Casino Modernisation Review

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Casino Modernisation Review

Prepared for the Office of Liquor, Gaming and Racing

by

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Introduction

The NSW Government has entered into an agreement with Crown Resorts Limited to allow the development of a Restricted Gaming Facility. When announcing its intention to proceed with the unsolicited proposal presented to the Government the then Premier stated that,

> "The independent steering committee found a competitive casino market would deliver increased tourism and broader economic benefits to NSW".[1]

Furthermore, the independent steering committee, in its Summary of Findings stated that,

> "(T)he transition to competition requires adjustments to the taxation and regulatory settings to establish a level playing field which is also conducive to investment and growth."[2]

As part of the agreement, the Government made a public commitment to review casino gaming regulation with a view to establishing a regime prior to the commencement of gaming at the Crown Sydney Hotel Resort that:

(a) establishes regulatory neutrality between the casino licence holder and the restricted gaming licence holder;

(b) reflects best practice; and

(c) achieves regulatory efficiency.

The Government's optimal outcomes of the review include:

- modernisation of the current regulatory regime in a manner that reflects current best practice while recognising the uniqueness of the operating environment in New South Wales;
- implementation of the agreed outcomes from the unsolicited proposals process;
- establishment of a competitively neutral regulatory environment; and
- cost recovery of regulation.

This report considers and makes recommendations on:

- how best to facilitate a competitively neutral regulatory environment;
- the most cost effective and efficient way to regulate casino and restricted gaming facilities, taking into consideration the key risks for the NSW Government and the community;
- current best practice procedures and approaches for ensuring high standards of probity and integrity of venue operations, including licensing processes, conduct of gaming, the provision of credit, junkets and inducements, accounting and internal controls, and rebate play provisions;
- appropriate arrangements for the regulation of liquor and related conduct within venues licensed under the Act.

[1] Premier's Media Release 4 July 2013

[2] Assessment of Crown Resorts and The Star Entertainment Group Proposals, Summary of Findings, page 8

Preliminary Clarifications

Some matters need to be addressed at the outset.

Firstly, Section 6 of the *Casino Control Act 1992* makes clear that there can be only one casino licence and only one restricted gaming facility licence issued under the Act. Notwithstanding this provision, the Act also states in a note in that same section that,

> "The Barangaroo restricted gaming facility is treated as a casino for the purposes of this Act (see the definition of *casino*). Except where otherwise specifically provided, the provisions of this Act that relate to a casino or a casino licence also apply in relation to the Barangaroo restricted gaming facility and a restricted gaming licence."

This report has followed the logic of the Act and when referring to a "casino" it is intended to refer to both The Star and Crown Sydney. Where it is necessary in this Review to identify them separately, The Star and Crown Sydney will be identified clearly.

Secondly, during the course of this Review Echo Entertainment Group changed its identity to become The Star Entertainment Group. As a consequence, the new name will be used throughout this report even when referring to matters which occurred during the period in which The Star Entertainment Group operated under its previous name.

Another matter is the names of the two properties in question. For convenience, even though it has been known as Star City for much of its existence, The Star will be used throughout this document to refer to that complex at all stages of its existence. As to the restricted gaming facility, it will be referred to as Crown Sydney throughout this Review as if it currently exists even though it is still under construction.

The NSW Government has announced machinery of government changes which will change the role of the Independent Liquor and Gaming Authority and change the responsibilities as well as the name of the Office of Liquor, Gaming and Racing to Liquor and Gaming New South Wales. The changes as announced are more than just name changes and will result in a change in allocation of regulatory responsibilities. This Review has been cognisant of the proposed changes and where possible has drafted recommendations for change consistent with what the author believes will be the likely allocation of responsibilities.

Consequently where the Review refers to future regulation by the Independent Liquor and Gaming Authority it is referring to the expected new Authority; similarly, where it is discussing the past or present it is referring to the Authority as it was or is today. In some instances, because the allocation of responsibilities remains uncertain (to this reviewer) a generic statement of "the gaming regulator" will be used. The allocation of responsibilities by the Review should be seen purely as educated advice and in no way should be assumed to be the final determination which is, of course, a decision for the Government.

Furthermore, because some matters referred to may pre-date the Independent Liquor and Gaming Authority (such as issues which may have involved predecessor organisations such as the former Casino Control Authority or the Casino, Liquor and Gaming Control Authority) for the purpose of simplicity this Review will use "Authority" generically to refer to all of these bodies.

Similarly, where the Review refers to OLGR, it means the organisation as it was or is today. The name Liquor and Gaming New South Wales will be used when referring to any future responsibilities which may result from the recommendations.

Finally, the Casino Control Act is the name given to comparable legislation in many jurisdictions. This Review uses the name Casino Control Act specifically to refer to the New South Wales *Casino Control Act 1992*. Where legislation from other jurisdictions is being referred to it will be clearly identified as such.

Executive Summary

The primary objects of the *Casino Control Act 1992* are succinctly described in section 4A(1) as follows:

> "(1) Among the primary objects of this Act are:
>
> (a) ensuring that the management and operation of a casino remains free from criminal influence or exploitation, and
>
> (b) ensuring that gaming in a casino is conducted honestly, and
>
> (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families."

The Casino Modernisation Review has been conducted keeping these primary objects at the forefront of consideration. Every recommendation made in the Review has been drafted not just to be consistent with these three primary objects but to enhance the regulation of The Star and Crown Sydney.

Some recommendations will reduce red tape, transfer risk or change the method of regulatory control but in so doing, each has been designed not to lessen the focus of responsibility on the primary objects.

When considering the question of competitive neutrality, this Review has taken the position that The Star, a casino, and Crown Sydney, a restricted gaming facility, must be treated and therefore regulated differently where they operate in different markets. However, where they operate competitively, such as in the market for high worth international table game players, they should as much as possible do so in a competitively neutral environment.

Because one facility was approved in the early 1990s through a competitive process and the other about 20 years later through an unsolicited proposal process it is inevitable due to the effluxion of time and the different processes of approval that some of the regulatory scheme may be difficult to harmonise. However, wherever possible this Review has attempted to recommend changes which will see equality in regulation for the benefit not just of the operators but also the regulator and, by extension, the State of New South Wales.

Consultation throughout the process has ensured the views of a broad range of stakeholders, including industry, community groups, law enforcement and other State and Federal Government agencies, have been fully considered. The Review has also considered over 130 suggestions for change provided by stakeholders. Not every change suggested has been accepted. Other changes, not raised by any stakeholder, have also been considered.

Nearly 200 recommendations to modify the regulatory scheme are made in this Review. Some require legislative changes while others require a different approach to regulatory processes. Some require both. Furthermore, some changes which are recommended should be considered conditional recommendations on the basis that they can only be implemented if other changes, such as changes to the operators' internal controls, are also made.

As a penultimate step, the findings and recommendations were provided to both operators for comment. The comments provided are appended in full to this report. This approach provides the NSW Government with confidence that the operators, as the bodies most affected by any change, have been fully consulted.

In summary, once implemented, the recommendations should take New South Wales from its current position where it substantially still operates a 1990s model of casino regulation to one which would see New South Wales be a world leader in casino regulation. The results of this change should be:

- a more agile industry which is better equipped to compete nationally and internationally

- a regulator able to fulfil its responsibilities at a lower cost but with enhanced effectiveness
- a better allocation of risk, so that when it is appropriate, operational risks are aligned with the primary beneficiaries of those risks, being the operators
- a better experience for customers of the casinos with the operators providing improved service because of competition

while maintaining the core responsibilities of ensuring that the management and operation of the casinos remain free from criminal influence and exploitation, that gaming is conducted honestly and that appropriate systems and controls are in place to minimise harm to individuals and families.

The Review makes recommendations for changes consistent with the most modern approaches. However, the modernisation of casino regulation should not finish with this Review. The Authority and Liquor and Gaming NSW should recognise the need for ongoing and continuous improvement and reform. The regulatory scheme should continue to evolve while maintaining its adherence to the primary objects of the Act.

The Legislative Scheme

There are a number of New South Wales Acts relevant to this Review, with the primary Acts of importance being the *Casino Control Act 1992*, the *Liquor Act 2007* and the *Gaming Machines Act 2001*. Some other Acts are also relevant and have been considered where necessary. These include the *Securities Industries Act 1997* and the *Smoke-free Environment Act 2000*.

In addition, prescribed regulations which are relevant are the *Casino Control Regulation 2009*, the *Casino Control Amendment (Casino Supervisory Levy) Regulation 2015*, the *Gaming Machine Regulation 2010* and the *Smoke-free Environment Regulation 2007*.

This Review has quoted relevant excerpts of legislation in the main body of the report where appropriate and generally only where the provision referred to is brief. Where longer sections are required to be referenced they are included as Appendices. This structure should not be interpreted in any way as suggesting the legislation included in the Appendices is less important than wording incorporated into the body of the report. It is simply a mechanism to aid with readability of this Review.

In essence, casino gambling is authorised by the *Casino Control Act 1992*. The three primary objects of the Act, which drive the legislative scheme, are found in sub-section 4A(1). They are:

(a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation, and
(b) ensuring that gaming in a casino is conducted honestly, and
(c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

Sub-section 4A(2) then requires *"All persons having functions under this Act…to have due regard to the objects referred to in subsection (1)"*. While "all persons" is not specifically defined, it clearly means the casino operators, the regulator and the Police who are all charged with various responsibilities under the Act. It also applies to patrons of the casino.

To support these objects, the Act provides for a process to enable an operator to be chosen and a scheme under which that operator is expected to run its casino business. While the regulator is established under a separate Act (the *Gaming and Liquor Administration Act 2007*), the Authority has obligations specified as well.

What the legislation does not do, however, is prescribe the style of regulation. While the legislation includes some specific tasks for the operator and the Authority (as well as the Police and, in some respects, patrons and those specifically not allowed to be patrons, such as minors and people banned from entering the casino) it does not mandate the way much of the scheme should be regulated.

This Review has recognised that the Acts and Regulations are not inviolable. While they form the skeleton around which the rest of the body of regulation is developed, they can be changed when the need arises. In the assessment of the legislative scheme, this Review has made some recommendations which would require a change to the legislation while others effect change through modifications of procedures, rather than amending the legislation itself.

Consultation

As part of the Review, a broad range of stakeholders was invited to provide written submissions. All submissions were considered as part of the Review. In addition, all parties invited to make written submissions (whether they provided a written submission or not) were offered an opportunity to speak with the author of this report. Appendix 1 lists all stakeholders who were invited to contribute to this Review.

The range of stakeholders whose views contributed to this report is diverse including representatives of industry, community groups, gaming regulators and other government agencies.

In addition, the reviewer spoke with regulators, operators and specialist advisors with experience in Macau, Victoria, Queensland, Singapore and Las Vegas who all provided useful information to assist with the Review.

The author wishes to acknowledge the contributions of all stakeholders and others who provided information to assist with this Review. Not surprisingly, the views of all stakeholders did not always exactly align. Nevertheless, this report attempts not so much to find the middle ground or a consensus position but a way forward that should best serve the State of New South Wales keeping in mind the objectives of the Review as articulated in the Introduction.

At the initial stage of this Review, meaning as a response to an invitation to make submissions, nine organisations provided written submissions. These organisations are listed in the following table.

Organisation	Response received from	Position held
Casino & Resorts Australasia[3]	John Lee	Chief Executive Officer
Clubs NSW	Anthony Ball	Chief Executive Officer
Crown Resorts	Rowen Craigie	Chief Executive Officer
The Star Entertainment Group	Matt Bekier	Chief Executive Officer
Independent Liquor and Gaming Authority	Chris Sidoti	Chairperson
Ministry of Health	Kerry Chant	Deputy Secretary, Public and Population Health
NCOSS	Tracy Howe	Chief Executive Officer
NSW Police	Andrew Scipione	Commissioner of Police
Salvation Army	Geanette Seymour[4]	

All the suggestions made by stakeholders were assessed as part of the Review. In all, there were more than 130 recommendations made by stakeholders (with some overlapping) plus some additional suggestions which were considered to be outside the scope of this Review.

A first round of stakeholder meetings was conducted during the period 19 to 21 October in Sydney and on 11 November in Melbourne. Those meetings were conducted in a manner which ensured the stakeholders were able to raise their points for consideration without being encumbered by matters being raised by others. In this way, each stakeholder was able to ensure the Review took into consideration each point they wished to make without any

[3] Between when written submissions were invited and this Review proceeding, Casino & Resorts Australasia ceased to exist. The matters raised in that organisation's written submission have been considered but no further consultation with the association proceeded.

[4] The Salvation Army submission, dated 9 December 2014, was unsigned and not attributed to any person. It was handed to the reviewer at a stakeholder meeting on 20 October 2015.

matter being discounted or compromised. The first round of stakeholder consultations took place with the following organisations and their representatives.

Organisation	Representatives
Australian Hotels Association	John Whelan, Chief Executive Officer
Clubs NSW	Josh Landis, Executive Manager, Public Affairs
Crown Resorts	Rowen Craigie, Chief Executive Officer Michael Neilson, General Counsel Michelle Fielding, General Manager – Compliance for Crown Melbourne
The Star Entertainment Group	Matt Bekier, Chief Executive Officer Chris Downy, General Manager, External Affairs Andrew Power, General Counsel Graeme Stevens, Regulatory Affairs Manager for The Star
Gaming Technologies Association	Ross Ferrar, Chief Executive Officer
Independent Liquor and Gaming Authority	Chris Sidoti, Chairperson Micheil Brodie, Chief Executive Officer and Commissioner
NCOSS	John Mikelsons, Deputy CEO
NSW Treasury	Mark Piggott, Director Infrastructure and Structured Finance Unit
Salvation Army	Col Geanette Seymour
NSW Crime Commission	Robert Inkster, Assistant Commissioner Louise Douglas Major, Intelligence Manager
Department of Premier and Cabinet	Jonathan Thorpe, A/Principal Policy Officer Brendan Cook, Principal Policy Officer

Subsequent meetings were held with both The Star Entertainment Group and Crown Resorts to seek clarification of specific issues raised in their written submissions. Both The Star Entertainment Group and Crown Resorts subsequently provided further written material to assist the Review.

Further consultations occurred with the Authority, NSW Police, NSW Treasury, the Department of Premier and Cabinet, AUSTRAC, the Macau DICJ[5] and the Victorian Commission for Gambling and Liquor Regulation during the course of the Review.

A final opportunity to meet with the reviewer was offered to all stakeholders towards the end of the Review process to allow for an explanation of the key findings. These meetings were held in Sydney and Melbourne in early February 2016.

Once a final draft was completed a copy was provided to The Star Entertainment Group and Crown Resorts to enable them to provide comment. This process allowed The Star Entertainment Group and Crown Resorts to correct factual errors and to provide their views on the recommendations. Each understood that their written response, should they choose to make one, would be appended in full to this report. The Star Entertainment Group response is provided as Appendix 19 and the Crown Resorts response can be found as Appendix 20.

The only changes made to this report upon receipt of these final submissions were to correct factual and typographical errors, to remove some unintended inferences and to clarify matters where the final draft was unclear. There were no material changes to the report.

[5] DICJ is the acronym used to describe the Macau Gaming Inspection and Coordination Bureau. (The letters DICJ are the initials of the Portuguese version of the name, Direcção de Inspecção e Coordenação de Jogos.)

Relevantly, there have been no changes to the report in any of the matters addressed by The Star Entertainment Group or Crown Resorts in their submissions.[6]

The Range of Regulatory Approaches

In the last 25 years, jurisdictions have generally introduced casinos in one of two ways, primarily determined by the political environment. Some have had to deal with potentially hostile Parliaments, media and communities whereas others have been implemented without the need for this type of debate and exposure. How a jurisdiction gets to the position of finally determining to proceed can significantly influence the form of casino regulation put in place.

If a jurisdiction has to convince a Parliament, media and local community that the introduction of a casino is desirable it will often promote its scheme as being the "toughest" ever seen on organised crime; if, instead, it is a decision which does not involve this form of scrutiny, models promoting economic aims, such as employment creation and tourism are put in place.

The New South Wales government proceeded with a casino regulatory regime in the early 1990s after receiving a report from Sir Laurence Street[7] which addressed the questions of integrity, consumer protection, tourism, economic and employment effects on other industries and many other issues. Much of the regulatory regime in New South Wales was developed based on the findings and recommendations of the Street Report and has been modified incrementally over time.

Some of the regulatory modifications have resulted from the findings of various reports prepared under section 31 of the Casino Control Act. In particular, the report prepared in 2000 by Mr P D McLellan QC (now Justice McLellan) found matters of concern in the behaviour of the then operator, particularly in the Endeavour Room, which resulted in a strengthening in the monitoring and compliance roles undertaken by the Authority. Since that time, not only have the names of the casino, the Endeavour Room and the regulator changed, but the ownership and management of the casino has also completely changed. As a consequence, while the concerns as raised in those earlier reports were valid at the time they were raised, there may be little value in maintaining the regulatory regime which developed out of those reports unless those same concerns exist today. Consultation with stakeholders has indicated that the practices of the operator today are far removed from those addressed in the 2000 review.

Irrespective of the direction taken, there are some general principles that any jurisdiction should use to determine the type of model it wishes to adopt. Essentially there are four pieces of information which need to be combined from which a model can be developed. None of these pieces can stand alone and each helps inform the other. The pieces of the puzzle required are:

- Is strict regulation or "light touch" regulation appropriate?
- Are the expected operators capable and willing to comply with the regulatory scheme?
- Why do licensed operators comply?
- What is the role of the regulator?

Helpful information has been developed from a variety of different sources which will assist a jurisdiction to decide what model of regulation will best fit its individual circumstances.

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[6] The Star Entertainment Group and Crown Resorts also provided written advice on typographical and factual errors. That advice has not been appended.

[7] *"Inquiry into the Establishment and Operation of Legal Casinos in NSW"* by The Hon Sir Laurence Street, 27 November 1991

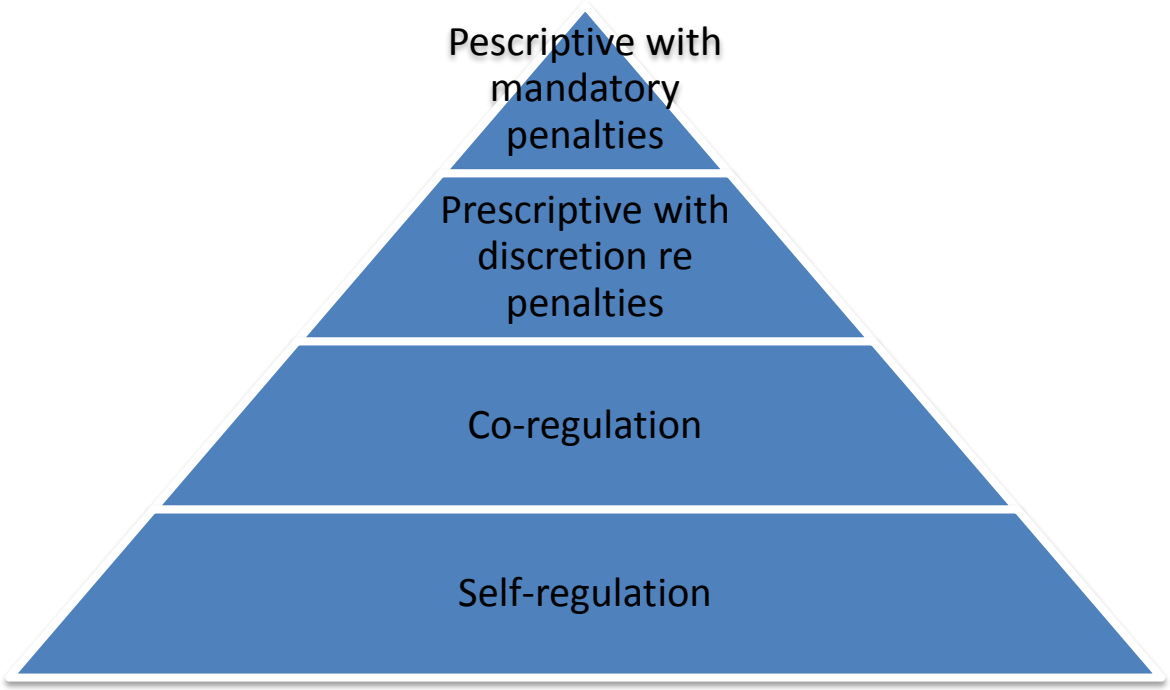
Is strict regulation or "light touch" regulation appropriate?

'Braithwaite's Pyramid', a concept developed by Ian Ayres and Professor John Braithwaite[8] in the early 1990s provides a descriptive basis for determining the level of regulation needed for any industry.

