the continuing suitability of the licensee and its close associates, or of the

⁶¹ *Gaming and Wagering Commission Act 1987* (WA) s 8(3).

⁶² *Gene Technology Act 2000* (Cth) s 50 – 52.

⁶³ *Casino (Burswood Island) Agreement Act 1985* (WA) s 11 – 17, 15(1).

⁶⁴ *Casino (Burswood Island) Agreement Act 1985* (WA) s 15(1).

way in which the licensee conducts the gaming and gaming related activities at the Perth Casino.⁶⁵

90. By way of contrast, in Victoria, under the current legislative regime, the VCGLR must, at least every 5 years, investigate and form an opinion as to the following (which is provided to the Minister):
 - 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.⁶⁶
91. In addition to the requirement to regularly review the casino licensee, the VCGLR has a number of coercive powers bestowed on it to assist in its performance of its supervisory functions, such as the power to request any records of the casino operator.⁶⁷
92. By way of further example, 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 Territory.⁶⁸
93. Questions
 - A. Should the WA regulator have a legislated power to review the casino licence holder? If so:
 - a. What matters ought to be reviewed?
 - b. Who should bear the cost of the review?
 - c. What powers should the regulator have?
 - B. Should the regulator have the ability to suspend a casino licence? If so, in what circumstances?
 - C. Should WA include a regime like the one found in sections 28, 28AA and 28A of the Victorian legislation for approval by the regulator where there is major change in circumstance to a licensee or a close associate?⁶⁹

Delegation of powers of the GWC

94. The concept of 'delegation' in administrative law is the process of handing some administrative action or decision to a subordinate. In respect of statutory bodies such as the GWC, the power to delegate is found in the governing legislation. Effective

⁶⁵ PCRC, Interim Report [603].

⁶⁶ *Casino Control Act 1991* (Vic) s 25; *Casino Control Act 1992* (NSW) s 31 is to similar effect.

⁶⁷ *Casino Control Act 1991* (Vic) s 26.

⁶⁸ *Gaming Control Act 1993* (NT) s 2A(b).

⁶⁹ *Casino Control Act 1992* (NSW) s 35 is to similar effect.

management of delegations is key to the legitimacy of decisions and actions taken by a statutory body.⁷⁰

95. The GWC has a power to delegate all or any of its powers or duties, save for the power of delegation itself. A delegation may be given to a member of the GWC, a sub-committee of the GWC, the Chief Casino Officer, an inspector or a specified persons or persons of a specified class or persons holding a specified office or class of office.⁷¹
96. Once a delegated power is exercised within the parameters of the instrument of delegation, the exercise of power is by law deemed to have been exercised by the GWC itself.⁷² A broad statutory power to delegate, without safeguards such as the requirement to keep a register of delegations, may result in a regulator not maintaining control and oversight of actions taken in its name.
97. There is no formal requirement in the GWC Act for keeping record of decisions made or powers exercised under delegation. In practice, the exercise of delegated power has been minuted by the GWC but there is no formal register maintained by the GWC.
98. In New South Wales, the Independent Liquor and Gaming Authority maintains the 'Gaming Authority's Delegations Manual',⁷³ although that does not contain a record of each individual exercise of delegation.
99. Questions
 - A. Are there any specific current powers which the casino regulator ought not be able to delegate?
 - B. Are there any potential future powers of the casino regulator which it ought not be able to delegate?
 - C. What oversight should the casino regulator retain over the exercise of delegated power?
 - D. How should delegations (their grant and exercise) be recorded? For example, should the delegation of powers be articulated with precision in a written instrument which addresses, as a minimum:
 - a. the scope of the delegation, namely whether it be a full or partial delegation of power;
 - b. any conditions of the delegation (for example, can the delegate decide whether to exercise the power independently or must the delegate act in accordance with an in-principle decision of the delegator); and
 - c. the content and purpose of reports to the regulator concerning the exercise of delegated powers (for example, whether the report is simply for

⁷⁰ Australian Public Service Commission, 'Delegations under the Public Service Act 1999 and subordinate legislation', (2013), archived at <https://legacy.apsc.gov.au/delegations-under-public-service-act-1999-and-subordinate-legislation>.

⁷¹ *Gaming and Wagering Commission Act 1987* (WA) s 16; *Interpretation Act 1984* (WA) s 59.

⁷² *Gaming and Wagering Commission Act 1987* (WA) s 16(2).

⁷³ Instrument of Delegation (Independent Liquor and Gaming Authority) (No. 1) 2019.

noting and recording or whether the exercise requires ratification before taking effect).

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

100. One of the duties of the GWC under the current legislative regime is to formulate and implement policies for the scrutiny, control and regulation of gaming (and wagering). Those policies must take into account the requirements and interests of the community as a whole and the need to minimise harm caused by gambling.⁷⁴ Currently, there is no statutory requirement for the GWC or the Perth Casino to develop a gaming harm minimisation plan or program to be implemented at the Perth Casino. That is not to say that the casino operator is not doing anything in this space, on its own volition.
101. The *Victorian Casino Control Act 1991* (Vic) sits in contrast to the CC Act. It states that one of the objects of the VCGLR is to maintain and administer systems for the licensing, supervision and control of casinos, for the purpose of:
 - fostering responsible gambling in casinos in order to (i) minimise harm caused by problem gambling; and (ii) accommodate those who gamble without harming themselves or others.⁷⁵
102. Further, under section 69 of that Act, it is a condition of a casino licence that the casino operator implement a compliant Responsible Gambling Code of Conduct.
103. One aspect of legislative and policy reform under consideration is whether there ought to be a prescriptive approach to harm minimisation and the responsible service of gaming. In South Australia it is a condition of a casino licence that the casino operations conform with the applicable responsible gambling codes of practice.⁷⁶ Another example of a jurisdiction with a more prescriptive approach is outlined below.
104. In pursuance of its legislated function to foster responsible gambling and minimise the harm from problem gambling,⁷⁷ the Tasmanian Liquor and Gaming Commission (TLGC) has, amongst other things, the following code, scheme and rules⁷⁸ in place:
 - a. In 2012, the TLGC introduced a mandatory Responsible Gambling Mandatory Code of Practice⁷⁹ for all prescribed licence holders operating in the gaming and wagering space within Tasmania. That code, which is subject of review at least every 5 years, covers 10 areas of gambling operations (excluding Premium Player Programs), namely: advertising; inducements; player loyalty programs; access to cash; payment of winnings; lightly; service of food and alcohol; clocks in gambling

⁷⁴ *Gaming and Wagering Commission Act 1987* (WA) s 7(1)(ba).

⁷⁵ *Casino Control Act 1991* (Vic) s 140(c).

⁷⁶ *Casino Act 1997* (SA) s 41B(b).

⁷⁷ *Gaming Control Act 1993* (Tas) s 125(ea).

⁷⁸ The TLGC is empowered to make rules for the conduct of gaming or activities with respect to, amongst other things, matters relevant to the conduct of gaming or gaming activities: *Gaming Control Act 1993* (Tas) s 91.

⁷⁹ Tasmanian Liquor and Gaming Commission, *Responsible Gambling Mandatory Code of Practice for Tasmania* (CM:20/13718, 1 March 2020).

areas; staff training in recognising people with gambling problems and information to players.

- b. The TLGC manages the 'Tasmanian Gambling Exclusion Scheme',⁸⁰ which provides a means for patrons to exclude themselves from gambling, whether that be self-exclusion, or exclusion initiated by a venue or third party, and the monitoring of that exclusion and revocation (if applicable). The genesis for the Scheme is found in legislation.⁸¹
- c. The TLGC has also made the following rules relevant to harm minimisation in casinos: Casino Licence Rules,⁸² Premium Player Program Rules (Pre-Commitment)⁸³ and Premium Player Program (Pre-Commitment) Standards.⁸⁴

105. In addition to the code, scheme and rules described above, the Tasmanian legislation:

- a. requires the Minister to cause an independent review of the social and economic impact of gambling in Tasmania to be conducted every 3 years;⁸⁵ and
- b. has a specific division dedicated to 'player protection'⁸⁶ which, amongst other things:
 - i. requires licensed providers to allow players to impose self-limits on wagers and deposits;⁸⁷ and
 - ii. provides a mechanism for the submission, receipt and handling of complaints against the licence holder.⁸⁸

106. Questions

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

⁸⁰ Tasmanian Government Liquor and Gaming Branch, *Fact Sheet: Tasmanian Gambling Exclusion Scheme* (CM:21/24687, June 2021).

⁸¹ *Gaming Control Act 1993* (Tas) s 76ZNA – 76ZNG.