It has four levels of regulation which can be used in a number of ways, but for our purpose can be summarised as follows:

- the top of the pyramid has a form of regulation which is prescriptive with mandatory penalties
- the second level down has regulation which is prescriptive with discretion regarding penalties
- the third level is described as co-regulation
- the fourth and widest level of the pyramid is self-regulation.

It is designed as a pyramid because as you move down the pyramid from the top the numbers of activities that need each type of regulation increase in quantity – that is, there are more matters self-regulated than there are requiring prescriptive regulation with mandatory penalties. Conversely, the regulatory effort increases as you move up the pyramid. Increased regulatory effort also equates to increased costs for the regulated party as well as the regulator itself and more decision points involving the regulator, thereby slowing down the decision-making and restricting an operator from taking quick action.



An example of how using *'Braithwaite's Pyramid'* can be used to inform an approach for casino regulation can be explained using a common problem in many jurisdictions: What should the regulator do when minors enter the gaming floor of a casino when to do so would be an offence for both the operator and the minor concerned?

- If the regulatory approach is at the top of the Pyramid, that is, prescriptive with mandatory penalties, the casino operator and the minor would be penalised using a

[8] *"Responsive Regulation: Transcending the Deregulation Debate"*, Ian Ayres and John Braithwaite, Oxford University Press, 1992

mandatory and fixed formula every time a breach was proven, irrespective of circumstances.

- If the approach is prescriptive with discretion regarding penalties, all breaches would be investigated but the regulator could decide on a case-by-case basis what penalty, if any, to impose for each breach.
- If it is a co-regulation model, the regulator might spend some time working with the casino operator to find ways to improve compliance and as long as the casino operator is working appropriately to keep minors out, it might choose to take action only if the operator has been particularly negligent. For example, if there is an average of over 5,000 minors each month trying to get onto the gaming floor but being stopped by security from entering, the regulator could decide that as long as the number of breaches stays at an acceptable level (say fewer than 5 per month) it might take no action except when the casino operator has actually invited the minor onto the floor or failed to have appropriate security officers at the point of entry.
- If the model is to be self-regulation, the casino operator would take full responsibility for keeping minors out and would not be penalised if breaches occur other than the possibility of being publicly embarrassed.

Are the expected operators capable and willing to comply with the regulatory scheme?

A useful model has been developed by the New Zealand Department of Internal Affairs[9] and is simply called *'VADE'*.

The four letters in *'VADE'*, that is *V*, *A*, *D*, and *E*, describe the four levels of regulation which can be described as:

- *'V'* is for *'Voluntary'* which describes those who voluntarily wish to comply and know how to do so
- *'A'* is for *'Assisted'* which describes those who are attempting to comply but do not necessarily know how to do so and therefore need assistance
- *'D'* is for *'Directed'* which refers to those who might comply most of the time but have a propensity to offend should an opportunity arise
- *'E'* is for *'Enforced'* which describes those with criminal intent and involved in illegal activity.

The big gambling companies are generally in the *'Voluntary'* space for reasons which will be expanded on below.

An example of an organisation in the *'Assisted'* category would be a company which was previously not regulated (perhaps because it was government owned or because it operated in a previously unregulated market) but now has to comply with rules which did not exist before. These companies can be described as willing but not fully able. Hence, they need to be assisted.

A *'Directed'* entity is best described as one which will generally operate legally, but if an opportunity exists to break the law and get away with it, it will do so. In the gambling and liquor industries, this might happen with operators with low value licences that do not care if they put those licences at risk.

Those in the *'Enforced'* group are part of organised crime who should not be allowed anywhere near gambling in properly regulated markets.

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[9] *"Achieving Compliance – A Guide for Compliance Agencies in New Zealand"* available at http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Information-We-Provide-Achieving-Compliance-A-Guide-for-Compliance-Agencies-in-New-Zealand

Why do licensed operators comply?

For gambling regulators to use *'Braithwaite's Pyramid'* and *'VADE'* to their advantage, they need an understanding of why gambling licensees may or may not comply. With that knowledge, the jurisdiction can determine the style of regulatory action it should take. The International Association of Gaming Regulators (IAGR) polled its members to ask that simple question: "Why do licensees comply?" A paper was subsequently prepared with the results[10]. The primary reasons are not because of probity and integrity checks or because of casino inspectors' presence in venues.

According to IAGR's members, there are, in fact, two equally important reasons why gambling licensees comply. The first is corporate reputation and the second is the value of their gambling licences. In fact, of the thirteen different reasons put forward, pre-approval of activities and on-site inspectors were considered to be two of the least valuable regulatory tools.

What is the role of the regulator?

The schemes under which Australian and most international gaming regulators operate have some clear roles for regulators. Various responsibilities are clearly understood by the regulators. These include:

- Probity regulation (for this purpose, meaning ensuring that people and organisations are suitable to be involved in gaming)
- Integrity regulation (for this purpose, meaning ensuring the games that are offered are fair, secure and auditable)
- Social regulation (for this purpose, meaning ensuring compliance with harm minimisation requirements; undertaking social impact analyses, etc).

What is less well understood is the economic role of the regulator. Many of the decisions of Governments in recent years have been to allow gaming as a new activity or to allow an expansion of gaming for economic reasons, such as, but not limited to job creation, taxation revenue increases and reputational enhancement of the jurisdiction. In its recent process to award a licence for an integrated resort in Brisbane, the Queensland Government identified the aim of bolstering Brisbane's position as an "international city" as one of the aims it wishes to achieve by allowing an integrated resort to be developed in the heart of Brisbane.

Similarly, the Singapore Government determined to allow two integrated resorts with different but defined markets as a way to increase the number of visitors to Singapore, the average length of time each visitor stayed in Singapore and the amount each visitor spent on their visits.

More directly relevant are the reasons given by the New South Wales Government when announcing that it had agreed to proceed with Crown Resorts' unsolicited proposal for a Restricted Gaming Facility at Barangaroo. With this development, along with obligations imposed on The Star, the State of New South Wales needs to be satisfied that each operator complies not just with traditional gambling responsibilities but also with its obligations to the State. While it might not always be explicitly stated anywhere, the gaming regulator should undertake this responsibility as it has access to the information necessary to monitor compliance and the tools available to it (such as, ultimately, disciplinary action) to facilitate compliance.

Putting the pieces of the puzzle together

A gaming regulator responsible for probity, integrity, social and economic regulation has to have the capability of fulfilling all these responsibilities. How many resources need to be

[10] *"The 'Official' List of Reasons Why Licensees Comply"* by Peter Cohen, Gaming Law Review and Economics Vol 14, Number 6, published by Mary Ann Liebert, Inc, 2010

directed to each area can be determined by considering *Braithwaite's Pyramid*, *VADE* and the reasons why licensees comply.

While the day-to-day activities of the gaming regulator seem to be prescribed by the legislative instruments which establish them and identify their scope of work, it is apparent that the methodological approach of regulators can differ. For example, the Singapore Casino Control Act is heavily modeled on the Victorian Casino Control Act, to the extent that the link to the Victorian legislation is referred to in the Singapore scheme. However, the approach taken to regulating casinos in Victoria and Singapore varies significantly.

The most obvious difference is the highly prescriptive approach taken by the Singapore Casino Regulatory Authority compared with Victoria's more risk-based approach. A specific example which clearly shows the difference is in the approach to junket regulation.

Singapore's *Casino Control Act 2006* provides for a stringent regime of control over junket operations, which the legislation describes as "casino marketing arrangements" with junket organisers termed International Marketing Agents (IMA). In Singapore, IMAs are required to be licensed and persons employed by the IMA as their representatives, or agents, must also be licensed.

Victoria does not regulate junket operators directly. Victoria's casino legislation addresses junkets and in 1999 Victoria introduced regulations which provided for a degree of oversight of junket operations by the gaming regulator[11], but those regulations were impliedly revoked on 1 July 2004 when the *Casino Control Act 1991* was amended.

The Victorian approach now is an example of permissive, risk-based regulation. While junkets are no longer required to be approved by the Victorian regulator, that does not absolve the casino licensee from the responsibility to ensure, among other things, that junket operations comply with its approved systems of administrative and internal controls. The regulator retains a general power to issue binding directions to the operator, in relation to the conduct, supervision or control of operations in the licensed casino[12].

In summary, the view of the Victorian regulator is that normal commercial arrangements should be permitted to apply to the engagement of junket organisers, provided the casino licensee has appropriate approved procedures in place to manage that relationship.

With some differences, the New South Wales scheme parallels that in place in Victoria. As will be detailed later in the section *"Current best practice procedures and approaches for the provision of credit, junkets and inducements"* the regulation of junkets in New South Wales does not make use of a number of prescribed regulations in the *Casino Control Regulation 2009.* Instead, the casino operator has appropriate internal controls in place. This provides a specific example of how a risk-based approach to regulation can work in casino regulation and, as will be explained later, is already partially in place in New South Wales.

The big casino operators, with valuable licences and a corporate reputation to protect will be voluntarily compliant and therefore sit in the 'V' category and as such not a lot of regulatory effort is needed to ensure compliance. Regulating those operators using a model which sits at the top of *'Braithwaite's Pyramid'* would seem to be an inefficient use of resources. These operators should be sitting in a relatively low place on the Pyramid, such as in the co-regulation space.

A modern regime requires the co-operation of the regulated parties who are provided with greater freedom to run their business but in return for them taking on a higher level of risk. This model sees the regulator transfer much of its activity from upfront approvals to monitoring and compliance. As a consequence there is a higher level of risk that disciplinary action may be taken by the regulator. For this model to work, the operators need to appreciate that the "light hand of regulation", perhaps counter-intuitively, can

[11] Casino Control (Junkets and Premium Players) Regulations 1999

[12] Section 23 Victoria *Casino Control Act 1991*

lead to higher penalties should the operators not place enough value on the benefits they are being given.

The changes described below will necessitate three discrete reforms:

- Policy changes by Government implemented by changes to legislation and other regulatory instruments
- Changes to the operator's operational methodology
- Cultural and procedural changes, and perhaps structural changes, within the regulator.

In summary

A risk-based, co-regulatory model provides for the best outcome for the regulation of the major forms of casino gambling in sophisticated markets whereas the prescriptive, top-of-the-pyramid approach will lead to unnecessary regulatory interference which constrains innovation and competition (for international and interstate players) while costing the State more to regulate than necessary.

Once this decision is made, it becomes easier to develop the best regulatory framework.

Current Regulatory Practices

“Regulatory practices” is a term which encompasses multiple facets. For the purpose of this Review it covers not just the legislative scheme, but the mechanisms by which it is implemented. By way of example, Victoria and Singapore have essentially similar legislation regulating casinos with Singapore openly stating that its Casino Control Act was based on Victoria’s Act of the same name.

However, even though the legislation is similar, the methodology for regulating is vastly different. Victoria has shifted its focus from a highly prescriptive approach implemented in the early days of casino regulation in the 1990s to an essentially risk-based approach today. Conversely, Singapore started with a heavily prescriptive approach and has continued in that form showing no willingness to change.

This is not to say that the Singapore methodology is inappropriate for Singapore. Each jurisdiction has to implement what will work best for its own needs.

In New South Wales, there is not a single view about the form of regulation. The Authority believes it operates a risk-based model; but this view is not shared by all parties. That the Authority holds this view possibly sheds more light on where it has been than where it is today. It is quite conceivable that an organisation which has shifted its approach away from a highly prescriptive model may believe it is risk-based when it compares how it regulates today with the methods used previously, even though there is still considerable scope to become more risk-based.

Examples of where current regulatory practices are still prescriptive are many and are described in more detail later in this Review. Some exist because of legislative obligation; others because of the form in which the Authority has chosen to pursue casino regulation. The Review makes a number of recommendations which, if accepted, will reform the regulatory practices and move New South Wales to a modern, risk-based regulatory model.

Reform Opportunities

Overview

A combination of the consultation process, analysis of the legislative scheme and consideration of regulatory practices in New South Wales has guided this Review. All requests for change as well as additional matters which have arisen during the process of the Review have been examined and recommendations have been made where opportunities for improvements can be made.

Key regulatory considerations have not been ignored when making recommendations for changes. Most importantly, the key objects of the Casino Control Act, as articulated earlier in the Review, must continue to be the priority.

For example, the importance of maintaining gaming integrity and ensuring a responsible approach to delivering gambling are considered to be not negotiable, although the mechanism to achieve these outcomes may change.

When modernising the regulatory scheme it is important to appreciate that abolition of some requirements does not mean that no controls are in place. Rather, much of the modernisation which will be discussed below will rely on a change of regulatory approach rather than solely the removal of "red tape". For example, one of the matters which will be discussed below is the approach to moving gaming tables. Older styles of regulation require that pre-approval of the regulator be sought before any movement occurs. In a modern regime, this requirement is abolished but not without a replacement control being put in place. In this example the control would be certification by the operator that before a moved table is brought into play various measures are confirmed to be in place. This would include CCTV cameras being angled correctly and switched on, other electronic surveillance equipment appropriately connected and the drop box[13] correctly attached to the table, among other things. The specific requirements should be negotiated between the licensee and the regulator. Once the scheme is established, the regulator can then choose to audit the certification process should it see a need to do so.

Three broad categories of change will be recommended below. In summary, while they will be specific in their application, they will fall into the following categories:

- modifications to the regulatory arrangements, including changes to legislation
- changes to practices undertaken by the operators to complement the changes in the regulatory arrangements
- cultural and possibly structural changes within the regulator to facilitate the new regulatory arrangements and operator practices.

Some recommendations will only fall into one category and others may require action in all three.

Modifications to the Regulatory Arrangements

This category refers generically to changes in legislation, the regulations and any other documents whether they are agreements, directions or notices from the Authority.

Changes to the Operators' Practices

This category requires that for implementation to take place, the operators would need to make some changes to their own procedures. In some instances, the changes to the aforementioned regulatory arrangements should only take effect after approved changes are made by the operators. The Review recognises that at

[13] The 'drop box' sits under the gaming table and receives the cash and bet vouchers used by players to buy chips at the table.

this time, only The Star would need to make changes to procedures whereas Crown Sydney would be drafting procedures which would meet with the requirements of the modernised scheme.

Cultural and Structural Changes within the Regulator

The machinery of government change already announced by the Government will require structural change to create a different Authority and the new Liquor and Gaming NSW. This Review also recognises that the shift to a less prescriptive and more risk-based model will require cultural change which, in this context, means an holistic understanding by the regulator that there is a different way from regulating casinos than the form being pursued to date.

The experience in Victoria which saw similar structural changes showed that concomitant cultural change was also necessary as the modernisation of the regulatory model will substantially change the way the casinos will be regulated.

A key outcome of this Review will be transferring risk from the Government sector to the operators. Regulators unnecessarily involved in day-to-day operations of casinos, which prescriptive models engender, assume a level of liability which should not be the State's responsibility These risks come in many forms but are generally in place where the regulator is asked to approve something in advance rather than allow the operator to decide the correct course of action.

In addition, the old model of regulation requires operators to provide the regulator with copious amounts of information, much of which is not read. There is a danger for the regulator that it will be considered to have implied knowledge of facts buried within the information. While this Review recognises that much of this information should still be collected, it will be recommending that the operators keep it and make it available to the regulator on demand. This is consistent with the broader theme of transferring much of the regulatory effort from an approvals regime to one of monitoring and compliance.

This Review is a point-in-time analysis and will make recommendations for changes consistent with the most modern approaches. However, the modernisation of casino regulation should not finish with this Review. The regulator should recognise the need for ongoing and continuous improvement and reform. Ideas for modernisation may come from anywhere – from operators, the community or from within the regulator. What matters most is that the regulatory scheme continues to evolve while maintaining its adherence to the primary objects of the Act.

A further comment needs to be explicitly made. Modernisation of the regulatory scheme from a prescriptive to a risk-based model reduces the regulatory burden on the operators. However, it comes at a potential, but wholly avoidable, cost. Should an operator under this model breach an Act, regulation or any other requirement, it should anticipate the possibility of a higher level of disciplinary action. Whereas the older style of regulation sees the regulator intervening up front and thereby preventing some regulatory errors from occurring, the modern, risk-based model leaves it to the operators to work out for themselves how to comply. In essence, 20 years after introducing a casino regulatory scheme to New South Wales, the training wheels will be removed and the operators will take on the responsibility of not falling.

For example, and using one of the matters previously used to illustrate the differences in the various models of regulation, a risk-based model would not necessarily see disciplinary action taken for every breach of the Act caused by a minor entering the casino. However, when the regulator determines that a breach has occurred which warrants disciplinary action, it is likely to be because the operator has been negligent. Perhaps it did not have security officers in place at an entrance or maybe a host has invited a young-looking minor into the casino without first verifying that person's age. In such circumstances, the operator should be prepared for a higher, more meaningful level of disciplinary action. Of course, such action can be avoided by the operator managing its business in an appropriate manner.

Timing of changes

Determining when to make any changes recommended in this Review is clearly a contentious issue. Three potential timeframes have been considered being:

- As soon as any regulatory changes necessary can be put into place;
- From 19 November 2019, being the date on which The Star's exclusivity ceases and Crown Sydney may commence operations (subject to meeting all necessary building and regulatory controls); or
- From whatever date Crown Sydney opens, should it not open on 19 November 2019.

Not surprisingly stakeholders hold differing opinions on the appropriate date for the implementation of changes with the two operators identifying dates which would advantage them best. However, as explained to all stakeholders during the course of this Review, it is the author's view that the primary beneficiary of this Review should be the State of New South Wales, not the operators *per se*. That the operators will benefit from many of the changes proposed happens to be serendipitous. With this in mind, as the changes are intended to benefit the State of New South Wales, the interests of New South Wales are best served if all the recommendations which are accepted are implemented as quickly as possible.

This does not mean the implementation date for all measures needs to be the same. As was explained to stakeholders during the consultation stage, implementation of changes will require at least one but up to three separate steps which do not always have to happen sequentially.

Firstly, some measures will require changes to legislation, regulations or other documentation such as agreements; the second step will require the drafting of revised procedures (in the case of The Star) or new procedures (in the case of Crown Sydney) consistent with the recommendations in the Review; thirdly, cultural and possibly structural changes, along with changes to procedures and training will be necessary within the regulator.

Only when all the steps necessary for each recommendation are in place should the changes proposed in this Review proceed. However, once in place those changes should be implemented immediately and not wait for any specific date to be reached.

How best to facilitate a competitively neutral regulatory environment

The Casino Control Act clearly recognises that The Star and Crown Sydney are not to be considered the same. This is articulated in Section 6(1) of the Act which states,

> (1) Subject to subsection (2), only one casino licence may be in force under this Act at any particular time. A casino licence is to apply to one casino only.
> (2) A restricted gaming licence may be granted under this Act to operate the Barangaroo restricted gaming facility. Only one restricted gaming licence may be in force under this Act at any one time.
> (3) Sections 7–12 do not apply in relation to an application for a restricted gaming licence.

Not only does the Act differentiate the type of facility by giving descriptively unique names, it also expressly excludes sections 7 to 12 of the Act, which apply to The Star, from applying to Crown Sydney.

However, it is clear that The Star and Crown Sydney will be competing in some markets. While Crown Sydney will have no poker machines, is not able to offer low limit gaming[14] and

[14] The expression "low limit gaming" is used to mean bet limits below the minimum bet levels identified on pages 2 and 3 of the Stage 3 Outcomes and Transactions Summary – Unsolicited Proposal: Crown Sydney Hotel Resort.

will not be open to the general public but by invitation only[15], both The Star and Crown Sydney will be competing for players in the higher end table games market.

In addition, many of the provisions in the Casino Control Act and accompanying Regulation will apply to both operators. These include provisions such as employee licensing, suitability of associates of the casino operator, the obligation to pay tax, the requirement for internal controls and much more.

When considering the question of competitive neutrality, this Review has taken the position that The Star (a casino) and Crown Sydney (a restricted gaming facility) must be treated and therefore can be regulated differently where they operate in different markets. However, where they operate competitively, they should as much as possible, do so in a competitively neutral environment.

Because one facility was approved in the early 1990s through a competitive process and the other about 20 years later through an unsolicited proposal process it is inevitable due to the effluxion of time and the different processes of approval that some of the regulatory scheme may differ and be difficult to harmonise. However, wherever possible this Review has attempted to recommend changes which will see equality in regulation for the benefit not just of the operators but also the regulator and the State of New South Wales.

The benefit to the regulator comes from the ability to establish, where possible, the same regulatory processes. A regulator having too many areas with different regulatory approaches will inevitably produce some inefficiencies but more problematically, may face unwarranted and undeserved criticism of perceived favouritism. Regulators in Australia already face criticism that casinos are treated differently from club and hotel gaming venues. To be accused of treating The Star differently from Crown Sydney (and *vice versa*) where there is no need for a different approach is a risk that the regulator does not need to be obliged to take.

To this end questions need to be asked as to whether differences in the legislative and the broader regulatory scheme should remain. Clearly some matters, such as those required for the approval and operation of poker machines, need not be considered as it is accepted that Crown Sydney will not have any of that product on its floor. Similarly, some sections are specific to the casino and restricted gaming facility respectively for the mechanical purpose of licensing and establishment of each facility (such as sections 7 to 13 of the Casino Control Act).

It is also accepted that the legislation is only one part of an intricate conglomeration of agreements and requirements and the Acts in themselves do not tell the whole story. While this particular section of the Review is dedicated to the question of competitive neutrality, this issue will also arise in other sections of the Review where the discussion may need to address competitive neutrality along with other matters. For example, this Review has a specific section on rebate play. It is within that section the question of competitive neutrality with respect to rebate play will be addressed.

The following provisions of the Casino Control Act specifically provide for different treatment for a casino and a restricted gaming facility:

- Section 5A **Ministerial directions relating to licensing of Barangaroo restricted gaming facility**
- Section 19 **Authority to define casino premises**
- Section 19A **Boundaries of restricted gaming facility**
- Section 22 **Conditions of casino licence**
- Section 22A **Restrictions on gaming in Barangaroo restricted gaming facility**

[15] The expression “invitation only” is used throughout this report to mean the entry requirements identified on pages 3 and 4 of the Stage 3 Outcomes and Transactions Summary – Unsolicited Proposal: Crown Sydney Hotel Resort.

- Section 22B **Only members and guests permitted to participate in gaming at Barangaroo restricted gaming facility**
- Section 64A **Staff training facilities and employment program**
- Section 65 **Casino layout to be approved by Authority**
- Section 66 **Approval of games and rules for games**
- Section 67 **Directions as to games in casino to be available**
- Section 71 **Times of operation of casino**
- Section 74 **Credit prohibited**
- Section 89A **Application of Smoke-free Environment Act 2000**
- Section 115A **Casino supervisory levy**

Each of the above listed sections of the Act and the Regulation have been considered and commentary below addresses the question of whether continuing with the different treatment should continue as it is, in a modified form or whether the differences should be eliminated entirely.

The Casino Control Act has 171 sections. While the sections listed above show that there are some differences in the regulatory framework, it is also true that most of the Act operates in the same way for both The Star and Crown Sydney. As such, while there are some changes which might be recommended to improve competitive neutrality, much of the operating environment is already a level playing field.

In addition to the Casino Control Act, there are other regulatory obligations which differ. Some of these arise from the licensing and planning regime in place when The Star was originally developed. For example, a specific obligation is imposed on the location of ATMs by the Sydney City Council as part of The Star Development Approval.[16]

Related to the issue of planning and development is that Crown Sydney, being located at the Barangaroo site is within an area classified as a State significant development. As such, it comes under the *State Environmental Planning Policy (State and Regional Development Act) 2011* which allows Crown Sydney to be developed under the deliberate advantages that legislation offers for projects considered to be of State significance.

On the other hand, The Star, having been originally built in the early to mid-1990s and significantly upgraded since, is not currently designated as a State Significant Site. This puts The Star at a disadvantage when compared with Crown Sydney for any major capital works as the approval process will be more complex and involve more parties. It is not beyond the scope of this Review to question whether major developments such as extensions or large-scale renovations (perhaps measured by capital expenditure) could not be considered to warrant making The Star a Site for Significant Development but it is recognised that such a change may require additional consultation before proceeding, which is beyond this Review.

A separate consideration is the regime for liquor regulation. At this time it is unclear how Crown Sydney and the whole Barangaroo complex will fit with the Sydney CBD Entertainment Precinct, which abuts the Barangaroo site, while The Star is clearly outside the Precinct boundary. As will be discussed below, an appropriate liquor regulatory regime needs to be in place for both The Star and Crown Sydney and where possible, should operate consistently.

The reality is, however, that Crown Sydney, as a restricted gaming facility, is intended to have some differences from The Star, not the least because it will not have any poker machines. As such it is not an automatic conclusion that every measure in legislation or other documentation needs to operate in the same way. It is also not necessarily a negative outcome if some matters continue to operate differently.

[16] The issue of location of ATMs is addressed in "Current best practice procedures and approaches for the provision of credit, junkets and inducements" section in this Review.

Section 5A Ministerial directions relating to licensing of Barangaroo restricted gaming facility

The key provision in this section is subsection 1 which states,

"The Minister may give directions to the Authority in relation to the granting of a restricted gaming licence, including directions relating to the terms and conditions of the licence and the boundaries of the Barangaroo restricted gaming facility."

This section clearly complements the unsolicited proposal process. Because the section includes at subsection 2 a requirement that any direction so made be published on the Authority's website, any concern that a Minister might misuse this provision to advantage either The Star or Crown Sydney is ameliorated.

Nevertheless, such a risk exists, but as the provision could be used equally to advantage or disadvantage Crown Sydney, it is arguably a competitively neutral provision as it stands.

Section 19 Authority to define casino premises / Section 19A Boundaries of restricted gaming facility

Sections 19 and 19A address a similar issue in different ways. The full text of sections 19 and 19A is included in Appendix 2.

In essence, each describes the method by which the boundary of each casino can be initially defined and subsequently changed. To be clear, this provision refers to the boundary of the gaming area, known as the "blue line" in the case of The Star, and is different from the boundary of the whole complex. This boundary is relevant as it prescribes, amongst other things, the area within which gaming is allowed, where minors (apart from exempt apprentices) cannot venture and within which excluded persons must not be.

There are two major differences in the way in which the process of making changes to the boundary may be applied. The first difference is the process of application. In the case of The Star the boundaries can be redefined by the Authority on its own initiative or upon application by the casino operator.[17] Conversely, under section 19A, the boundary of the Crown Sydney casino can only be redefined upon application by the licensee. This difference puts The Star at a potential disadvantage, although in reality not much is likely to turn on it as it is difficult to conceive of a circumstance where a properly run Authority would amend the boundary of The Star unilaterally.

The above comment assumes the Authority ceases to be the landlord for The Star. This matter is addressed below under the sub-heading "Ownership of Land". Should the Authority continue to be the landlord, the provision which allows the Authority to unilaterally change the boundaries of the casino should be changed as it could be misused (although it is important to stress that there is no evidence to date to suggest any misuse by the Authority).

Nevertheless, the process for amending the casino boundary should be consistent for both The Star and Crown Sydney which can best be achieved by removing the power of the Authority to amend The Star's casino boundary unilaterally.

The second difference is a limitation imposed in section 19A to the size of the casino gaming floor at Crown Sydney to 20,000 square metres. This provision is a key part of the approval of the unsolicited proposal and is not within the scope of this Review to change. It is, however, relevant to the Review to state that the size of The Star is not constrained by legislation. As such, this is one aspect of the regulatory scheme where the two operators will operate in an environment which will not be competitively neutral.

[17] See section 19(2)

Section 22 Conditions of casino licence

This section shows the different regulatory framework in place between The Star and Crown Sydney. Whether the difference is a product of the different approval processes (competitive bid versus unsolicited proposal) or if it is more reflective of a modern approach to casino regulation is immaterial. What matters is that the legislation treats the respective licences differently.

In the case of the licence which allows for The Star, the process for making an amendment to the conditions of the licence are prescribed in sub-sections (2), (3), (4) and (5). Most relevantly for this Review, sub-section (3) says that,

> "An amendment may be proposed:
>
> (a) by the licensee by requesting the Authority in writing to make the amendment, or
>
> (b) by the Authority by giving notice in writing of the proposed amendment to the licensee and giving the licensee at least 14 days to make submissions to the Authority concerning the proposed amendment."

By way of comparison, sub-section (2A) of the Act states that,

> "In the case of a restricted gaming facility, the conditions of the licence may be amended only with the agreement of the licence holder."

Accordingly, similar to the provision which allows for redefinition of the casino boundary for The Star, the Authority has a unilateral power to amend the conditions of that operator's licence; for Crown Sydney it does not.

There is no reason why the two licensees should be treated differently and as such it is recommended that section 22 be amended by removing the power of the Authority to amend The Star's licence unilaterally.

A possibly complicating feature of section 22 is how it is complemented by section 23, which explains the process for taking disciplinary action against a casino operator. One of the forms of disciplinary action which may be taken is "the amendment of the terms or conditions of the licence", although the Act makes clear that the reverse, that is, amendment of licence conditions using the mechanism in section 22 is not to be considered to be disciplinary action. However, because section 22(2A) states that the conditions of the (Crown Sydney) licence may only be amended with the agreement of the licence holder, it would appear that this form of disciplinary action contemplated by section 23 may not be possible against the Crown Sydney licence without the licensee's consent. If this interpretation is correct it may nevertheless not matter as the licensee may agree to the amendment of the conditions of its licence rather than be subjected to a more extreme form of disciplinary action such as a fine of up to $1,000,000 or suspension or even cancellation of its licence which appear not to be limited by the Act.

Section 22A Restrictions on gaming in Barangaroo restricted gaming facility

As well as imposing a commencement date of not before 19 November 2019, this section imposes limits on Crown Sydney's gaming offer including a total ban on poker machines and minimum bet levels on table games. This section clearly differentiates Crown Sydney from The Star.

While much of the gambling on tables at The Star takes place at a level which is above the minimum bet levels imposed on Crown Sydney, the value of these bets has been determined by market forces between The Star and its patrons, not by legislated obligation.

While it is inconceivable that Crown Sydney would install any poker machines in breach of this requirement, to give the community and other interested

stakeholders comfort, the regulator should, as part of its regular audit program, formally confirm that there are no poker machines in Crown Sydney.

This section of the Act is a major signifier of the main differences between a casino and a restricted gaming facility and must remain. As such competitive neutrality arguments are intended not to apply to these specific matters.

Section 22B Only members and guests permitted to participate in gaming at Barangaroo restricted gaming facility

This is another provision which is required to differentiate The Star from Crown Sydney and is an additional reason why not all provisions in the regulatory framework must be competitively neutral.

To give the community confidence that Crown Sydney is indeed operating under the terms of its approval as a members and guests facility only it will be necessary for the regulator to ensure that the various obligations in place are adhered to. For example, the regulator will need to establish an audit program that monitors Crown Sydney to ensure that:

- Minimum bet levels are maintained as required in clause 5 of the Restricted Gaming Licence
- Crown Sydney has and follows a Membership Policy as required by clause 6 of the Restricted Gaming Licence.

One stakeholder suggested that The Star should have VIP membership policies that match those agreed for Crown Sydney. This Review does not share that position. One of the key findings of the independent steering committee was that a competitive casino market would deliver increased tourism and broader economic benefits to New South Wales. Requiring The Star and Crown Sydney to have matching VIP programs and policies would run counter to that competitive process.

Section 64A Staff training facilities and employment program

This section of the Act requires Crown Sydney to fulfil commitments it made as part of its offer under the unsolicited proposal. As a consequence, it is a licensee-specific matter which does not require modification of any obligation on The Star with respect to staff training facilities and employment programs.

It is an important responsibility of the regulator to ensure Crown Sydney complies with this obligation.

Section 65 Casino layout to be approved by Authority

The first three sub-sections of section 65 describe the process by which the casino layout at The Star is to be regulated by the Authority. Sub-section (4) specifically states that the first three sub-sections do not apply to Crown Sydney. Rather, the process for approving facilities and equipment for monitoring and surveillance operations and location of those facilities and equipment must be approved by the Authority. Section 65 is reproduced in full at Appendix 3.

The difference in the regulatory schemes imposed by this section on The Star and Crown Sydney provides a clear example of how the current framework is not competitively neutral. The model imposed on The Star is an “old” methodology whereas the scheme in place for Crown Sydney reflects modern practice. There is no reason why The Star and Crown Sydney should not be treated in the same way, that is, the more modern way. Changes to this particular section are addressed below in the section headed *“Current best practice procedures and approaches for the conduct of gaming”*.

Section 66 Approval of games and rules for games

This section appears to treat the casinos differently in two respects. Firstly, it deems that the games of baccarat, blackjack and roulette are approved games for Crown Sydney whereas The Star had to seek approval for those (and all other games). Secondly, the section does not permit the game of keno to be played at Crown Sydney.

The first difference does not impact on competitive neutrality as the games of baccarat, blackjack and roulette are already approved for The Star, albeit by a different mechanism.

The second difference does technically impact on the principles of competitive neutrality, but even if Crown Sydney wanted to be able to offer keno it would be a game of minimal interest to Crown Sydney's patrons. This is another anti-competitive provision which is of immaterial consequence and does not need to be amended.

As has been recommended with respect to poker machine availability, the regulators regular audit program should ensure that keno is not available in Crown Sydney.

Section 67 Directions as to games in casino to be available

This section gives the Authority the power to determine which games may be played at The Star. It also allows the Authority to determine the minimum and maximum number of any particular game. It is conceivable that the Authority could use this power to mandate that The Star offer a particular game even if The Star may wish not to do so.

It is unclear from the wording of this section whether it empowers the Authority to mandate the number of specific versions of games, such as single zero or double zero roulette[18] need to be made available. However, as the Authority has to approve the rules of any games under section 66 of the Act, it does not need to be able to mandate specific versions as it can use its power under this section for that purpose.

Section 67 is of questionable value. A modern regulatory regime leaves the choice of games to the operator with the regulator having the ability to prevent an unsuitable game (one, for example, that may be considered to have a house advantage which is too great) through its power to approve or not approve the rules of any game.

It is likely that this section will never be used, but as it does not apply to Crown Sydney the risk that it may one day be applied to The Star suggests that the better option might be to repeal it altogether to ensure competitive neutrality.

Section 71 Times of operation of casino

This section makes it a condition of The Star's licence that it opens to the public on days and times directed by the Authority. Conversely, the section makes specific reference to the obligation of The Star to be closed on the days on which it is not required to be open. The Authority can change the opening hours, but in so doing must consider any representations made by The Star.

This section does not apply to Crown Sydney which, instead, has its opening conditions expressed in clause 8 of its licence.

In effect, therefore, this section provides the Authority with a unilateral power over The Star which it does not have over Crown Sydney. From a competitive

[18] As implied by the description, single zero roulette has one zero on the roulette wheel whereas double zero has two. The impact of this change is to the house advantage. Single zero roulette has a house advantage of approximately 2.7% whereas the house advantage for double zero roulette is about 5.3%.

neutrality viewpoint, this provides a potential advantage to Crown Sydney, although it needs to be said that there is no suggestion that The Star is unhappy with the current hours on which it is required to open.

However, a future Authority may wish to make changes to the days or hours of opening of The Star which may be detrimental to The Star's business. As such, to ensure competitive neutrality, this section should be amended to make clear that The Star should always be able to offer on the same days and hours available to Crown Sydney that part of its offering which matches that provided by Crown Sydney.

This would mean that the Authority would still have a right, in effect, to instruct The Star, after appropriate consultation, to close its poker machine business and its main gaming floor on days or hours as the Authority sees appropriate.

Section 74 Credit prohibited

This section addresses two specific matters which are covered in this Review in more detail in the section called *"Current best practice procedures and approaches for the provision of credit, junkets and inducements."* One of those two matters treats the operators differently by preventing The Star from offering credit to any player[19] while it expressly allows Crown Sydney to extend credit to any player who is not an Australian resident and who qualifies either as a premium player or who is participating in a junket[20].

From a competitive neutrality viewpoint, this section treats The Star and Crown Sydney differently which should be amended. The Review addresses this matter in more detail later.

Section 89A Application of Smoke-free Environment Act 2000

The issue of smoking restrictions is complicated by the schemes for The Star and Crown Sydney being in different legislation.

In essence, irrespective of the formal language in legislation, the regulation of smoking boils down to two matters, being:

- The locations within the properties where smoking might be allowed, and
- The conditions under which smoking will be allowed.

These two matters are not mutually exclusive but it helps for this Review to consider them separately.

The exemption provided to The Star from smoking bans that would otherwise be in force is found in the *Smoke-free Environment Act 2000* (see Appendix 4 for the relevant sections). The *Smoke-free Environment Act 2000* has a complexly worded provision providing an exemption for a *"casino private gaming area"* which is defined in section 10A to mean *"an area in a casino that is used substantially for gaming by international visitors to the casino other than an area used substantially for the purposes of gaming machines"* (presumably intended to mean for the purpose of playing gaming machines).

The double use of the subjective word *"substantially"* in the Act allows for considerable discretion. Nevertheless, the essential feature of this provision is that The Star's table game floor will be entirely smoke-free except in areas primarily used for international gamblers.

In addition, the Authority has allowed gambling on gaming machines which are in areas defined as being outdoors. The Star has taken advantage of this allowance and placed a number of gaming machines, available to any player, outdoors. By

[19] See section 74(1)(d)
[20] See section 74(5)

being placed outdoors, the ban on smoking while playing these machines does not apply.

For Crown Sydney, by virtue of section 89A of the Casino Control Act, the *Smoke-free Environment Act 2000* in its entirety does not apply. Instead, the Restricted Gaming Licence issued to Crown Sydney prescribes what is permitted so that smoking is not banned in any part of Crown Sydney, other than in restaurants. As a consequence, smoking will be allowed for any player who is admitted there. Accordingly, Crown Sydney has an advantage that is not available to The Star in that the opportunity for patrons to smoke is more widespread with non-international patrons able to smoke in the venue.

However, the wider availability of smoking areas at Crown Sydney cannot be considered in isolation from the restrictions placed on players to enter Crown Sydney. It will not be a public facility in the sense that anyone (over the age of 18 and not excluded) can enter at any time. Instead, patrons and their guests will be allowed by invitation only.

The second issue to consider is the conditions under which smoking will be allowed. Again, The Star has its conditions embedded in the Smoke-free Environment Act which require that it comply with the obligations imposed by the *Smoke-free Environment Regulation 2007*. The relevant obligations require that the premises meet the guidelines for determining if a place is enclosed.[21] Furthermore, the Minister for Health is required to review annually the exemption for a casino private gaming area to determine whether the exemption is justified on the grounds of maintaining parity with the smoking restrictions in casinos in other States and Territories with a report on the outcome of each review to be tabled in the Parliament.[22]

In addition, the Act also provides a power for the Director-General of the Department of Health to remove the exemption provided to The Star under certain prescribed circumstances which essentially relate to non-compliance of the operator of requirements under the Act or the *Smoke-free Environment Regulation 2007*.

Notably, however, there are no prescribed obligations imposed on The Star with respect to air quality in the areas exempt from the smoking ban. This contrasts with the scheme in place for Crown Sydney where the licensee must comply with conditions imposed by the Authority with respect to air quality equipment and quarterly air testing. The findings of that testing are to be reported annually to the Minister for Health who must then table these findings in the Parliament.[23] These conditions are in the Restricted Gaming Licence which prescribes maintenance, testing, technology and reporting obligations on Crown Sydney.

Accordingly, the conditions under which smoking is allowed vary. As a consequence, there are competitive neutrality issues with each operator required to comply with:

- different legislation
- different definitions of smoke-free facilities
- different exemptions from smoke-free requirements
- different monitoring regimes, and
- different air quality obligations.

[21] Regulation 6 of the *Smoke-free Environment Regulation 2007*

[22] section 11C *Smoke-free Environment Act 2000*

[23] section 89A Casino Control Act

When considering whether to make any changes to the regulatory regime regarding smoke-free areas, the Government is bound by agreements it already has in place in respect of Crown Sydney. However, it has more freedom if it wishes to modify the regulatory scheme with respect to The Star, particularly if it wishes to bring The Star and Crown Sydney as much as possible into the same regulatory scheme.

To implement competitive neutrality this Review recommends changes to both the exempt areas as well as the monitoring and air quality regimes to align the controls over The Star with those in place for Crown Sydney.

With respect to the areas exempt from the ban on smoking, a competitively neutral approach would allow players who meet eligibility criteria to enter Crown Sydney to have the same access to smoking areas at The Star's equivalent invitation-only area. On this basis, extending the exemption to include the Sovereign Room is recommended.

If the exempt areas are to change, so too should the monitoring regime. The obligations imposed on The Star in the Smoke-free Environment Act and Smoke-free Environment Regulation should be replaced with those that are in place for Crown Sydney. This would give responsibility to the Authority to manage air quality issues and reporting in the same manner as applies to Crown Sydney.

While this Review has made some recommendations in an attempt to find a competitively neutral approach to the issue of smoking bans and exemptions, finding the best method of implementation to achieve these objectives needs to be determined. One option is to amend the Smoke-free Environment Act and Smoke-free Environment Regulation to achieve the recommended changes. The alternative approach is to remove the reference to smoking bans and exemptions for The Star from that Act and regulation and instead incorporate the changed regime for The Star in the Casino Control Act where the controls for Crown Sydney are located. The latter approach is preferred if it can be achieved so that over time the regulatory direction for this issue does not subsequently diverge as could easily occur if the two properties continue to be regulated by completely different Acts.