⁸² Tasmanian Liquor and Gaming Commission, *Casino License Rules* (CM:20/17159, 1 March 2020).

⁸³ Tasmanian Liquor and Gaming Commission, *Casino License Rules* (CM:20/17159, 1 March 2020).

⁸⁴ Tasmanian Liquor and Gaming Commission, *Premium Player Program (Pre-commitment) Limit Setting Standards* (5 July 2021).

⁸⁵ *Gaming Control Act 1993* (Tas) s 151(5)(a). See for example: South Australian Centre for Economic Studies, 'The Fifth Impact Study of Gambling in Tasmania 2021 – Volume 1: Industry Trends and Impacts (June 2021); Volume 2: 2020 Prevalence Survey Report.

⁸⁶ *Gaming Control Act 1993* (Tas) Part 4A, div 7.

⁸⁷ *Gaming Control Act 1993* (Tas) s 76Zk, 76ZL.

⁸⁸ *Gaming Control Act 1993* (Tas) s 76ZN.

- E. Should there be an independent body which addresses gambling harm, similar to the Victorian Responsible Gambling Foundation?

Inspectors

107. Government inspectors undertake inspection and audit work at the Perth Casino.
108. The PCRC has inquired into role of government casino inspectors historically and presently. This has included inquiring into the content of inspections, the quality and frequency of inspections and the number and expertise of inspectors.
109. The CC Act enables the GWC to appoint inspectors, but in practice, the task of appointing inspectors⁸⁹ has been delegated to the Department and those inspectors are employees of the Department.
110. The current focus of the inspection regime is:
- a. monitoring of EGMs for compliance with approved rules (for example, maintaining return to player of 90 cents in the dollar);
 - b. ensuring correct revenue is paid to the State;
 - c. calculation of gaming revenue and assessment of casino tax;
 - d. checking play at gaming tables proceeds under the relevant game rules and the games pits are adequately supervised; and
 - e. dealing with patron disputes on the gaming floor.⁹⁰
111. In the period from the commencement of the Perth Casino up until 2002, inspectors were rostered to work in shifts at the casino premises for 24 hours of every day of the year. The physical presence of inspectors at Perth Casino has decreased over time as there has been increased reliance on electronic surveillance.
112. In Tasmania and Queensland, the relevant legislation outlines the requirements for appointing inspectors and their duties.⁹¹ In Queensland, the inspector holds office pursuant to conditions in the instrument of the appointment and the regulations.⁹²
113. In the Victorian RCCOL Report, the Commissioner recommended that the *Victorian Casino Control Act 1991* (Vic) be amended to include an expansion to inspectors' functions to include:
- a. ascertaining whether money laundering, loan-sharking and drug-dealing are taking place at the casino; and
 - b. removing a person's licence to remain on the casino premises on behalf of the casino operator.⁹³

⁸⁹ *Casino Control Act 1984* (WA) s 3(1).

⁹⁰ PCRC, Interim Report [543] (a) – (d).

⁹¹ *Gaming Control Act 1993* (Tas) s 127A – 135; *Casino Control Act 1982* (Qld) s 85E – 91.

⁹² *Casino Control Act 1982* (Qld) s 85F(1).

⁹³ RCCOL Final Report, vol 3 [PUB.0030.0001.0001] 6 [recommendation 17].

114. The Commissioner also recommended that inspectors' powers be increased to allow them unfettered access to all parts of the casino, all surveillance equipment and all the books and records of the casino. Further, any interference with inspectors' performance of their functions is to be a strict liability offence carrying a significant penalty.⁹⁴

115. Questions

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

Ministerial powers

116. The Minister has powers under both the CC Act and GWC Act in respect of casino regulation.

117. Currently the CC Act and the GWC Act fall within the Minister for Racing and Gaming's portfolio of responsibilities.

118. Since the inception of the Perth Casino in 1985, ministerial and GWC responsibilities, powers and obligations have increased under the CC Act and the GWC Act.⁹⁵

119. Current ministerial powers include:

- a. entering into a casino complex agreement;⁹⁶
- b. approving applications for casino gaming licences;⁹⁷
- c. approving staff licences;⁹⁸ and
- d. approving funds available for the administration of the CC Act.⁹⁹

⁹⁴ RCCOL Final Report, vol 3 [PUB.0030.0001.0001] 6 [recommendation 18].

⁹⁵ See discussion PCRC, Interim Report [175] – [177].