Section 115A Casino supervisory levy

The Act states that a casino supervisory levy is to be paid to the Authority in respect of each casino licence in an amount prescribed in the regulations. The relevant regulation is the *Casino Control Amendment (Casino Supervisory Levy) Regulation 2015* which amends the *Casino Control Regulation 2009* to state that the casino supervisory levy for the 2015/16 financial year will be $7,165,310. The regulation also states that the amount of the levy will increase by 2.5% per annum until the Minister reviews the quantum of the levy which must be at least once every five years.

The regulation also states in clause 3 (which inserts a new clause 56C into the Casino Control Regulation) that this clause (ie, clause 56C) *"does not apply to a restricted gaming licence"*. It is clear therefore that it is intended that the supervisory levy apply to The Star and not to Crown Sydney.

While the supervisory levy does not apply to Crown Sydney, this does not automatically mean it should be removed from The Star. As part of the unsolicited proposal process Crown Resorts negotiated a suite of arrangements which includes tax payments and other matters with the final package excluding a casino supervisory levy. There is no reason why The Star, should it so wish, could not seek to negotiate with the NSW Government to amend, remove or replace the casino supervisory levy. As the Act stands, it already contemplates the possibility that the levy could be structured differently from the flat rate as it currently stands with section 117 of the Act providing three options including:

- the levy as a specified amount (the current format)
- the levy to be calculated in a particular manner, such as a percentage of gross gaming revenue
- a mixture of a specified base amount plus an amount calculated in a specified manner.

Should The Star wish to negotiate a new arrangement with the Government it should provide modelling to the State which shows the implications for Government revenue of the requested change. At its most simplistic, if the Government believes that The Star will grow gross gaming revenue more quickly than 2.5% per annum, it should consider accepting a proposal that the levy be tied, at least in part, to gross gaming revenue, rather than specified at a rate which is adjusted upward by a fixed 2.5% per annum.

Maintaining competition

When the Authority is considering whether to allow a change in ownership of a casino operator, it is expected that it will consider integrity of the new shareholders. Similarly, if the increased shareholding would change the controlling interest in the licensed operator it is incumbent on the Authority to consider whether the new owners would have sufficient capability to operate a casino. This test of capability does not necessarily require that the new owners themselves must have intrinsic capability - it may be shown by the new owners maintaining the same key employees. What is less clear is whether the Authority should be considering competition issues. On the one hand, there are other regulatory agencies, such as the ACCC, who specialise in this matter and as a Federal agency have an over-riding power anyway.

It was a clear statement from the New South Wales Government when announcing that it had accepted the Crown Resorts unsolicited proposal that one of the reasons for its decision was the competition in the marketplace that would be created by allowing a restricted gaming facility to compete, at least in part, with The Star.

It is therefore a logical expectation that an agency within the service of the New South Wales Government should be monitoring the activities of both The Star and Crown Sydney to determine whether competition is truly occurring. Whether this should be the Authority, Liquor and Gaming NSW or a separate agency, such as NSW Treasury, is for the government to decide. However, given the access to data, powers to seek information and the specialised understanding that the Authority and Liquor and Gaming NSW will have, it is not illogical for one of these two agencies to be given this responsibility.

Whichever agency is tasked with monitoring competition between The Star and Crown Sydney, clear direction should be given to ensure it is understood by the operators and the agency that the responsibility is about competition between those two businesses and not between those businesses and others, such as clubs, the wagering operator or the lottery licensee.

Specific issues impacting on one operator

There are a number of controls imposed on The Star through the *Casino Operations Agreement Lease – terms of lease agreement* (COA), each of which has been considered to determine whether it unreasonably restricts competition with Crown Sydney, whether each is suitable as part of a modern casino regulatory regime or whether each is necessary as part of an appropriate harm minimisation strategy. These measures are;

- The requirement that The Star seek approval from the Authority for external advertising
- The requirement that The Star seek the Authority's approval for light display in and around The Star precinct

- The requirement that The Star spend a budgeted amount on marketing and consumer satisfaction surveys
- The requirement that The Star take out various kinds of insurance
- The requirement that the Authority approve any change of name to the premises
- The requirement that The Star seek the Authority's approval to make alterations to the premises.

External advertising

Clause 3.5 of the COA states,

"The lessee will not without the prior approval in writing of the lessor erect, display, affix or exhibit or suffer to be erected, displayed, affixed or exhibited on or to the Premises any light, sign, advertisement, name, notice or hoarding visible from outside the Building."

The Authority explained that this control ensures that The Star does not breach advertising restrictions for gaming machines. That obligation is found in section 70A of the Casino Control Act which states that,

> "(1) It is a condition of a casino licence that the casino operator must not publish any advertisement relating to gaming machines or cause or permit any such advertisement to be published."

While it is true that the obligation ensures this to be the case, it is a classic prescriptive control which is inconsistent with a modern regulatory scheme. A better approach is to abolish the pre-approval requirement and, instead, leave it to The Star to ensure that it complies or face the consequences of prosecution or disciplinary action under section 23 of the Act if it breaches the requirements.

As the obligation in the COA does not mention gaming machines at all, it impacts on all of The Star's proposed external signs and advertising. Maintaining this unnecessary control imposes a competitive disadvantage on The Star as Crown Sydney does not have any such obligation to seek pre-approval for *"any light, sign, advertisement, name, notice or hoarding visible from outside the Building."*

Approval for light display

Clause 3.7 of the COA states,

"The Lessee covenants that it will not cause, suffer or permit to emanate from the Premises either a light source of any nature whatsoever which in the opinion of the Lessor results in a nuisance to owners or occupiers of adjoining or neighbouring lands or buildings or is or may be a hazard to traffic or members of the public or any flashing light without the written permission of the Lessor and the Casino Control Authority first had and obtained."

Similar to the advertising restriction in Clause 3.5 referred to above, this clause imposes an unnecessary prescriptive control. It also transfers risk to the Authority as, in effect, the Authority is being asked to give permission for The Star to allow a light source to emanate from the premises which may be *"a nuisance to owners or occupiers of adjoining or neighbouring lands or buildings"* or *"a hazard to traffic or members of the public."* The Authority should not be put in a position of being asked to endorse such an action. A more appropriate mechanism is for The Star to be required to comply like any other business in Sydney with the same rules about light sources emanating from its building.

Similar to the advertising control in the COA, maintaining this unnecessary control also imposes a competitive disadvantage on The Star as Crown Sydney does not have any such obligation to seek pre-approval for any matters associated with its external lighting.

Spending on marketing and consumer satisfaction surveys

Clause 12.5(b) of the COA[24] requires The Star to spend *"the amount (plus or minus 10%) provided in each budget…on advertising, marketing and promotions"* with the objective of *"ensuring the casino is fully and regularly patronised".* The Star must also provide quarterly certification in writing of the amounts it has spent on advertising, marketing and promotions.

It may not have been inappropriate when the COA was entered into that The Star was required to commit to spending a minimum amount on marketing, particularly if the State saw that the marketing would assist in the promotion of Sydney or New South Wales as a tourism destination. However, as it is now nearly 20 years since The Star opened it should be left to The Star to manage its marketing budget as it sees fit.

The independent steering committee which assessed Crown's unsolicited proposal concluded that a competitive casino market would deliver increased tourism and broader economic benefits to New South Wales. The inference to be drawn from that conclusion is that marketing of The Star will be one of commercial significance for The Star and does not need a prescribed obligation as is found in the COA.

With respect to the COA requirement for customer satisfaction surveys, if it were ever necessary, it is difficult to see what value the Authority can derive from receiving these surveys. In Victoria, a similar obligation existed until about 10 years ago. The Victorian regulator used to receive the report but found it provided no useful information with which the regulation of the casino could be improved. This Review does not argue against customer satisfaction surveys – only that it is unnecessary for the completion of such surveys to be prescribed or delivered to the Authority. Should the operators wish to undertake customer satisfaction surveys they should be free to do so in any format and seeking information on any matters that they wish.

Similar to other matters in the COA referred to above, as a similar obligation is not required of Crown Sydney, the marketing and customer satisfaction survey provisions impose a competitive disadvantage on The Star.

Insurance

As a competent business, it is difficult to imagine that The Star does not appreciate the need for various forms of insurance. All businesses of this size will have insurance without the need for a regulator to prescribe the forms of insurance required. The only insurances that arguably could be mandated might be by the landlord for the premises[25] and in respect of business interruption because the impact that may have on Government duty payments.

In 2005 the Victorian Commission for Gambling Regulation and Crown Melbourne agreed to amend the Casino Agreement which changed and simplified the insurance obligations. As the Casino Agreement is a public document[26], the version as it currently stands can be quoted here. Clause 35.1(a) of the Casino Agreement states,

> "35.1 The Company must:
>
> (a) insure and keep insured all of its Assets and Rights for the following:

[24] See *Deed of Amendment and Restatement as between executing parties (Casino Operations Agreement)*

[25] This Review argues elsewhere that the Authority should not be the landlord of The Star. If that recommendation is accepted, the question of suitable insurance becomes one for the Government agency which takes over as landlord from the Authority.

[26] See http://www.vcglr.vic.gov.au/home/gambling/existing+licensees/crown+casino/

(i) business interruption insurance (including insurance for the payment of all casino taxes) for the Melbourne Casino;

(ii) products and public liability insurance; and

(iii) real and personal property (also known as building and contents or industrial special risks) insurance (at replacement value) for the entire Melbourne Casino Complex,

and for each insurance policy the interests of the State, the Commission and any Mortgagees must be noted by endorsement on the policy or if the Commission so directs, in the joint names of the Company and the State and the Commission for their respective rights and interests;"

There are other obligations, such as reporting requirements in Clause 35, so the full text of that Clause has been included as Appendix 5.

The obligation for The Star to take out insurance should be limited to those matters of direct concern to the State, such as business interruption insurance (to protect duty payments) and any insurance required to protect the State as owner of the premises, such as public liability insurance and property insurance.

The Star should confirm with the Authority the suitability of business interruption insurance while the suitability of insurance required to protect the State as owner should be confirmed with the landlord.

Similar to other matters in the COA referred to above, as a similar obligation is not required of Crown Sydney, the insurance provisions impose a competitive disadvantage on The Star.

Premises name

Clause 3.5, which is referred to above with respect to advertising controls, also includes the following words:

"The Lessee shall be entitled to determine the name of the Premises subject to it obtaining the prior written approval of the Lessor."

It seems unnecessary for the Lessor to have a say in the name of the operator's business. It is another matter, albeit a potentially minor one, which is inconsistent with the scheme in place for Crown Sydney and should therefore be removed from the COA.

Alterations

Clause 5.16 of the COA states,

"(a) The Lessee will not nor will it permit any person to make any alterations or addition to any part of the Premises or any additions or alterations thereto other than minor alterations or additions for which the consent of the Lessor shall not be required without the prior consent in writing of the Lessor which consent shall not be unreasonably withheld and shall in the course of such alterations or additions made with the consent of the Lessor observe and comply with all reasonable requirements of the Lessor, the Casino Control Authority and the requirements of all Authorities."

It is reasonable that The Star seek the lessor's approval to make alterations, other than minor alterations, to its premises. However, should the lessor not be the Authority (as recommended elsewhere in this Review), the approval of the Authority should not be required. As such, it is suggested that the need to gain the Authority's approval should be removed from clause 5.16 of the COA.

Ownership of Land

The Star is situated on land owned by the State of New South Wales; similarly Crown Sydney will be. However, whereas The Star's landlord is the Authority, as things stand, this will not be the case for Crown Sydney.

From a competitive neutrality point of view it would be better if both properties had the same landlord. In addition, from a pure regulatory perspective, the Authority is not the best option to be the landlord. While there are no complaints from either The Star or the Authority that the current arrangements are unsatisfactory, there are two clear reasons why the Authority is not the best agency to have the responsibility of being landlord.

Firstly, being a landlord is not the core business of a regulator. Secondly, there is the potential for a perceived conflict of interest, whether indeed a true conflict arises or not. As landlord it is arguable that the Authority should be pursuing policies which maximise the value of that land for the State. However, in so doing it may not necessarily achieve appropriate regulatory outcomes in either the liquor or gambling areas of its responsibility.

While it is important to stress that this Review found no evidence that the landlord/tenant relationship has in any way compromised an Authority decision, it is nevertheless an undesirable situation which should be rectified.

By way of comparison, Crown Melbourne's casino, main hotel tower and some other components of the integrated resort[27] are similarly located on Government-owned land. However, the Victorian gaming regulator has never been the landlord. Instead this responsibility has always been with the Victorian Department of Treasury and Finance. This has freed up the Victorian gaming regulator to monitor the physical standard of the Crown Melbourne facility as part of the obligation imposed on Crown Melbourne through the Casino Management Agreement[28] to operate a world-class property without any conflicts as the landlord of the premises.

The arrangement that the Government has put in place for Crown Sydney's occupancy of the Barangaroo site might prevent a single landlord from taking responsibility on the Government's behalf for both sites. However, if a single landlord cannot be arranged it is considered essential that the Authority cease to be the landlord to avoid future claims of perceived bias and to ensure that the regulator does not have a different relationship through this arrangement with The Star compared with Crown Sydney.

As well as matters discussed above, competitive neutrality issues involving gaming and liquor are considered throughout this Review. There are likely to be other non-gaming and non-liquor matters which impact on the operators. An ideal result would be that both operators work within the same scheme with the same Government officials taking responsibility for administering their responsibilities equally. However, this Review recognises that this is not a "greenfield site" and as such some inconsistencies may still have to apply. Where these inconsistencies can be abolished, however, they should be. This may require some administrative retro-fitting. Given that other significant changes are also likely to be pursued as a result of this Review, the best opportunity to make these changes may be with the other changes recommended herein.

[27] That part of Crown Melbourne between Whiteman Street and the Yarra River is on Government-owned land whereas Crown's Promenade Hotel, Crown Metropol, some conference facilities, training facilities and some retail (all on the south side of Whiteman Street) are not on Government-owned land.

[28] See Casino Management Agreement, Schedule 1, Clause 20

The most cost effective and efficient way to regulate casino and restricted gaming facilities

A single regulator

The two operators both support a single regulator with clear functions and duties taking responsibility for regulating their activities. For the avoidance of any doubt, the new model of an Independent Liquor and Gaming Authority and Liquor and Gaming NSW will be considered for the purpose of this Review as a single regulator having two arms. It is important, however, that there is a clear division of responsibilities between the new Authority and Liquor and Gaming NSW.

Within the regulator, the division of responsibilities for casino regulation should be by function rather than by property. The Star and Crown Sydney will have some distinct differences, most obviously the lack of poker machines at Crown Sydney. Where the two operators require regulation of the same activities, for example, in the approval of gaming products and the monitoring of game play, the same personnel should undertake that responsibility for both venues.

Using the same personnel should deliver a consistent methodology and approach as well as less likelihood of regulatory capture by one operator. In addition, as the regulator will also have responsibility for liquor and gaming activities at other venues, such as clubs and hotels, having a consistent approach to the regulation of The Star and Crown Sydney may simplify regulation of these other operators[29].

Conversely, should there be separate teams in place to regulate The Star and Crown Sydney, it is likely that over time different approaches and policies will develop resulting in the potential for one operator to believe it is being disadvantaged by the decisions of the team that is responsible for regulating its business. It is an important component of the role of the regulator not only to regulate both operators equally (where they are operating in the same market) but also to be seen to be doing so.

A "single regulator" would be facilitated by having the same team handling applications for approvals (whether for people, products or procedures) and similarly a single team managing all aspects of monitoring and compliance for both operators as well as for both liquor and gaming activities. Ultimately, there should be a single position with management responsibility for all gaming approvals; and likewise, a single person accountable for the gaming monitoring and compliance functions. Similarly, one position should be given ultimate responsibility for all liquor regulation of The Star and Crown Sydney.

Casino reviews

Section 31 of the Casino Control Act states that,

(1) Not later than 3 years after the grant of a casino licence, and thereafter at intervals not exceeding 5 years, the Authority must investigate and form an opinion as to whether or not:
  (a) the casino operator is a suitable person to continue to give effect to the casino licence and this Act, and
  (b) it is in the public interest that the casino licence should continue in force.

(2) The Authority is to report its findings and opinion to the Minister, giving reasons for its opinion, and is to take whatever action under this Act it considers appropriate in the light of its findings.

(3) If a restricted gaming licence is granted before 15 November 2019, the licence is, for the purposes of this section, taken to have been granted on that date.

[29] The scope of this Review does not include addressing issues of competitive neutrality between The Star and Crown Sydney on the one hand and clubs and hotels on the other. Nor is it within the scope of this Review to advise on the best structure and operation of the new Authority and Liquor and Gaming NSW except in the area of regulation of The Star and Crown Sydney.

A similar provision to section 31(1) can be found in section 25(1) of the Victorian Casino Control Act although in that State the legislation requires a broader consideration of matters. The relevant provision states,

> (1) Not later than 3 years after the commencement of operations in a casino, and thereafter at intervals not exceeding 5 years, the Commission must investigate and form an opinion as to each of the following matters—
>
> (a) whether or not the casino operator is a suitable person to continue to hold the casino licence;
>
> (b) whether or not the casino operator is complying with this Act, the *Casino (Management Agreement) Act 1993*, the *Gambling Regulation Act 2003* and the regulations made under any of those Acts;
>
> (c) in the case of the Melbourne Casino Operator, whether or not the casino operator is complying with—
>
> (i) the transaction documents; and
>
> (ii) any other agreements between the Melbourne Casino Operator and the State, or a body representing the State, that impose obligations on the casino operator in relation to gaming;
>
> (d) whether or not it is in the public interest that the casino licence should continue in force.

The Victorian legislation was more closely aligned to that found in section 31 of the Casino Control Act until it was amended in 2005[30] to extend the mandatory reporting period which until then was once every three years and also broadened the scope of matters to be considered to include the agreements and other transaction documents.[31]

While the Singapore Casino Control Act at section 59 specifically notes that it is similar to Victoria's section 25, that legislation has no mandatory deadline. Rather, it simply states that,

> The Authority[32] shall, at such intervals as it may determine, investigate whether or not —
>
> (a) the casino operator is a suitable person to continue to hold the casino licence; and
>
> (b) the casino licence should continue in force, and shall take whatever action the Authority considers appropriate in the light of its findings.

Jurisdictions such as Nevada, Great Britain, Queensland and Macau do not require mandatory reviews but provide the regulator with sufficient powers to undertake investigations as necessary.

Consideration of the value of section 31 needs to be understood in the context of the powers given to the Authority by preceding sections 29 and 30. Section 29 gives the Authority power to give a casino operator a written direction that relates to the conduct, supervision or control of operations in the casino and it is a condition of the casino licence that the operator comply with such a direction. The written direction includes power to direct a casino operator to *"adopt, vary, cease or refrain from any practice in respect of the conduct of casino operations."*

Section 30 provides the Authority with a general power to investigate a casino at any time it chooses and whenever directed to do so by the Minister. These investigations can look at, but are not limited to:

- the casino and operations in the casino

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[30] See Casino Control (Amendment) Act No. 47 of 2005

[31] The agreements and transaction documents are defined in section 25(2) of the Victorian *Casino Control Act 1991*

[32] The Casino Regulatory Authority

- the casino operator or an associate of the casino operator
- any person who could affect the exercise of functions in or in relation to the casino
- any person who could be in a position to exercise direct or indirect control over the casino operator or an associate of the casino operator.

Section 30 empowers the Authority to take whatever action is allowed under the Act in light of the results of any such investigation. As such, the powers to take disciplinary action or to issue a direction under section 29 provide the Authority with sufficient powers to take action against the casino operator should any investigation conducted under section 30 find issues of concern.

Because of these powers available to the Authority under sections 29 and 30, it is doubtful whether the scheme of mandatory reviews provides any particular value to the State. If any issues of concern were to be found by reviews conducted under section 31 it should have been expected that the Authority would have already identified such concerns and acted on them immediately rather than waiting for the mandatory review. Consequently, it is not conceivable that a situation might ever arise where the casino operator could be found not to be *"a suitable person to continue to give effect to the casino licence"* as a result of a review under section 31 of the Act.

Similarly, given the investments made by the operators in their properties it is not believable that the Authority could ever come to the conclusion from a review conducted under section 31 that it is no longer in the public interest that the casino licence should continue in force.

As a consequence, and perhaps ironically, the mandatory reviews generally cause perception problems regarding the performance of the regulator rather than the operator. This is because any concerns raised by the section 31 review in New South Wales (and section 25 in Victoria) allow for the question to be asked as to why the regulator did not identify such a concern sooner. Conversely, if, as should be expected, no material concerns are discovered, there is a perception that the regulator is too "soft" on the casino operator or even the subject of regulatory capture.

Should the obligation to conduct mandatory reviews under section 31 continue, the Authority will be required to conduct two such reviews every five years which would be a highly inefficient use of its limited resources. Even if the operators pay for the cost of these reviews, the time taken to fulfil this obligation will distract the regulator from its other responsibilities. Abolition of the section 31 mandatory review would be consistent with moving the regulatory scheme from one which is highly prescriptive to an efficient, risk-based model.

While this Review is strongly of the view that section 31 of the Act should be repealed, if that recommendation is not accepted it is worth making some suggestions which may improve the value to the State of these reviews. The following should make section 31 more valuable (although, in the reviewer's opinion, not valuable enough to retain.)

- Expand section 31 to cover assessment of obligations made to the State by both operators, such as promises to maintain particular standards, develop specific facilities or commitments made for minimum levels of capital investment.
- Bring the conduct of the section 31 review in-house so that:
    - the regulator's own specialist expertise is used
    - where the regulator may have some deficiencies, it can improve its level of knowledge by undertaking the review. This should not prevent the regulator outsourcing specialised tasks such as financial analysis.
    - it would overcome problems where the recommendations of the review results in outcomes which are inconsistent with the regulator's strategic approach making implementation difficult. For example, a previous section 31 review resulted in an increase in inspector numbers at The Star when that particular

> approach to solving the same problems identified in that review was considered to be counter-productive by the then Authority CEO[33].

While this Review recommends abolishing the section 31 review, or, if that is not to occur, that the review should be conducted in-house, there is a more immediate problem to be resolved. The next mandatory review of The Star must be completed by December 2016. Given the time taken to complete such a review, the process for undertaking it must commence very soon. Even if the recommendation to repeal section 31 is accepted, the Authority cannot assume that the amending legislation will necessarily proceed in time. Given the new Authority and Liquor and Gaming NSW may not have the capability to do this review in house, it may be that this particular section 31 review will still have to be out-sourced.

As stated, the section 31 review is a *de facto* review of the performance of the Authority. If there is a concern that the performance of the regulator should be formally reviewed, one way of doing this would be to require the regulator to undertake a broad-ranging and regular internal audit program.

Internal audit reviews provide two valuable services. The first and obvious one is that it allows the regulator to find where its weaknesses lie and take action to rectify problems identified. The second useful outcome is that an internal audit program on a rolling 12 month schedule provides management with an incentive to review their own teams' performance before the internal auditors do, thereby giving the regulator improvements in performance and a reduction in risks.

Perception of bias

The Star and Crown Sydney will obviously have some differences and with that will come some different regulatory needs. Where The Star and Crown Sydney are essentially the same (such as in the premium player market), the Authority will not only need to treat the operators equally but will need to be seen to be doing so. The greater the transparency in its decision making, the less likely the possibility of accusations of bias.

Not every issue can be discussed or determined in public. However, where it is possible to do so the Authority should attempt to make public as much as it can of its decision making and the reasons for its decisions.

It is the nature of modern gaming regulation that much of the regulatory activity is negotiated, consistent with a co-regulatory model. This will continue to make sense and some of this will need to be done confidentially. For example, the process for approving rules of table games, internal controls and any matter involving premises security will need to be discussed in private and by the regulator with one operator at a time.

Where matters might impact on both operators, to avoid accusations of providing "better" or "more timely" information to one operator over the other the Authority should consider issuing guidance notes which could be in two forms. One set of guidance notes might be published on the Authority's website with notification sent to both operators at the same time. The other, should there be a need for some form of secrecy, for example security reasons, might see the guidance notes provided confidentially to the operators.

The Role of Gaming Inspectors

A key consideration for this Review is the role of gaming inspectors under a modernised scheme. As this matter is informed by the totality of recommended changes, it makes sense to address this particular issue at the end of the discussion on Reform Opportunities. As such, please refer to the sub-section headed *"Any other relevant matters"*.

[33] Personal communication between the former CEO and Commissioner of the Authority, Brian Farrell, and the author of this Review.

Current best practice procedures and approaches for licensing processes

Who should require licensing and pre-approval?
Most, but not all, jurisdictions around the world require that employees performing specified duties should be licensed. Where licensing is required, it is used not just to ensure that people considered to be unsuitable are not allowed to work in the industry in the first place but also to empower the regulator to take action against people who may become unsuitable after being licensed. Examples of a person who may have been suitable at the outset but who subsequently may be considered unsuitable are individuals who steal from the casino.

There is a higher order question which needs to be answered. Is licensing of employees by the regulator the best way to meet the requirement that only suitable people are employed in the industry? Instead, could not licensing of employees by the regulator be replaced with an obligation imposed on the operator to take responsibility for the suitability of its own employees? This is the model in place for most industries, including some which handle large quantities of cash and are regulated, such as banks.

This Review has considered two options, being:

- **Option 1:** Abolition of employee licensing altogether
- **Option 2:** Retaining and modernising the employee licensing scheme including,
    - Who should require a licence?
    - The licensing process
    - Mutual recognition between Australian jurisdictions
    - Approval of identification
    - Certificates of competency
    - The disciplinary action process
    - Term of employee licences
    - Transferability of licences
    - Licence application fee.

Option 1: Abolition of employee licensing altogether

Almost all casino regulatory schemes in premium jurisdictions have some form of licensing of casino employees. Some extend the licensing to all those working on the premises where the casino is located while others, such as New South Wales and Victoria, limit licensing to employees performing specified duties, generally with some direct association with gaming.

One notable exception to the traditional employee licensing model can be found in Macau where the onus is on the operators to do their own assessment of employees and then register them. The Macau DICJ checks that employees are registered and as part of that process checks for local obligations, primarily that employees performing gaming-related duties are local Macanese residents. Recent advice from the Director of the Macau DICJ is that the registration method works satisfactorily for Macau.

Just because most other premium jurisdictions have always incorporated an employee licensing scheme in their suite of regulatory tools does not mean it is still necessary to continue with it. In an analogous situation, up until 2004, all premium jurisdictions with junket business required that junket promoters (also called junket organisers in some jurisdictions) needed to be approved by the regulator. In 2004, Victoria abolished this requirement and New South Wales subsequently followed suit. This progressive approach was considered radical when first announced but has not caused any problems and other jurisdictions internationally are known to be considering whether they should also follow this progressive lead.

The licensing of employees serves the following purposes:

- It allows the regulator to form a judgement about the suitability of individuals to work in a casino based on the character, integrity and reputation of the person. If a person satisfies this probity assessment, they may be licensed
- It gives the regulator a tool to remove an unsuitable person from the casino industry by taking away the individual's licence by way of disciplinary action.

It is important that suitable employees are engaged by the operators. However, the question that should be asked is whether licensing by the regulator is the most effective and efficient method of achieving this aim? In effect, the regulator is taking on the responsibility that an employer should have which is to make decisions of this type about its own workforce. There are many other industries where employees handle cash and make decisions which require the person to operate with integrity (banking and retail, for example) where the responsibility as to the suitability of the employee lies entirely with the employer. More relevantly, employees of gaming venues (ie, clubs and hotels) do not need to be licensed in New South Wales irrespective of their duties with the decision whether a person is suitable left wholly to the employer. If it is suitable for clubs and hotels to employ persons performing gaming duties without those people being licensed, why should it not be suitable for casino employees to be similarly employed without being licensed?

The Star and Crown Melbourne do not rely solely on the employee licensing decisions of their respective regulators to determine a prospective employee's suitability. Rather, they undertake their own probity analysis of prospective employees and choose not to employ those who they believe pose an unacceptable risk to their business. In effect, therefore, the licensing activity of these regulators is duplicating what is already happening thereby increasing the costs of employment with no obvious material benefit.

With respect to the second reason for licensing (the ability to stop a person working in a casino by removing their licence), the operators already terminate the employment of more people than the regulators do. However, as legislation currently stands, there is an implied obligation on regulators to take this form of disciplinary action. Consultation with the casino operators confirms that the operators would terminate the employment of these same people but often wait for the regulator to act first to make their task easier as legislation forbids operators from continuing to employee people to perform the duties for which a licence is required when those licences are cancelled.

Elimination of licensing would reduce the cost of regulation by removing a time-consuming exercise, both at the upfront licensing stage as well as the investigations which lead to disciplinary action.

There may be a view that the first objectives of the Casino Control Act is not being served by abolishing the function of licensing employees. This objective found at Section 4A states:

> (1) Among the primary objects of this Act are:
> (a) ensuring that the management and operation of a casino remain free from criminal influence or exploitation, and
> (b) ensuring that gaming in a casino is conducted honestly, and
> (c) containing and controlling the potential of a casino to cause harm to the public interest and to individuals and families.

However, section 1(a) would continue to be served by requiring the casino operators and its key personnel, such as Directors and principal shareholders, to be approved as associates. Section 1(b) would continue to be actively administered by requiring casino operators to incorporate stringent employment checks (which they already do) as part of their internal controls which themselves continue to be approved by the regulator. Section 1(c) would continue to be achieved through the suite of responsible gambling obligations imposed on the operators.

If New South Wales were to abolish the licensing of casino employees it would be considered a radical form of modernisation but perhaps no more radical than abolishing the approval of junket organisers which it has already done.

Option 2: Modernising the employee licensing scheme

Should the decision be made to retain employee licensing, the following sections offer suggestions of reforms to make the licensing regime as efficient as possible.

Who should require a licence?

The number of duties for which a licence is required could be reduced. Section 43(1) of the Casino Control Act defines a special employee to mean a person who:

(a) is employed or working in a casino in a managerial capacity or who is authorised to make decisions, involving the exercise of his or her discretion, that regulate operations[34] in a casino, or

(b) is employed or working in a casino in any capacity relating to any of the following activities:

- the conduct of gaming,
- the movement of money or chips about the casino,
- the exchange of money or chips to patrons in the casino,
- the counting of money or chips in the casino,
- the operation, maintenance, construction or repair of gaming equipment approved by the Authority under section 68,
- the supervision of any of the above activities,
- casino security,
- any other activity relating to operations in the casino that is prescribed for the purposes of this definition.

(2) The regulations may exempt persons employed or working in a casino in any specified capacity from being special employees.

The *Casino Control Regulation 2009* states at Regulation 6 that:

(1) For the purposes of section 43 (2) of the Act, a person employed or working in a casino in a capacity relating to:
  (a) the movement of money about the casino, or
  (b) the exchange of money in the casino, or
  (c) the counting of money in the casino, or
  (d) the supervision of that movement, exchange or counting of money, is exempt from being a special employee if the money concerned relates only to the sale of food or drink, or of souvenirs or similar merchandise, in the casino.

(2) However, subclause (1) does not operate to exempt from being a special employee an employee who is at any time responsible (whether in an acting capacity or otherwise) for the supervision and management of the sale or supply of liquor in the casino.

(3) For the purposes of section 43 (2) of the Act, a person employed or working in a casino in any of the following capacities is exempt from being a special employee:
  (a) as a promoter of a junket,
  (b) as a representative of such a promoter,
  (c) as a person providing a cash collection, delivery and handling service to the casino under a contract or as an employee of such a person.

[34] See also discussion regarding the definition of *"operations"* in the section entitled *"Current best practice procedures and approaches for conduct of gaming"* later in this report.

The Victorian legislation is almost identical. It requires that individuals performing the following duties should be licensed. A person who:

(a) is employed or working in a casino in a managerial capacity or who is authorised to make decisions, involving the exercise of his or her discretion, that regulate operations in a casino; or

(b) is employed or working in a casino in any capacity relating to the following activities—

(i) the conduct of gaming or approved betting competitions;
(ii) the movement of money or chips about the casino;
(iii) the exchange of money or chips to patrons in the casino;
(iv) the counting of money or chips in the casino;
(iva) the security and surveillance of the casino;
(v) the operation, maintenance, construction, or repair of gaming equipment or totalisators;
(vi) the supervision of any of the above activities;
(vii) any other activity relating to operations in the casino that is specified by the Commission for the purposes of this definition by notice in writing given to the casino operator."[35]

In comparison with the similar definitions in use in the New South Wales and Victorian Acts (and Singapore's which is similar although the text is not included here), Queensland's Casino Control Act appears to be less specific, but the detail can be found instead in the Queensland *Casino Control Regulation 2009*. The relevant provisions of the Act state:

casino employee means any person employed or working in a casino whose duties or responsibilities relate to or are in support of the operation of such casino, but does not include—

(a) a casino key employee; or
(b) persons or persons of a class or category of persons prescribed as persons employed in casinos who are not required to be licensed as casino employees.

Casino key employee is subsequently defined in the Queensland legislation as:

casino key employee means—

(a) a person employed by, or working for, a casino in a managerial capacity or who is empowered to make decisions, involving the exercise of the person's discretion, that regulate the operation of a casino; or
(b) any person associated with or employee of a casino who has the power to exercise a significant influence over or with respect to the operation of the casino; or
(c) any person associated with or employee of a casino who, by reason of the person's remuneration or policy-making position or by reason of any other criteria prescribed under a regulation, holds or exercises or is able to exercise authority of such a nature or to such an extent in respect of the operation of the casino as to render it desirable in the public interest that the person be licensed as a casino key employee.

The Queensland *Casino Control Regulation 2009* then prescribes the work of casino key employees in Regulation 15 and the types of work for casino employees in Regulation 16 as:

15 List of types of work for casino key employees—Act, s 35
For section 35(1)(d) of the Act, the following list is prescribed—
(a) administrative management;
(b) cash and accounting management;
(c) casino executive management;

[35] Section 37 Victoria *Casino Control Act 1991*

(d) casino management;
(e) casino promotions management, including junket promotions management;
(f) gaming management;
(g) gaming machine management;
(h) internal audit management;
(i) keno gaming management;
(j) security management;
(k) surveillance management.

16 List of types of work for casino employees—Act, s 35
For section 35(1)(d) of the Act, the following list is prescribed—
(a) administrative and incidental operations;
(b) cash and accounting operations;
(c) casino promotions, including junket promotions;
(d) games supervision;
(e) games dealing;
(f) gaming machine operations;
(g) internal audit operations;
(h) keno gaming operations;
(i) security operations;
(j) surveillance operations.

The Queensland scheme is highly prescriptive and is included for comparative purposes but certainly not as an exemplar of modern regulation to be followed. Rather, New South Wales should take this opportunity to determine a modern approach to casino employee licensing.

If licensing of employees is to continue, consideration should be given to reducing the categories of employees for whom a licence is required. The changes suggested below maintain employee licensing for the core activities of gaming but reduce the need for licensing of non-gaming related duties and in other special circumstances.

While the Casino Control Act requires that employees performing "casino security" hold a special employees licence, the same duties require individuals to be licensed under the *Security Industries Act 1997*. While the licensing provisions in the Casino Control Act and the Security Industries Act both go to suitability, the provisions in the latter Act can be considered to be objectively more stringent (See Appendix 6). Accordingly, if a person is to undertake the duties of casino security it is most likely on the same set of facts that a person could not be licensed as a casino special employee if they fail to acquire a licence under the Securities Industry Act.

However, as explained above, being granted a licence is only one aspect to employee licensing. The possession of a licence empowers the Authority to take action against any licensed employee. It is therefore not inappropriate, if licensing of employees is to be retained, for the Authority to retain a power to take disciplinary action against security officers at the casino.

This could be achieved by amending the Act to state that a person holding a licence issued under the Security Industries Act could be considered suitable to be granted a licence effectively automatically under the Casino Control Act or, alternatively, to be deemed to hold a casino special employees licence while employed by a casino operator.

If a person who performs the duties of a security officer is subsequently found to be unsuitable by the Authority to continue to work in a casino that casino employee's licence could be cancelled. A separate decision should be made about whether that person remains suitable to continue to hold a licence under the Security Industries Act. In such a situation, the Authority should also notify the Commissioner of Police, not only if it removes the right of a Security Officer to continue to work in a casino, but if it takes any disciplinary action against a Security Officer.

As explained later in this report, the definition of *"operations"* in the Casino Control Act should be narrowed. As a consequence, those people who currently require a licence in areas where they *"regulate operations in a casino"* under its current broad interpretation but who do not have a role in gaming, such as employees of the operator working in marketing, should no longer be required to hold a licence. Whether the definition of *"operations"* is amended as recommended or not, there is no value to the regulatory scheme in licensing employees who are not involved in gaming.

The final change which is recommended is to prescribe an exemption from the requirement for licensing for defined "special circumstances". Examples of "special circumstances" might include during industrial action where unlicensed personnel may perform some limited duties or for a staff member in an unlicensed role who may step in to fill a temporary breach such as where security officers leave their posts at a casino entry to intervene in an actual or potentially violent confrontation. In the latter example, an unlicensed employee, such as a member of the casino's bar staff, might move to guard a casino entry until the licensed security officers can return.

Related to the question of positions requiring a licence is the obligation for the casino operator to advise the Authority of position descriptions and organisational structures. This obligation will be addressed in the internal control section below.

The licensing process

The current process sees a duplication of effort between the Authority and the operators. Essentially, the process sees the operators make decisions on who they wish to employ before any application is lodged with the Authority. Part of that decision involves the operators performing their own assessment of the suitability of the person using similar tools as those available to the Authority.

However, while the tools are similar, they are not necessarily exactly the same. Whereas the Authority makes use of NSW Police and the information held within the resources of the Police, the operators have access to information available publicly. The main difference between the information available publicly and through NSW Police is intelligence information held by the Police and not publicly disclosed.

That intelligence information may be useful when determining the suitability of an operator and its defined associates (such as potential new Directors of the licensed operator) where a higher level of assessment should be expected. However, it is of much less value when determining the suitability of a person applying for a special employees licence.

There are three reasons why Police intelligence is of limited value as part of the process for assessing the suitability of applicants for employees licences.

- Firstly, there is often limited use for which intelligence can be used when following the rules of natural justice. History has shown many times that while Police may be happy to disclose intelligence information to gaming regulators, they often do not want the same information disclosed to the applicant as it may damage other Police operations. Without access to this information, the applicant would be denied natural justice if the application were to be refused on the basis of it. From a practical perspective, section 50(2) of the Act requires that if the Authority is considering refusing a person's licence, it must provide the applicant with an opportunity to make submissions as to why the application should not be refused. Clearly the scheme contemplates that any information available to the Authority to enable it make a decision must also be made available to the applicant.
- Secondly, much of the intelligence surrounding an applicant relates to people with whom the applicant is known to associate. However, under the Casino Control Act who an applicant for an employees licence associates with is not, in itself, relevant to the test of suitability. What is relevant is a person's "general reputation"[36] which may

[36] See section 52(3)(b) of the Casino Control Act

be affected by who that person associates with – but reputation is what other people think of the applicant and, by definition, must therefore mean the information about that association must be in the public domain.

- Thirdly, accessing Police intelligence slows down the licensing process for very little, if any, reward. There is a significant opportunity cost with the resources being used to make assessments producing insignificant results.

Related to this concern about the lack of value from accessing Police intelligence, is the questionable value of taking an applicant's fingerprints[37]. While it is true fingerprinting will provide a higher level of certainty of identity of the applicant, it is questionable whether this approach is necessary. Again, as mentioned before, this scheme can be compared with gaming employees who work in clubs and hotels – if they do not even need to be licensed, is there any value to be gained from taking fingerprints of applicants for casino employee licences?

In summary, therefore, if employee licensing is to continue, fingerprinting should be abolished and a decision by the Authority should be based on a person's criminal record but not on any undisclosed criminal intelligence.

Mutual recognition between Australian jurisdictions

Mutual recognition legislation was enacted by the Commonwealth and New South Wales in 1992 and in other Australian States and Territories from 1992 onwards. Under the New South Wales *Mutual Recognition Act 1992*, a person in an "occupation" which requires a form of registration and which includes some type of qualification including (but not limited to) *"experience, character or being fit or proper"* [38]must have a registration of another jurisdiction recognised in New South Wales. Accordingly, a person licensed as a casino special employee (howsoever described) in another Australian jurisdiction is *"entitled after notifying the local registration authority of [New South Wales]"* to be registered in New South Wales for the equivalent occupation[39]. The "local registration authority" then confirms with the initial registration (or licensing) authority that the person indeed holds the qualification claimed.

While mutual recognition operates in theory, it is not always a practical form of approval. The reality is that licensing schemes work most efficiently when operated simply following the same procedures for all applicants. Applications received using the mutual recognition process may not be common and as such not all regulators in Australia will have processes in place either to process an application received or to respond to another regulator's request for confirmation of information. As a consequence, applications received using the mutual recognition process might be slower to process than a new application freshly received for the same person. While that may not seem fair, it is recognition of the relative rarity of applications received seeking mutual recognition of qualifications. While the Authority is required to accept applications received under mutual recognition, it may be better for the operators (through whom all applications are received) to recognise that depending on the jurisdictions involved a fresh application may be quicker to process.