⁹⁶ *Casino Control Act 1984* (WA) s 18 – 20.

⁹⁷ *Casino Control Act 1984* (WA) s 21 – 21F.

⁹⁸ *Casino Control Act 1984* (WA) s 9.

⁹⁹ *Casino Control Act 1984* (WA) s 14.

120. As to the GWC, the Minister has the power to, amongst other things:
 - a. give qualified directions for the administration of GWC duties;¹⁰⁰
 - b. appoint members of the GWC;¹⁰¹ and
 - c. approve GWC expenditure.¹⁰²
121. The Minister may also require that a close associate of a public company relinquish shareholdings in a company that is either a party to a casino complex agreement, or is a casino licensee, if they are found not to be a suitable person.¹⁰³
122. When a casino complex agreement is terminated under the CBIA Act,¹⁰⁴ the Minister may, with the prior approval of the Governor, revoke any casino gaming licence granted to a party to the casino complex agreement.¹⁰⁵
123. The ability of the Minister to exercise powers as to the suitability of the licensee, is, in practice, diminished because a casino licence is not granted for a fixed term and the CC Act does not provide for regular reviews of the licence.¹⁰⁶
124. In Tasmania, the regulator cannot grant a casino licence without the approval of the Minister. Unlike in Western Australia, the regulator in Tasmania has the power (independently of the Minister) to cancel a licence as a form of disciplinary action. The Minister may not give a direction to the regulator to prevent it from cancelling or revoking a casino licence.¹⁰⁷
125. In the Northern Territory, a casino licence is granted until it is either terminated in accordance with the relevant agreement, surrendered, or cancelled.¹⁰⁸ The Minister has a discretion to cancel or suspend a casino licence, but only if the Minister is satisfied that a casino licensee has engaged in particular conduct, including a failure to comply with the licence or laws applicable to casinos, committing an offence or acting in a manner which brings disrepute to the casino licence.¹⁰⁹
126. In Queensland, the Minister may delegate their powers under the Act to a chief executive or an appropriately qualified inspector or officer of the department.¹¹⁰
127. Ministerial powers in respect of granting, revoking or suspending the casino licence for Perth Casino is an important consideration of any regulatory model. Ancillary to that is consideration of any further powers the Minister may have in respect of directing or overseeing the operations of a regulator.

1. Questions

¹⁰⁰ *Gaming and Wagering Commission Act 1987* (WA) s 6.

¹⁰¹ *Gaming and Wagering Commission Act 1987* (WA) s 12(1)(b).

¹⁰² *Gaming and Wagering Commission Act 1987* (WA) s 6, 9(4).

¹⁰³ *Casino Control Act 1984* (WA) s 19B(1).

¹⁰⁴ *Casino (Burswood Island) Agreement Act 1985* (WA) s 26 – 27.

¹⁰⁵ *Casino Control Act 1984* (WA) s 21C.

¹⁰⁶ PCRC, Interim Report [429].

¹⁰⁷ *Gaming Control Act 1993* (Tas) s 112S, 112T, 127(4).

¹⁰⁸ *Gaming Control Act 1993* (NT) s 19.

¹⁰⁹ *Gaming Control Act 1993* (NT) s 20.

¹¹⁰ *Casino Control Act 1982* (Qld) s 15.

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

GWC financial systems and resources

128. Currently the GWC is required to ensure the revenue it derives is sufficient to cover its operating, administrative and 'other' costs.¹¹¹ Funding is also available by appropriations from Parliament.¹¹²
129. Any tax paid by the licensee is payable to the Treasurer.¹¹³
130. The GWC has no staff and relies upon the Department for services including the appointment of administrative staff, inspectors and other public officers.¹¹⁴ The Department charges the GWC service fees for the assistance it provides.¹¹⁵
131. There is currently no legislative mechanism for either:
- a. the periodic review of the casino licence fee beyond anything specified in the CBIA Act;¹¹⁶ and
 - b. any directive as to how the casino licence fee must be used for the administration of the CC Act.
132. Questions
- A. To what extent should the casino operator fund its own regulation? Why?
 - B. Should licence fees payable by a casino licensee be accounted for and used solely for the regulation of casinos or should they be generally available, with other funds, to be utilised in the regulation of all forms of gaming and wagering?
 - C. Should there be a legislative power for the regulator to review the casino licence fee on a regular basis?
 - D. How prescriptive should any power to increase or decrease the casino licence fee be?