Approval of identification

Licensed employees are required under section 45 of the Casino Control Act to wear a form of identification approved by the Authority. That same section then allows the Authority to exempt a person or class of persons from that requirement. In essence, this legislation parallels that used in Victoria and Queensland.

What is different from the situation in Victoria and Queensland is the additional requirement included in the Casino Control Regulation as regulation 8 which states,

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[37] Section 46(3) of the Casino Control Act states that the Authority may require an applicant to consent to having fingerprints taken. While the Authority does not currently require that fingerprints be taken, fingerprints are taken as part of the process for applying for a National Police Certificate.

[38] See the definition of "occupation" in clause 4 of the Schedule to the *Mutual Recognition Act 1992* (NSW)

[39] See clause 17 of the Schedule to the *Mutual Recognition Act 1992* (NSW)

> "A casino employee who is not a licensee under Part 4 of the Act must, at all times while carrying out his or her duties in any part of a casino to which the public does not have access, wear on his or her person and so as to be clearly visible a form of identification approved by the Authority."

Given the Act specifically empowers the Authority to exempt some people from having to wear identification it seems somewhat incongruous that Regulation 8 comes from a contrary position requiring that back of house, non-licensed employees, wear an approved form of identification.

Nevertheless, the question of identification should be considered in the light of the two options for employee licensing discussed above. If employee licensing is to be abolished, there is little reason for the regulator to mandate a particular form of identification. What should be necessary is that the operator provide each person who works as a dealer, games supervisor, assistant games supervisor or a security officer (and perhaps some other duties) with a visible form of identification which enables a player or an inspector to read that person's first name. (To protect the privacy and safety of the individuals, their surnames should not be displayed).

Conversely, if licensing is to continue, each licensed employee will be provided with a physical licence. While a licence confirms that the person has passed the test of suitability, whether that person displays that licence or not is not particularly valuable to the community or inspectors. Players will rightly assume that a person who is performing the duties which require a licence (whether the player knows what those duties are or not), will be suitable to do so. Inspectors do not need to have visible confirmation of a person's licence, (even though many inspectors probably think that they do) as long as that person has a visible form of identification.

Accordingly, whether employee licensing continues of not, a visible form of identification should be necessary, but there is no need for the form of that identification to be approved by the Authority.

Furthermore, there appears to be no valid reason to maintain the obligation in Regulation 8.

Certificates of competency

Section 44 of the Casino Control Act states that a special employee must hold both a licence and a certificate of competency issued under section 64 of that Act (see Appendix 7). The certificate of competency is issued by the casino operator if satisfied that the employee has satisfactorily completed training undertaken by the casino operator. The Act also requires the casino operator not to issue a certificate of competency unless the "training or qualifications on the basis of which the certificate to be issued complies with any standards or other requirements set by the Authority."

Victoria had a similar provision in its Casino Control Act which was abolished more than a decade ago. It was considered then to be a barrier to employment as it was perceived that individuals could not get a job without a certificate of competence, but conversely could not be proven to be competent without the experience of having performed those duties for which the certificate was required.

The regulation of certificates of competency implies that somehow the regulator is better qualified than the employer to judge what skills are necessary for a person to undertake the responsibilities of a licensed employee. This absorption into the responsibilities of the regulator what should rightfully be an employer's responsibility is another example of an unnecessary risk being taken by the regulator rather than the employer.

In many other industries, including somewhat ironically the inspectors of the regulator itself, no certificate of competency is required. Instead the employer takes full responsibility for ensuring that the employee is sufficiently skilled to undertake the roles expected. A casino operator should not be considered to be any less responsible than other employers and should take full responsibility for the standard of training and competence of its employees. Ultimately, the casino operator takes full responsibility for the competence of all its employees as it may be the subject of disciplinary action for any mistakes made.

The continuation of the requirement for licensed employees to have a certificate of competency is an unnecessary anachronism which can safely be removed without diminishing the integrity of gaming or the expectations that licensed employees will undertake their duties in a responsible manner.

Disciplinary action processes

Having employees licensed requires that the regulator continuously monitor those licensees for suitability. Section 59 of the Act provides various grounds for the taking of disciplinary action either in the form of a written notice censuring the licensee, suspension of the licence for a specified period or cancellation of the licence. The grounds are clearly defined[40] but require a proper investigation by the regulator before any such action can be taken.

These investigations, plus the time required to ensure procedural fairness (such as the minimum 14 days which the Authority must provide the licensee with to make submissions before making a decision)[41] means a licensee who may not be suitable to continue to be licensed retains a licence for quite some time. However, the disciplinary action process must be conducted fairly and recognise the impact any decision might have on a person's employment.

While this Review will not recommend that a time limit be imposed on the disciplinary action process (such as requiring that the process be concluded within 6 months) other changes recommended within this Review should enable a transfer of resources, if required, to allow for the investigation and disciplinary action processes to proceed as quickly as possible.

Term of employee licences

The duration of a casino employee licence is 5 years (unless the licensee dies, has the licence cancelled by disciplinary action or voluntarily chooses to surrender the licence)[42]. A more efficient model would be to extend this period to 10 years which is the term in Victoria. In so doing, it reduces the cost of regulation while having minimal (if any) impact on the integrity of gaming.

Transferability of licences

Section 55 (c) of the Act states that a special employee licence remains in force until *"the employment which the licence authorises is terminated"*. As part of the competition expected in New South Wales, there will also be competition for employees. There will be a need to repeal this provision to allow licensed employees to move between operators without the need for the cancellation and re-issue of a new licence.

Licence application fee

Given the changes recommended above, it would be appropriate to review the cost of applying for an employees licence. In particular, the extension of the term from 5 to 10 years, the abolition of the certificate of competency and the limitation of investigation to criminal records and not criminal intelligence, will reduce the workload for the regulator[43]. As such, if an application licence fee is to be based on cost recovery, a fresh analysis would need to be undertaken to ensure the correct value is being charged for licence applications received under this modernised regime.

[40] See section 59(1) of the Casino Control Act

[41] See section 59(3)(a) of the Casino Control Act

[42] Section 55 (a), (b) and (d) of the Casino Control Act

[43] Abolishing the taking of fingerprints does not affect the licence application fee. Payment for the taking of fingerprints is included as part of an application for a National Police Certificate. However, similar checks can be undertaken without the need for fingerprints.

Current best practice procedures and approaches for conduct of gaming

Gaming operations

The remit of the Authority's responsibilities with respect to operations relies on the definition of *"operations"* in section 3 of the Casino Control Act. The Act then empowers the Authority to undertake certain actions such as the issuing of written directions that relate *"to the conduct, supervision or control of operations in the casino."*[44]

Section 3 defines *"operations"* as follows:

> *operations*, in relation to a casino, means:
> (a) the conduct of gaming in the casino,
> (b) the management and supervision of the conduct of gaming in the casino,
> (c) money counting in, and in relation to, the casino,
> (d) accounting procedures in, and in relation to, the casino,
> (e) the use of storage areas in the casino, and
> (f) other matters affecting, or arising out of, activities in the casino.

This definition is a very broad interpretation with parts (c) to (f) not restricted to the conduct of gaming in the casino. While it is almost identical to the language of the Victorian Act, it varies from the Queensland definition which can be found in section 4A of that State's Casino Control Act which states,

> "A reference in this Act to *casino operation* or *operation of a casino* or to a like expression in relation to a casino is a reference to the operation and conduct in respect of a casino of—
> (a) gaming; and
> (b) money counting, surveillance, accounting, storage and other activities in connection with or related or incidental to gaming and its operation and conduct in respect of a casino."

In a risk-based model of regulation the definition might not be problematic as a regulator operating under such a regime may interpret "operations" narrowly recognising that its objects of minimising criminal influence and exploitation and minimising harm from gaming can be achieved by focusing its regulatory effort on gaming-related matters.

As New South Wales wishes to modernise its casino regulatory regime it may be prudent to be explicit that its expectations are that a risk-based approach is to be followed and that accordingly the definition of operations should be changed to reflect this approach. A simple amendment to the definition of operations in Section 3 so that each of parts (c) to (f) is limited to the conduct of gaming should suffice. If this were to occur, part (c), as an example, would become *"money counting in, and in relation to, the conduct of gaming in the casino"*.

Equipment, facilities and layouts

Gaming machines for the casino are defined in section 8 of the Casino Control Act as *"any device the Minister determines to be a gaming machine"*. The Minister has issued a direction under section 8 (see Appendix 8) which makes clear that a gaming machine in the casino is to have the same meaning as an *"approved gaming machine"* in the *Gaming Machines Act 2001*, except for those gaming machines which are multi-terminal gaming machines based on table games. An *"approved gaming machine"* is one which has been approved by the Authority under section 64 of that Act.

[44] See section 29 of the Casino Control Act

Section 64 enables the Authority to refuse to approve a gaming machine if it does not meet the approved technical standards, meaning any technical standards the Authority may have approved under section 62 of the *Gaming Machines Act 2001.* Irrespective of which standards the Authority may choose to approve, the Ministerial direction also states that *"there should be presumption in favour of approving gaming equipment where that gaming equipment has been approved for use in a casino in another jurisdiction with a similar level of regulatory controls".* Australian and New Zealand regulators have approved the Australian/ New Zealand Gaming Machine National Standard. Similarly, many international regulators have adopted the GLI-11 Standard[45]. It is apparent from the Ministerial direction that the Authority should approve for use in the casino gaming machines which meet either of these standards.

While the definition of an *"approved gaming machine"* is found in the *Gaming Machines Act 2001*, what is more problematic is defining what appears to be a gaming machine but does not operate as one. The Star has machines which it uses for tournament play. These machines do not accept cash or pay out tickets which could then be used in The Star's other, approved gaming machines. A question arises as to whether these machines should be counted toward the 1,500 gaming machine cap. On the one hand, because they do not accept cash or pay out prizes, they do not meet one of the essential features of a gaming machine. On the other hand, the only reason why they do not do so is because they have had those particular functions disabled.

The problem of determining what is and what is not a gaming machine is not a question isolated to The Star. It is, in fact, an ongoing problem for regulators in many jurisdictions which sometimes find it difficult to mount prosecutions for the illegal possession of gaming machines because of an inability to prove that a non-operating machine meets the legal definition of a gaming machine.

Nevertheless, with respect to The Star, it would appear logical that tournament machines should count toward the 1,500 allowed. If they were not so counted, this would open the door for Crown Sydney to install similar machines without breaching their licence but almost certainly undermining the community's confidence in the regulatory scheme. It is open to The Star to seek an increase in the cap to accommodate the tournament machines should it wish to do so.

Casino operators regularly wish to add new gaming equipment (such as gaming machines and gaming tables) to the gaming floor, move equipment or dispose of equipment which is no longer required. The regulatory scheme needs to ensure that the equipment used is fair to players and does not exacerbate problem gambling. As such, there is a regulatory role. How these three functions of installation, movement and disposal are dealt with can vary depending on whether the approach is one which is highly prescriptive or one that is risk-based.

A prescriptive model involves the regulator giving prior approval for the installation of new equipment, the movement on the gaming floor of previously approved equipment and the eventual removal from the floor, disposal and sometimes destruction of the equipment. A risk-based model removes the need for pre-approval and replaces it instead with a scheme of approved procedures combined with certification by the operator. Under this latter model, the regulator can audit the actions of the operator to ensure that its certifications are correctly applied and meet the obligations of the approved procedures.

With respect to the installation of new gaming machines (including for this purpose, multi-terminal gaming machines), an inspector of the Authority currently attends the gaming floor as part of the installation process. The purpose of the inspector's attendance is to ensure that the correct gaming machine is being installed in the correct location. However, there is a better way. As all gaming machines are connected to a central monitoring system (CMS), which has as one of its features a "signature check" of the installed software, the inspector's

[45] See http://www.gaminglabs.com/gli-standards

presence at installation is not required to ensure the integrity of the game if the CMS can be relied upon.

The "signature check" ensures that the software in the gaming machine is the same version as has been uploaded to the CMS. Procedures should be in place within the operator to ensure that only approved software is uploaded to the CMS. If the "signature check" fails, the CMS will prevent the gaming machine from operating.

For the regulator to have confidence in this model of regulation it needs to be satisfied that the operator's procedures, including uploading game software to the CMS, are appropriate and being followed. This model requires the regulator to approve the CMS and then to monitor that system to ensure that it is operating as approved. In Victoria, systems auditors[46] are engaged to check that the approved version of the CMS is being used in the casino.

In a prescriptive model, inspectors may also attend installation to ensure that gaming machines are located within the approved gaming area or even within a smaller, defined gaming machine sub-area. However, if the procedures in place require that the gaming machine is to be located on the gaming floor, or the sub-area of the floor defined as a gaming machine area, the presence of inspectors would not be required as long as the procedure obliged the operator to certify that the specified machine (identified by a serial number) was installed correctly (meaning, in the approved area or sub-area, connected to the CMS and, if required, within CCTV view).

Some regulators, and some inspectors, believe that their role in approving the layout of gaming machines includes assessing comfort levels for players. In so doing, inspectors measure the distances between gaming machines, chairs used by players of those gaming machines, walls and so on, and make an assessment. As there are no standards of what makes an appropriate distance, the assessment is purely subjective. More relevantly, it is purely unnecessary. Casino operators can make their own subjective assessments of comfort levels and if they get it wrong, the players will let them know.

It is recommended that the mechanism for installation of new gaming machines be changed to a risk-based model after operator procedures have been approved and appropriate regulatory procedures are in place.

Movements of gaming machines on the casino floor should follow similar procedures to those described for the installation of new gaming machines. Subject to the operator having approved controls in place (connection to CMS, certification that machine is in an approved gaming area or approved gaming machine sub-area, etc), the operator should be able to move gaming machines when it chooses without the need for an inspector to be present. The operator would certify that all necessary procedures have been followed and advise the regulator accordingly.

Installation of new gaming tables should follow a similar procedure as that recommended above for gaming machines, varied to accommodate the specific requirements of the table. For example, the operator should be able to install or move a table or change a table layout (ie, from a layout for one game to a different game) subject to the operator certifying that all relevant procedures have been followed. The details of those procedures can be worked out with the regulator but should include confirmation that the table is installed in an approved gaming area (or table game sub-area), that CCTV cameras are installed, angled correctly and working, that other electronic surveillance is appropriately installed, that drop boxes are affixed, etc.

This Review has also considered the possibility of allowing trial periods for new games. The idea of a live trial would be to allow a game to operate *in situ* while rules and procedures are fine tuned. Adopting a live trial scheme would also overcome the time taken to have new

[46] Systems auditors in Victoria check that all gambling operating systems are installed and working as approved including lottery, wagering, jackpot, keno, casino CMS and the club and hotel gaming network CMS. The Systems Auditors also monitor these systems for risks (such as access controls).

products approved by the Authority which The Star considers to be unreasonable. Much of this time is taken up in the process of drafting suitable rules. While the concept of live trials has much to commend it, it is foreseeable that a game in trial mode, even if it is clearly explained to the players that it is a trial, can lead to player disputes if the rules are not clear and the procedures not clear or not fully understood by the dealers. As player disputes undermine the community's confidence in gaming it is obvious that they should be avoided. As such, allowing the introduction of a process, such as live trials, which may increase player disputes, is not in the community's interest. Of course, live trials might not be necessary if the process for approving new table games could be streamlined. The Authority should examine its own processes for assessing and approving table games to see whether there are any unreasonable delays which could be eliminated.

Related to the issue of new equipment is the use by casino operators of pre-shuffled playing cards which are shuffled prior to their arrival at the casino. Cards which are not pre-shuffled arrive with their cards in numerical order by suit and then have to be shuffled before use. Pre-shuffled cards serve two purposes. Firstly, they reduce the risk of an inadequate manual shuffle which may provide an advantage to players of some games (notably blackjack). Secondly, and related to the first point, they save time for the casino as shuffling cards to ensure a random distribution of the deck cannot be foreshortened. The Authority approved the use of pre-shuffled cards in 2012. As long as the pre-shuffling methodology is suitable, including suitable controls of playing cards in the transfer from the pre-shuffling premises to the secure playing card storage in the casino, there is no reason why the Authority should not continue to allow the pre-shuffling of cards.

Disposal of gaming equipment can be by sale or destruction and needs to ensure that the product does not fall into inappropriate hands in a usable form. Pursuant to clause 12.3(b) of the COA, The Star is required to obtain permission from the Authority for the destruction of any approved gaming equipment. The Star advises that as far as it is aware, this approval has never been withheld. This suggests that the disposal and destruction of gaming equipment should only be a notification requirement and not something which requires prior approval. In broader terms, the role for the regulator should be to approve the disposal procedure (which should include a notification obligation) and then audit the activities of the operator to ensure it follows the approved procedures.

The procedures for the disposal or destruction of other equipment, such as cards, chips and dice, should be similar in structure to that in place for other gaming hardware. The major risk with cards, chips and dice is that if not destroyed properly they may find their way back into the casino. However, should this occur, the casino is the party with most at risk as any cheating using these products will be at the operator's expense. It is therefore logical that the operator's interest in a properly conducted disposal and destruction regime should be sufficient to ensure that the regime operates as it should. Nevertheless, to give the community confidence in the operations of the casino it is appropriate for the regulator to include an audit program of equipment destruction as part of its scheme of risk-based management of the casino.

While gaming machines and table games are the visual manifestation of gaming in a casino, there are also back of house tools which are required to maintain gaming operations. Most of this equipment is directly or indirectly digital. As such there are server rooms and equipment which need to be maintained. One of the requirements for the casino (and any business) is to have back up and disaster recovery capability. Generally, for a business the size of casinos, disaster recovery should be off-site. Clearly this equipment will need to be in secure locations. Given that for disaster recovery reasons gaming-related equipment, such as servers, should be held off-site, there is no reason why the same core equipment (that is, the equipment that operates live, rather than for disaster recovery purposes) could not also be off-site, as long as there is sufficient security. The Authority should approve the use of off-site locations, subject to being satisfied as to security of the location and accessibility by inspectors.

For the avoidance of any doubt, this Review recommends that any gaming equipment being used by a player should only be usable inside the gaming floor of the casino. While this

statement may seem unnecessarily obvious, given the progress of mobile gaming activities in Nevada, this is a real issue which may be faced by Australian regulators sometime in the near future.

Betting, including chips, vouchers, currency

Some tidying up of legislative terminology will assist with the smooth operation of the casinos. Section 70 of the Casino Control Act has become dated and restrictive because it has not kept pace with casino operational developments.

Section 70 is a long section and is included in full in Appendix 9. However, the key provisions for this discussion are subsections 70(1)(c), 70(1)(d) and 70(2)(c) which state respectively,

> "(1)(c) chips for gaming in the casino are not to be issued unless the chips are paid for in money to the value of the chips or by chip purchase voucher that, on payment of the amount shown on the voucher, was issued by or on behalf of the operator unless the game rules require or provide for another method,
>
> (1)(d) gaming wagers are not to be placed in the casino otherwise than by means of chips unless the game rules require or provide for the placing of wagers by any other means,
>
> (2)(c) chips or chip purchase vouchers are to be redeemed for a cheque at the request of the patron (if the patron requests a cheque), or wholly or partly for money (with a cheque for any balance) if the patron so requests and the casino operator concurs."

The intentions of section 70 are clear. It is intended that patrons not place wagers with unsuitable forms of things of value. Similarly section 70 also intends that patrons be paid what is rightfully theirs. However, by prescriptively nominating what is allowed, rather than generically stating what is not allowed, it limits the ability of casinos to use more modern instruments of gaming.

Subsection (1)(c) is intended to ensure that chips cannot be purchased by non-traditional means such as a player "converting" his or her wristwatch for chips. However, the restrictive nature of this section also prevents chips from being purchased with complimentary bet vouchers issued by the operators. It is not likely that this limitation was intended as the use of complimentary chip vouchers is standard practice for casinos around the world. (Complimentary chip vouchers are traditionally exchanged for complimentary betting chips which differ from the standard gaming chips in that they can only be played with and not exchanged for cash.)

Subsection (1)(d) is intended to prevent players trying to place inappropriate wagers (such as wristwatches, for example) directly on gaming tables. The consequence of this provision as it is currently worded is that it also prevents the placement of bets by complimentary bet vouchers.

Subsection (2)(c) intends that chips and chip purchase vouchers must be redeemed for cash. This is the "reverse" provision to subsection (1)(c) to ensure that the casino operator honours a player's chips with cash or a cheque and not, for example, with a wristwatch. However, this provision does not properly allow for tournament chips (special chips used for the purpose of playing tournaments rather than a cash game) or for training purposes. Furthermore, as explained above, the purpose of complimentary bet chips is to provide as a marketing exercise some chips to a player to gamble with, but not to convert directly to cash. The wording of this subsection, however, requires operators to allow players to directly convert complimentary bet chips into cash.

The Victorian legislation is similar in its construct to that in place in New South Wales and results in the same deficiencies as described above[47].

These problems can be resolved with simple amendments which

[47] See sections 64(1)(c), 64(1)(d), 64(g)(iii) and 68(2)(a) of the Victorian *Casino Control Act 1991*.

- make clear in subsection 70(1)(c) that chips can be purchased with complimentary chip vouchers;
- change subsection 70(1)(d) to allow wagers to be made with promotional or complimentary bet vouchers or chips purchased with promotional or complimentary bet vouchers;
- make clear in subsection 70(2)(c) that redemption of chips for cash or cheque does not apply for chips used in tournaments and for training purposes and that complimentary bet chips do not need to be exchanged for cash.

"Promotional play" refers to play undertaken by patrons using the casino operator's own funds. Essentially, the casino operator is providing the cash for the patron to play usually in the form of promotional chips, tokens or vouchers. While the form of the gift to the player can be in a variety of non-cash forms, the key issue is that it is the operator's own proceeds which are being used to gamble.

Obviously players have the same chance of winning or losing on any betting contingency whether it is promotional play or a player using his or her own funds. Under the current regulatory scheme, duty is payable on losses from promotional play on tables yet not on promotional play on gaming machines. This inconsistency should be rectified.

Whether rectification for promotional play losses should be by duty being payable on both tables and gaming machines or on neither has been considered. While duty being paid on player losses is a fundamental expectation in all jurisdictions, it is questionable whether a player has in fact lost anything when betting in promotional play. As such, this Review has come to the view that duty should not be paid on promotional play as there is no genuine player loss to tax.

The VIP areas of The Star and Crown Sydney are intended to facilitate play by relatively sophisticated gamblers. Some of these players will have demands beyond those made by mass market players. As long as the demands do not impact on the integrity of the game, affect other players, result in incorrect assessment of tax or encourage irresponsible gambling practices, it would not be inappropriate for the regulatory scheme to accommodate those demands. One possible demand from these sophisticated players is to gamble in foreign currency, as has been allowed in Victoria. There is no reason why New South Wales should not also allow this option. Of course, as with any activity, the regulatory scheme would only allow the operators to accept bets in foreign currency if suitable internal controls and operating procedures are in place to manage issues such as currency controls and conversion of duty payable in Australian dollars.

Section 72(1)(d) of the Casino Control Act requires that *"there is prominently displayed at each gaming table or location related to the playing of a game a sign indicating the permissible minimum and maximum wagers pertaining to the game played there"*. Because multi-terminal gaming machines have been considered to be table games, the Authority considers that this section must also apply for those games. While it is correct that players should be provided with information as to the maximum and minimum wagers which can be placed, given that multi-terminal gaming machines have player terminals which already include this information it appears unnecessary to mandate an extra physical sign be displayed. No amendment to the Act would appear to be necessary as sub-section 72(2) allows the Authority to exempt a casino operator from compliance with subsection 72(1)(d).

The regulatory scheme imposes a requirement that amendment of a table minimum (that is, the minimum bet allowed at a table) can only be changed with 20 minutes notice. The intention is to allow players at that table time to decide whether to continue to play at that table in the knowledge that the minimum bet required to be placed will soon be higher. From a responsible gambling perspective, giving players time to make a decision about whether to continue playing at what will soon become a higher minimum bet level is appropriate.

Nevertheless, there are two exceptions to this obligation which would not compromise the responsible gambling intentions of this requirement. These are that:

- The minimum bet could be changed at any table where no players are present without the need for a 20 minute notice period.
- If a minimum bet is changed, new players to that table in the period between when the notification is made and before the 20 minute notice period is concluded must play at the higher minimum bet level.

There appears to be no sound reason why the minimum bet could not be changed at a table where there are no players with immediate effect. There can be no question of confusion among players or any issues associated with players being required to be at different minimum bet levels for the 20 minute notice period.

The option of retaining the 20 minute notice period for those players at the table when the notice is provided but for the new minimum to take immediate effect for any new player to the table after the notice of change has been displayed is more complex. Such an operation requires the casino operator to manage the different table minimum bet levels. If the operator can do so with a clear arrangement in place so that the players are not confused or disadvantaged, then they should be able to do so. The operators should be given the opportunity to indicate how their Standard Operating Procedures can accommodate such a model. As The Star has already developed Standard Operating Procedures which allow for these contingencies, the Authority has amended the rules of games to allow for higher minimum bets for new players to the table (see section 6.5 of the Rules of the Game for Blackjack, for example).

The obligation for the 20 minute minimum is legislated (see sub-sections 72(1)(e) and 72(2) of the Casino Control Act). Sub-section 72(2) allows the Authority *"by instrument in writing"* to exempt a casino operator from compliance with the 20 minute obligation. That exemption has been exercised by including it "in writing" in the Rules of the Game. However, as this Review also recommends changes to the regulatory processes for the game rules (see below), that mechanism for the Authority to implement the exemption may no longer be available. Accordingly, it is recommended that sub-section 72(2) of the Act be amended to broaden the scope of possible exemptions by removing the limiting words *"in respect of any particular game played in the casino"*.

Game rules

Section 66(1) of the Casino Control Act says that the *"Authority may…approve the games that may be played in a casino and the rules for those games."* It is unclear from this provision whether the rules are required to be the Authority's rules or the casino operator's rules. The rules published on the Authority's website have the Authority name on them although there is no copyright statement confirming whose property the rules are.

With two operators wishing to compete with table games it is obvious that part of that competition will be in the offer of the games available. Each operator would consider it advantageous to have a unique offering, such as a bonus bet, attached to an otherwise traditional game, or a new game altogether. For this to occur, the operators need to have ownership of the intellectual property which are the rules of games. Accordingly, the Authority should approve rules of table games (and gaming machine games) presented to them by the operators with those rules being the property of the casino operator which sought their approval. This may mean that the rules of traditional games may vary – but that is one of the fundamental consequences of competition and should be supported as it provides players eligible to participate in play at both casinos a choice as to what they might prefer.

A specific issue which should be addressed in the game rules is the treatment by the operators of unclaimed prizes and credits. This can occur with credits left on gaming machines (including multi-terminal gaming machines) as well as gaming chips not collected from tables. The rules should make clear what approach will be taken within the casino and the operators should have procedures in place which explain how that particular aspect of the game rules will be administered. Ultimately, unclaimed prize money and credits should be transferred to the Government. Section 114 of the *Gaming Machines Regulation 2010*

prescribes a model for unclaimed prizes on gaming machines in clubs and hotels which refers to the unclaimed moneys being transferred into the Community Development Fund. A similar provision should exist, perhaps in the Casino Control Regulation (if a satisfactory head of power exists in the Act), with the unclaimed moneys being transferred to an appropriate Government fund, such as the Responsible Gambling Fund created under section 115 of the Casino Control Act.

The rules of the games offered at the casino must be available for players to view in a convenient form. Section 66(1A) of the Casino Control Act mandates that the rules approved by the Authority must be published on the Authority's website. This requirement may be well intentioned but can be a cause of fully avoidable problems. It would be significantly better if the Act was amended to make it an obligation of the operators to publish the approved rules themselves.

Firstly, players are more likely to visit the operators' websites when wanting to read the rules of any game. While this should happen as good customer practice without the need for any regulatory intervention, it should be a requirement that only approved rules can be published. Table game rules occasionally change, usually when the operator wishes to add a new contingency such as a new side bet or jackpot, for example. It is important that players are not confused by having access to out-of-date rules.

Secondly, there are potential problems associated with relying on the Authority's website. For example, administrative decisions within government may mean that the Authority may not always have control of its own website and instead is required to rely on another agency to make the changes. This could delay making changes to the website and thereby not only postpone the introduction of a new game (or an amendment to a game) but unless the casino operators know precisely when the website is updated, they may inadvertently be offering a version of the game which is inconsistent with the published rules.

Whether the Authority has control of its website or not, the updating of its website may not always be administered as promptly as it should. As the operators cannot offer the new or amended version of the game until the correct version of the rules are published, the Authority becomes a potential bottleneck which is more problematic when there are two operators competing in the Sydney market.

Approved rules should also be made readily available for players to read inside the casino. When disputes occur, the information needs to be readily available to players. The form in which the approved rules are provided should not be prescribed so that operators can provide them in printed or digital form (such as on a tablet provided to a player to read). However they are made available, they must be in a written form.

In summary, therefore, the current practice of approved rules being published on the Authority's website should discontinue to be replaced with a requirement that the approved rules be published on the operators' websites; and the approved rules must be made available in a readily accessible form for players to access inside the casino.

In addition to the availability of game rules, section 72(1)(c) of the Act requires the operators to provide patrons, at their request, with a summary of game rules with the text of that summary approved by the Authority. In so doing the Authority is required to adopt unnecessary risk as it takes on the responsibility of ensuring the information provided is accurate, complete and not misleading to players. It would be more consistent with a risk-based model if the scheme allowed the operators to develop their own information with the role of the Authority being to ensure that any information the operators choose to provide is accurate, not misleading and does not breach harm minimisation requirements.

Supervision, security and surveillance

In a traditional, prescriptive model of regulation, regulators prescribed formulae for determining the number of positions required to supervise game play. The traditional model divided the casino gaming floor into pits, each with a number of tables, and each

administered by a pit boss[49] who managed a number of game supervisors who then oversaw individual dealers. The number of people required for each position was highly regulated. A more modern approach is to change from this input model to an outcomes-focused approach. With this in mind, modern regulators have shifted from the highly prescriptive, formula-driven model to one which recognises that each gaming floor has its own requirements.

A modern model for determining supervision levels assess the risks associated with the game including matters such as table game limits, patron numbers, location, time of day and week, layout (including line of sight visibility) and the availability of technical surveillance support. After assessing risk, the number of supervisors can be determined. A higher risk rating will result in a requirement for more supervisors; a lower risk rating will require fewer. Under such a model, the role for the regulator is to approve the internal control which determines how the risk is assessed and will be managed, not the individual decisions regarding how many supervisors should be on duty for any particular game.

Modern technology continues to evolve and as such so should the system of casino regulation. When Australian casino regulatory schemes were being developed in the early 1990s it was thought that catwalks might be necessary to allow the regulator's inspectors and the casino's own surveillance staff unfettered visual access to the gaming floor. For example, the original version of Victoria's *Casino Control Act 1991* included a requirement that approval be sought for *"the position and description of a catwalk surveillance system for the direct visual monitoring of operations in the casino"*. While that same provision still exists in Victoria's Act today, there was never a catwalk surveillance system built into Crown Melbourne.

Catwalks have not been used in premium casinos for years due to the advent of high quality CCTV, which continues to improve. In the early 2000s, premium casinos invested in digital equipment and the continuing reductions in hardware and software costs (on a performance basis) mean that greater results are achievable from spending fewer dollars. Along with CCTV equipment, modern casinos also have other electronic surveillance technologies which, along with the CCTV images, are connected to the surveillance room.

Casinos have CCTV in use for the use of the operator and the regulator. As such, the quality of the product needs to meet requirements of both. On one view there may be some advantages in the Authority determining minimum technical standards for its requirements for CCTV. This would provide the operators with confidence when making purchasing commitments that the technology will meet the Authority's requirements. Alternatively, the operators can negotiate with the Authority at the time of making purchasing decisions to seek comfort that the option being considered will satisfy the Authority's needs. On balance, it may simplify matters if the Authority were to define minimum technical standards after consultation with the operators.

The casino's security functions are, in effect, coordinated with the casino's surveillance room staff who access the CCTV and electronic surveillance equipment and then pass information back to casino floor staff to take any necessary action. Surveillance and security already operate physically apart, albeit in the same building. With modern communications technology it is questionable whether the nexus between surveillance and security requires that surveillance remain physically close to security.

It is not inconceivable that with modern CCTV and other electronic surveillance equipment that the surveillance task could move further from security, including to an off-site location. If it can move off-site, why could it not also move to another State? Accordingly, consideration should be given to allowing the casino operators to move their surveillance (but not their security) off-site to anywhere else in Australia, subject to the regulator being satisfied that the operators will accept that the conditions of operation must match those in place for an operation in New South Wales. This would mean, for example, that operators commit to providing the same speed of access to video footage and that surveillance staff located outside New South Wales are made available for interview in New South Wales whenever the

[49] The term 'pit boss' is now known as 'assistant gaming manager' in New South Wales

need might arise. To enforce this commitment, the Authority should issue a specific direction to an operator which wishes to move its surveillance to another Australian jurisdiction which, if breached, would be a ground for disciplinary action against the operator.

If the operators choose to collocate their surveillance teams from other properties in a single location, each operator should be required to have a dedicated service for The Star and Crown Sydney respectively. This does not mean that individual employees can only provide surveillance for a single property, but, rather, that each property should have a dedicated shift. In fact, allowing employees to move from surveillance for one property to another may be beneficial as it may broaden the skill base of those employees.

However, before allowing The Star or Crown Sydney to move to off-site surveillance, each operator would need to develop appropriate Internal Controls to the satisfaction of the Authority and Standard Operating Procedures which would explain how the surveillance operations would operate off-site with an explicit commitment to ensuring that the issue of State borders will not be problematic. In particular, the relationship between the surveillance team and security staff needs to be clearly understood by both parties to ensure security responds as necessary to matters of concern identified by the surveillance team.

Controlled contracts

Controlled contracts are defined in section 36 of the Act as:

> (a) a contract that relates to the supply or servicing of gaming equipment that has been approved by the Authority under section 68 (1), or
> (b) a contract, or class of contracts, that, in the opinion of the Authority, is materially significant to the integrity of the operation of a casino and that the Authority declares, by notice in writing to the casino operator, to be a controlled contract.

Regulation 9 of the *Casino Control Regulation 2009* prescribes in a large list the classes of contract that for the purposes of paragraph (b) above are exempt from the definition of "controlled contract", with some exceptions to the general exemptions. It is unclear why this list of exemptions is prescribed in the Regulation when the Act states in paragraph (b) that the Authority is to declare *"by notice in writing to the casino operator"* what is considered to be a controlled contract. The full text of Section 36 of the Act and Regulation 9 are provided as Appendix 10.

Section 37 of the Act prescribes the process which the operators must follow to have controlled contracts allowed. In summary, the process is essentially a form of background check of the providers of whatever the goods or services are that the controlled contract would be procuring. This process is typical of the New Jersey form of regulation and can be understood in the context of casinos being developed in Atlantic City in the 1970s and 1980s when there was a legitimate fear of organised crime attempting to access casino proceeds through excessive contract payments.

It is more difficult to identify a good reason for this model to continue in the Australian context. A simpler method is to require casino operators to undertake due diligence appropriate to the type and size of the proposed contract. Accordingly, a higher level of due diligence checking would be warranted for suppliers of gaming equipment (playing cards, chips, gaming machines, etc) than might be required for a supplier of light bulbs. Similarly, a contract of $2 million should attract a higher level of assessment than one for $10,000.

In Victoria, the regulatory scheme included a similar controlled contract provision when that State's Casino Control Act was first enacted. Over time, the regulator made staged changes to the current scheme where the VCGLR no longer requires to be advised of any contract prior to Crown Melbourne entering into it. Instead, Crown undertakes its own due diligence and the VCGLR audits Crown's actions to ensure appropriate assessments take place.

The change to the regulatory process in Victoria requires Crown Melbourne to develop appropriate internal controls and standard operating procedures which articulate the

processes it must follow before entering into any contract. Since the new model was introduced there have been no issues of concern identified.

It is recommended that New South Wales follow the Victorian example. As a consequence, and subject to appropriate controls and procedures being in place (without which the model would not change), the obligation on the operators would be to notify the Authority of contracts entered into rather than waiting for pre-approval. The Authority could then include reviewing controlled contract assessment in its regular audit program.

Cheating

The Act has a specific provision which makes cheating at a casino illegal. The seriousness with which the Act takes cheating can be seen by the penalty provision which includes imprisonment as an option, one of the few times that such a penalty is allowed for under the Act. The provision covers matters well but there is a possibility that the Act may not have kept up with modern technology.

The Act states that a person must not obtain a benefit *"by the dishonest use"* of *"any trick, device, sleight of hand or representation"*. It is unclear whether this wording (in particular the words *"dishonest use"*) would necessarily capture some forms of technology known to have been used to gain a benefit at roulette.[50] The approved Rules of the Game for Roulette have addressed modern technology[51] and empower the operator to ban a person caught using it from the casino. However, breaking the rules does not empower any law enforcement action against a player.

It may be wise to strengthen this section by amending section 87 to include specific reference to the use of equipment used to monitor – but not tamper with - the rotations of a roulette wheel. The logical sub-section to amend for this purpose would be 87(2). It may also be necessary to amend sub-section 87(4) to ensure that the same equipment may be in the possession of the casino operators to enable them to train their staff in what to look for.

Game rules approved by the Authority also inadvertently have not kept pace with technology. Rule 19.1 of the rules of blackjack[52] published on the Authority's website states,

> "A person shall not, either alone or in concert with any other person, use or control at or near a gaming table or location related to the playing of a game a calculator, computer, or other electronic, electrical or mechanical apparatus or device that is capable, with respect to a game or a part thereof, of recording, projecting, analysing or transmitting an outcome or the changing probabilities or the playing strategies to be used."

This rule as it stands does not recognise the capabilities or ubiquity of smartphones. As most players in the casino playing blackjack will have a smartphone with them, each would be breaking this rule as soon as they use their phone, irrespective of their purpose in doing so. It would be better to change this rule to make it clear that an offence is committed if the device is used for the purpose of obtaining some form of benefit for the player or another person. (Earlier in this Review there is a recommendation that Game Rules should be the property of the operators. If this occurs, the operators should amend the rules. Otherwise, the Authority will need to make the suggested amendment.)

Current best practice procedures and approaches for the provision of credit, junkets and inducements

Credit and discharge of debts

The issue of allowing casino operators to extend credit has been considered along with the matter of the process for writing off debts.

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[50] See http://www.theguardian.com/science/2004/mar/23/sciencenews.crime, for example.

[51] See Rule 8.1 of the approved Rules for Roulette.

[52] See http://www.ilga.nsw.gov.au/__data/assets/pdf_file/0010/75259/Blackjack-15-July-2015.pdf

In Victoria, credit can be extended by the casino operator to non-Australian resident players on a premium program arrangement or a junket[53]. Crown Melbourne does not need to seek prior approval from the regulator and makes a commercial judgment in each case as to whether to offer credit and the maximum level of credit it is prepared to risk.

In Victoria, credit cannot be directly offered by the operator to any other players. As similarly occurs at The Star, however, the casino operator does have an indirect avenue to providing credit through its cheque cashing arrangement. Crown Melbourne is permitted to accept cheques from local players and, without waiting for the funds to be cleared, can allow the player to gamble with those proceeds.

The VCGLR confirms that these arrangements, which have been in place for about 20 years, have not been of concern with respect to criminal exploitation, criminal influence or in any way with harm minimisation principles.

The ability to offer credit directly (to premium, non-Victorian players) or indirectly (to players via the mechanism of its cheque cashing facility) results in the operator having to manage unpaid debts. Crown Melbourne is required to seek the approval of the regulator before discharging any debts accrued by players[54]. While this requirement has been in place since the Victorian legislation was enacted in 1991, its purpose is unclear.

Involving the regulator in a matter which is a normal commercial arrangement between the operator and the patron does not add any value to the integrity of gaming. If the operator chooses to discharge a debt it should be free to do so like any other business. Experience in Victoria has shown that there is no discernible value to the State in including this regulatory step.

Conversely, as the requirement to seek the regulator's approval prior to discharging a debt takes time the operator is prevented from making prompt decisions which may cost the operator. While the commercial success of the operator is not the primary concern of this Review it is also not appropriate for regulatory processes to cost the operators money when there is no genuine value from such a regulatory imposition.

A simple example can show how the regulatory process may cost the operator. Should a high roller offer 50 cents in the dollar but only if the casino operator will accept that offer immediately, the operator can make a commercial decision to accept that offer only if it does not need to receive prior approval from the regulator. On the other hand, if the regulator's approval is required, that offer may be withdrawn because of the unavoidable time delay resulting in zero recovery for the operator.

The scheme in Victoria has been in place for many years and does not appear to have caused any problems. While it is sound practice from a harm minimisation point of view for credit not to be provided to locals, it is reasonable to assume that players on a premium play arrangement or participating in a junket must be relatively sophisticated with respect to their understanding of money and the consequences of credit.

In New South Wales, section 74(1)(d) of the Casino Control Act does not allow direct credit to be offered to any players at The Star. Conversely, section 74(5) ensures that the ban on credit in section 74(1)(d) does not apply to Crown Sydney and instead allows that operator to extend credit to any person participating in a premium player program or a junket. The full text of section 74 is included in Appendix 11.