¹¹¹ *Gaming and Wagering Commission Act 1987 (WA)* s 7(2).

¹¹² *Casino Control Act 1984 (WA)* s 14(1)(a).

¹¹³ *Casino Control Act 1984 (WA)* s 20(1).

¹¹⁴ *Gaming and Wagering Commission Act 1987 (WA)* s 18 – 19.

¹¹⁵ PCRC, Interim Report [461].

¹¹⁶ The rate of tax and amount of the casino licence fee may be reviewed jointly by the Minister and licensee: *Casino Control Act 1984 (WA)* s 20(2)(a).

- E. Should the casino operator be consulted before any increase or decrease in the casino licence fee?
- F. Who should recommend and/or approve any increase in the casino licence fee?
- G. In what circumstances should that increase or decrease be permitted?
- H. In the case of proposed models 1 and 2, should the regulator be assigned to regulate other industries, for example liquor? Why?

Junkets

133. Junket operators identify VIP patrons and make arrangement for them to travel to gamble in particular casinos, often by offering enticements such as free travel and accommodation. In return for junket operators organising groups to gamble at their casino, casino operators pay junket operators commissions. In the usual case, the junket operator receives funds from the junket participants which are to be gambled during the junket, conducts the chip buy in with the relevant casino and distributes gaming chips to the junket participants. In some jurisdictions, junket operators may also advance credit to junket participants and enforce debts incurred by those participants.¹¹⁷
134. The CC Act provides for regulations to be made 'for and with respect to regulating or prohibiting' the 'conduct of junkets' and 'the offering to persons of inducements, whether in the form of rebates or commissions or otherwise, to conduct or participate in junkets', including to:
- a. require a person to provide information and documents to the GWC for the purposes of being approved by the GWC to conduct junkets;¹¹⁸ and
 - b. require any contract or other agreement that relates to the conduct of a junket or the offer of an inducement to be approved by the GWC.¹¹⁹
135. Part 3 of the CC Regulations (as made) provided for the regulation of junkets at the Perth Casino but this Part was repealed in June 2010.¹²⁰
136. On 23 February 2021, the GWC issued DA104 under the CC Act. This direction stated: '[t]he Casino Operator shall not participate in the conduct of Junkets, Premium Player Activity or Privileged Player Activity.'¹²¹
137. While this direction is in place, the Casino Operator is unable to facilitate junkets at the Perth Casino.
138. An analysis of the Bergin Report and comparative legislative frameworks reveals three approaches 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

¹¹⁷ Bergin Report, vol 1 [BGN.0001.0001.0001] 16 [23].

¹¹⁸ *Casino Control Act 1984* (WA) s 25A(2)(c).

¹¹⁹ *Casino Control Act 1984* (WA) s 25A(2)(e).

¹²⁰ Western Australia, Government Gazette, No 100 (4 June 2010) 2484 [PUB.0005.0003.0146].

¹²¹ *Burswood Casino Directions 2021* (DA/104) [GWC.0001.0006.0019].

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.¹²²

139. The Singaporean approach of a legislative prohibition, with provision for the regulator to approve such dealing by way of the licensing of junket operators addresses the risks associated with junkets by way of regulatory supervision. The licensing regime permits case-by-case evaluation of the risks associated with a particular junket operator. Where those risks are sufficiently mitigated, the public interest benefits are made available to the State.¹²³ This regulatory model requires that the regulator is sufficiently resourced in order to carry out background and probity checks to the required standard.
140. There are related issues as to whether junket operators or other casino patrons should be allowed to bet as an agent for another person and whether a person who is not physically located in the casino should be able to engage in casino gaming remotely.
141. Questions
 - A. Should there be an unconditional statutory prohibition on junket operations at Perth Casino?
 - B. If junkets are to be prohibited, should the present ban on Premium Player and Privileged Player activity be included in the prohibition? If not, what type of regulation is necessary or desirable in relation to the activities of individuals coming within those definitions?
 - C. If junkets are allowed to form part of the operations at Perth Casino, what role should the regulator have in approving junket operators and assessing probity?
 - D. What other oversight should the regulator have in respect of junket operators at Perth Casino?
 - E. Should there be a legislative prohibition on remote betting or betting by agent?

¹²² Bergin Report, vol 2 [BGN.0001.0001.0334] 632 [88].

¹²³ PCRC, Interim Report [366].