Given the Victorian experience, the aim for competitive neutrality between The Star and Crown Sydney where each is operating in the same market, and the relative sophistication of premium players and participants in junkets with respect to their understanding of the value of money and in particular their ability to appreciate the consequences of being extended credit, The Star should be permitted to extend credit to players on a premium play program or participating in a junket. Importantly, however, The Star should not be able to extend

[53] Section 68(8) Victoria *Casino Control Act 1991*

[54] Section 68(2)(e) Victoria *Casino Control Act 1991*

credit to any resident of New South Wales. This will require an amendment to section 74 of the Act so that The Star can extend credit to the same cohort as Crown Sydney.

As both The Star and Crown Sydney have sister properties in Australia players may deposit funds with a casino outside New South Wales. Many international players are highly mobile and move quickly between properties. They would expect to be able to have immediate access to those funds when they arrive in the Sydney properties without having to go through a process of withdrawing funds form one casino property and then re-depositing them with another casino under the same corporate umbrella. There is a view that the Casino Control Act requires those funds to be in the account of the casino operator, rather than a related corporate entity of that operator. Subject to meeting satisfactory accounting controls, which make clear whose funds the money belongs to and that it is correctly recorded as being available to that gambler wherever he or she may be gambling, a modern regulatory scheme should enable these funds to "move with the gambler" without a need for the gambler to have to withdraw the funds at one property and re-deposit them at the next property.

A related issue which also needs to be addressed is the provision which requires the operator to seek the approval of the Authority to discharge its debts. At the moment, even though credit cannot be extended by The Star, it can still accrue gaming debts from dishonoured cheques. If the ban on the extension of credit is to be lifted for premium play and players participating in a junket, as is recommended above, the number and total value of gaming debts for The Star could be expected to increase.

While the same ban on extending credit does not apply to Crown Sydney, the provision which requires a casino operator to seek the approval of the Authority to partly or wholly discharge a debt applies equally to The Star and Crown Sydney.

There is no demonstrable value to the integrity of the casino's activities by requiring that the discharge of gaming debts be approved by the Authority. The provision of credit is a commercial decision and the decision to discharge any debts which may not be recovered should likewise be a commercial decision. The repeal of section 74(1)(e), which states that, a casino operator must not *"except with the approval of the Authority, wholly or partly release or discharge a debt"* will implement this change.

Linked to the issue of Authority approval for the discharge of debts is the rebate that the casino operator receives on tax paid on losses from a player who has an unpaid debt. While the provenance of this provision is not fully understood, on one view the rebate may be argued as logical as it is the casino operator who pays casino taxes on the money it has won from players. If the player has an unpaid debt it could be argued that the casino has not won any money while that debt remains unpaid and therefore should not pay tax on losses which it has not received.

The better view, however, is that once the casino operator has chosen to extend credit either directly or by accepting payment by cheque, the player is gambling with chips which have the same value as cash and as such that player's losses are cash losses. As such tax should be paid on those losses, whether or not the debt to the casino operator is ever repaid. Certainly, the model in Victoria sees tax paid on losses, irrespective of whether the player is playing on credit or not.

Both The Star and Crown Sydney might prefer a model where they receive a rebate for tax paid on losses from players in their debt, but such a model does not encourage sound commercial practices by the operators when determining whether to offer a player credit either directly or indirectly (using those terms as described above). Put simply, New South Wales should amend the scheme to stop providing rebates to the operators for tax paid on losses from unpaid debts.

A minor amendment to the Act is also recommended which would abolish what appears to be a form of protection for operators against making poor commercial decisions. Section 75(6)(a) makes it a condition of a casino licence that the operator,

> "not accept a cheque from a person if a cheque previously accepted by the operator from the person has not been met on presentation (unless the amount of the cheque not met was subsequently paid to the operator)."

This obligation could be removed with little effect other than forcing an operator to consider carefully whether to accept a cheque from a person who has previously allowed a cheque to bounce.

Access to cash

The only reference to ATMs in the legislative scheme is found in Section 74(3) of the Casino Control Act which states,

> "It is a condition of a casino licence that an automatic teller machine or any like device is not to be installed within the boundaries of the casino."

This compares with Nevada which allows ATMs on the gaming floor; Victoria, which requires that ATMs be at least 50 metres from any entrance to the gaming floor of the casino[55]; and most other jurisdictions which fall somewhere in between. It is clear that there is no accepted view internationally of the best approach to regulating the access to cash at casinos.

Nevertheless, the most important discussion point with ATMs is to consider the implication of cash availability to problem gamblers and players at risk of developing gambling problems.

In contemplating the issue for casinos, this Review has taken into consideration the outcome of the NSW Parliament's examination of a related matter. On 14 August 2014, the Legislative Council Select Committee on the Impact of Gambling published its final report. Its seventh of 18 recommendations was:

> "That the NSW Government amends section of 32 of the *Gaming Machines Regulation 2010* (NSW) to specify an appropriate distance between automatic teller machines and electronic gaming machines."

Clause 32 of the *Gaming Machines Regulation 2010* states that a hotel or club must not *"…permit a facility for the withdrawal or transfer of money from a bank or authorised deposit-taking institution (such as an ATM or EFTPOS terminal) to be located"* in a part of the venue where gaming machines are located.

This clause is consistent with the long-held view that if a patron requires more money to keep playing a gaming machine, the break in play while accessing cash will allow that player time to consider whether to continue gambling. The Committee was apparently concerned that as the current provision does not preclude the location of an ATM immediately adjacent but outside the gaming machine area, the intent of the current provision may not be met.

In its response to the Committee's recommendation the Government undertook to commission research investigating whether the gambling harm minimisation intent of clause 32 of the Gaming Machines Regulation can be met without specifying a separation distance between ATMs and gaming machines. That research project is expected to be completed by the second half of 2016.

It is helpful when considering the issue of access to cash at casinos to make use of the most recent data published in Australia, being the "*Study of Gambling and Health in Victoria – Findings from the Victorian Prevalence Study 2014"*[56] which was released in Victoria on 1 December 2015. That report showed that the most common form of gambling for players with gambling problems in Victoria is the playing of gaming machines. The research shows

[55] Victoria's requirement is influenced in part by a separate policy decision to ban ATMs in hotels and clubs altogether, which is not the situation in New South Wales.

[56] Prepared by Schottler Consulting Pty Ltd on behalf of the Victorian Responsible Gambling Foundation and the Department of Justice & Regulation Victoria.

that most expenditure was on gaming machines for 50.6% of problem gamblers whereas betting on casino table games was the highest spend activity for 3.9%.[57]

As is clear in the regulatory scheme – from the creation of a specific casino Act through to other practices involved in the regulation of gaming and liquor – casinos are not considered to be the same as clubs and hotels. One significant difference is that patrons frequenting clubs and hotels may be doing so for many non-gaming reasons. A person visiting a casino may also be attending for non-gaming purposes, but it is difficult to construct an argument that any person visiting the casino complex is not aware that its primary purpose is to offer gambling. As a consequence, a person visiting a casino should be aware that the offer of gambling will likely be more obvious than at clubs and hotels.

It would be prudent to see what the findings of the research commissioned to look at access to cash might disclose. It is equally important to appreciate that casinos (particularly one without poker machines) on the one hand and clubs and hotels on the other have differences in design, purpose and patron expectations which means that what may be recommended for clubs and hotels may not necessarily suit casinos.

Consideration also needs to be given to other forms of cash availability including but not limited to EFTPOS devices. The legislation states that an *"automatic teller machine or any like device"* is not to be installed on the gaming floor. Arguments can be made for and against classifying an EFTPOS device as a *"like device"* but it is also arguable that the legislation could have specifically referred to accessing cash by EFTPOS on the gaming floor but has not done so. As a consequence, it is at best unclear whether EFTPOS can be installed on the gaming floor. Given that non-gaming activities such as food and beverage services are offered on the gaming floor, and from a harm minimisation point of view should be encouraged to give players an opportunity for a break in play, EFTPOS should be allowed as a form of payment on the gaming floor. In Victoria, the use of EFTPOS is allowed on the gaming floor but is only used for non-gaming services, such as food and beverage payments.

A further problem with the specification of *"automatic teller machine and any like device"* in the legislation is that this form of wording may not meet future needs as card and digital payments as well as cash transfer options become more widespread. With smartphone technology and digital cash options moving into common use in other service industries, the regulatory scheme needs to be more flexible. Many people in the community already use card-based and smartphone technology instead of cash ("tap and go" purchasing, for example) with this form of cashless payment expected to increase.

International travelers also expect to be able to use credit and debit cards to pay for a broad range of goods and services to avoid having to carry large amounts of cash. At this time, however, there is insufficient evidence regarding potential gambling harm to support all international players being able to use credit and debit cards to purchase gaming chips directly on the gaming floor. However, rebate players (meaning for this purpose players on a premium player arrangement or a junket) have a more sophisticated understanding of money and credit and it may be appropriate to allow these players the opportunity to use their debit or credit cards to purchase gaming chips directly.

As the community's use of cash equivalent forms changes, so should the regulatory scheme for casinos also be able to do likewise. A way forward might be to refer to harm minimisation principles rather than product specific technologies. This may be achieved by replacing section 74(3) with a statement of principle that access to cash and its equivalent (meaning digital currency, for example) should meet harm minimisation requirements of the Authority. A similar requirement could also be in place for the methods by which patrons might purchase chips on the gaming floor. The Authority would then have flexibility to issue directions about access to cash and the purchase of chips with operators able to put a case to the Authority as to what should be allowed and under what conditions.

[57] See table 66, p 235. Data collected June to November 2014. Note, however, that N=86 for problem gamblers.

A further matter which needs to be addressed is The Star's Notice of Determination for Development Approval which includes the following,

> "No automatic teller machines are permitted to be installed in the same room in single level premises and on the same floor in multi level premises containing gaming machines."

Since opening, The Star has complied with the Development Approval requirement which, of course, means it has also complied with the Act. However, it is questionable whether the obligation imposed in the Development Approval is appropriate. A similar obligation is not imposed on clubs and hotels in New South Wales, at other betting locations (such as racetracks) and nor is it being recommended that it should. Furthermore, from a competitive neutrality viewpoint, the obligation in the Development Approval does not apply to Crown Sydney and as such appears to be an unfair restriction on The Star. Accordingly, removal of the obligation required by the Development Approval is recommended.

Until the findings of the aforementioned research project are known, to give certainty to the operators, the legislation should remain as it is with the restriction in The Star Development Approval removed. The likely outcome of this would be that operators will place ATMs near entry points to the gaming floor in their casinos which is consistent with standard practice at most casinos around the world.

Junkets

Section 76 of the Act states,

(1) The regulations may make provision for or with respect to regulating or prohibiting:
- (a) the promotion and conduct of junkets involving a casino, or
- (b) the offering to persons of inducements to take part in gambling at a casino, or
- (c) the offering to persons of inducements to apply for review of exclusion orders.

(2) In particular, the regulations may:
- (a) impose restrictions on who may organise or promote a junket or offer inducements, and
- (b) require the organiser or promoter of a junket, or a casino operator, to give the Authority advance notice of the junket and to furnish to the Authority detailed information concerning the conduct of and the arrangements for the conduct of any junket, and
- (c) require any contract or other agreement that relates to the conduct of a junket or the offer of an inducement to be in a form and contain provisions approved of by the Authority, and
- (d) require the organiser or promoter of a junket, or a casino operator, to give specified information concerning the conduct of the junket to participants in the junket.

(3) In this section:
junket means:
- (a) an arrangement involving a person (or a group of people) who is introduced to a casino operator by a promoter who receives a commission based on the turnover of play in the casino attributable to the person or persons introduced by the promoter (or otherwise calculated by reference to such play), or
- (b) an arrangement for the promotion of gaming in a casino by groups of people (usually involving arrangements for the provision of transportation, accommodation, food, drink and entertainment for participants in the arrangements, some or all of which are paid for by the casino operator or are otherwise provided on a complimentary basis).

Before addressing the question of junkets, some discussion of subsections 76(1)(b) and (c) is required. The use of the word "inducements", found only in this section of the Act is not specifically defined in the Act but is prescribed in Regulation 20 of the *Casino Control Regulation 2009*. Regulation 20, which is provided as Appendix 12, prescribes three different

forms of inducement, two of which apply solely to players of gaming machines (including multi-terminal gaming machines). As junket players rarely participate in gaming machine play, it is unclear why the inducement provision is wound into the junket section of the Act. It may be best to separate sub-sections 76(1)(b) and (c) from the rest of section 76.

The best methodology to regulate junkets was a topic of much discussion with multiple stakeholders. There is a worldwide public perception that junket play in casinos may provide opportunities for money laundering. However, if this were to occur it should be identified by the controls put in place by each country's agency established to monitor cash transactions. That agency in Australia is AUSTRAC, who was consulted as part of this Review.

The regulation of junkets in New South Wales has been the subject of a previous review by The Agenda Group for the Authority. That review recognised that the regulatory scheme for junkets is implemented through a combination of section 76 of the Casino Control Act, the *Casino Control Regulation 2009* and supplemented by the casino operator's approved system of internal controls. The relevant sections of the Act and Regulation are provided as Appendix 13.

That review found that while the Casino Control Regulation has specific requirements prescribed in regulations 14 to 19, much of the regulatory control of junkets relies instead on the casino operator's system of internal controls approved by the Authority under section 124 of the *Casino Control Act 1992*. In fact, a number of the regulations are not being used, although the matters intended to be regulated by them are still being adequately controlled.

Each of regulations 14 to 19 were examined as part of the earlier review conducted for the Authority. The main findings relevant to this Review are summarised below.

Regulation 16 requires that:

(1) A person must not act as a representative of a promoter unless the person is duly authorised by the promoter.

(2) A promoter who authorises a person as the promoter's representative, or changes such an authority:

(a) must, when giving (or changing) the authorisation, provide the person with a signed statement specifying the authority (or the authority as changed) given to the person, and

(b) must provide a copy of the statement to the Authority within 24 hours after providing it to the person.

(3) A casino operator must not allow a person to act as a representative of a promoter unless the casino operator has received a document, or a copy of a document, that:

(a) is signed by the promoter, and

(b) confirms that the person is duly authorised.

Regulation 16(2)(b) requires a junket promoter who authorises a representative (or changes an authority) to *"provide a copy of the statement to the Authority within 24 hours"* after providing it to the person. On balance, it would seem most likely that Regulation 16(2)(b) contains a drafting error. Rather than the junket promoter providing statements to the Authority, it would seem to make more sense that junket promoters provide copies of such authorisations to the casino operator. This would then fit logically with Regulation 16(3).

If, however, it is not a drafting error, the regulation should be changed anyway as providing the Authority with this information is an unnecessary regulatory burden. A better regulatory obligation would be for the promoter to be required to give a copy to the casino operator which the operator would make available to the Authority on request.

Regulation 17 requires the casino operator to notify the Authority of a conviction of a junket promoter or that promoter's representatives. It is questionable whether there is much to be

gained by continuing this Regulation. As the policy decision has been made that the approval of junket promoters by the Authority is no longer necessary it is unclear what the Authority would do with this information should it be provided as the law seems to intend.

Should the intent of this Regulation continue, it may be advisable to re-consider the specific language used. First, the word "conviction" is highly specific and does not include findings of guilt where a conviction is not recorded. Perhaps a more generic term, such as "finding of guilt" might be preferable. Secondly, the scope is extraordinarily broad with the provision seemingly encompassing all convictions irrespective of their relevance to honesty, integrity or gaming. If this regulation is to continue, it may be better to limit the findings of guilt on matters relating to gaming, theft or dishonesty.

A matter raised by law enforcement agencies[58] as part of the current Review was a concern that insufficient information is made available to them about junket players and the specific amounts each gambles. It remains unclear what law enforcement would do with such information once it is in their possession given the speed of mobility of these players. Nevertheless, discussions with AUSTRAC, the Federal agency with responsibility for enforcing the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AMLCTF Act), indicated that they wished to have continuing dialogue with the casino operators to ensure the best information is made available.

Some changes to the AMLCTF Act came into force on 1 January 2016 which require all organisations covered by the Act, including casino operators, to provide enhanced information on their customers, particularly those customers considered to be at high risk.

In addition, a further review of the AMLCTF Act is nearing completion which may improve the ability of AUSTRAC and gaming regulators to exchange information – an issue which has restricted information flow and limited the ability of gaming regulators throughout Australia to have meaningful involvement in AMLCTF matters.

With the previous three paragraphs in mind, it is interesting that regulation 18, which has the title "Advance notice of junkets" has no effect. Specifically, regulation 18(1) states that,

> (1) A casino operator must provide the Authority with such written details of any proposed junket as the Authority, by notice in writing to the casino operator from time to time, requests.

However, as the Authority has not issued any written notices under Regulation 18(1), this Regulation has no effect. The details which the Authority could require that the operators provide are described in sub-regulations 18(2), 18(3) and 18(4), which state,

> (2) The details are to be provided no later than 24 hours before any participant in a proposed junket the subject of such a notice takes part in gaming at the casino (or by such later time as the Authority may allow in a particular case).
>
> (3) However, if the Authority (by notice under subclause (1) or by a subsequent notice) requests the casino operator to provide a list of participants in a proposed junket, the casino operator must provide the list to the Authority as soon as practicable after receiving the notice.
>
> (4) A request under this clause may relate to junkets generally, to a particular junket or to junkets of a particular class.

Irrespective of the inactive status of regulation 18, its intent is addressed by inclusion of similar obligations in the casino operator's approved system of internal controls. Accordingly, while the Authority could issue a notice under regulation 18, before it does so it should discuss with relevant law enforcement agencies what their specific needs are and whether they are already being met. It is not enough that law enforcement agencies seek information just for the sake of receiving it. The Authority needs to be satisfied that such information

[58] For this purpose, law enforcement agencies means NSW Police, the NSW Crime Commission and the Australian Transaction Reports and Analysis Centre (AUSTRAC).

would serve a legitimate law enforcement purpose before any notice under regulation 18 is issued.

The earlier review came to the conclusion that the regulation of junkets through the requirements of the Casino Control Regulation is supplemented by the casino operator's approved system of internal controls. These controls are the intellectual property of the casino operator and approved by the Authority. They identify the procedures to be undertaken by the casino operator with respect to all aspects of junket operations and provide regulatory control which delivers the outcomes sought by the regulatory scheme. As they cannot be changed without the approval of the Authority, the internal controls are a practical method of regulating junket operations.

In addition to being a practical method of regulation, using the casino operator's internal controls as the primary tool for regulating junket activities has the added advantage of transferring much of the risks associated with junket regulation from the Government (including the regulator) to the ultimate beneficiary of the junket activity, which is where they belong.

The earlier review found that the regulatory scheme for junkets in New South Wales fell somewhere between the permissive regime of Victoria and the more prescriptive approach seen in Singapore, but significantly closer to the Victorian model than Singapore's. Although the Casino Control Regulations 14 to 18 appear not to add significantly to the scheme of junket regulation, what is intended by those specific regulations can nevertheless be effected through the operators' approved systems of internal controls.

While it is questionable whether Regulations 14 to 18 are necessary, on balance, they could remain as a useful "fallback" position in the event that a casino operator fails to fulfil its obligations adequately through its approved system of internal controls[59].

Regulation 19 is in effect and should continue in its current form as it is a key tool by which the Authority can be satisfied that tax at the appropriate rate is being paid on losses from junket and non-junket players. While sub-regulation 19(5) is not being used, it causes no harm by remaining. In summary, while there are questions to be asked about the need for regulations 14 to 18, the same cannot be said for regulation 19 which should remain.

There are some regulatory obligations that appear to be unnecessary because they add to the regulatory burden of the operator and provide no discernible benefit to the regulation of junket promoters. For example, the obligation to provide copies of passport and flight tickets to the Authority for every junket is unnecessary. Rather, this information should be collected and held by the casino operator and made available to the Authority to review as required. An audit program should be established by the regulator which requires a sampling of this information. Should a random sample give any cause for concern, a wider review could be undertaken.

Current best practice procedures and approaches for accounting and internal controls

A residue of the New Jersey style of regulation is the requirement for casinos to have highly prescriptive internal controls. In the traditional 1990s model, a casino was required to have an Internal Control Manual (ICM) which might comprise upward of 20 chapters, often called Internal Control Statements (ICSs), covering everything from organisational structures to physical key controls; and from chip storage to purchasing procedures.

A more modern approach is to require the casino operator to have a principles-based ICM which highlight matters such as where the casino might require dual controls, for example, but does not prescribe detailed procedures, such as who specifically are approved to provide those dual controls. Each part of the modern ICM is supported by Standard Operating

[59] If Casino Control Regulations 14 to 19 are to be retained, it would be desirable to fix what appears to be the drafting error in Regulation 16(2)(b) by replacing the word "Authority" with "casino operator".

Procedures (SOPs). The SOPs in a modern regulatory framework, in effect, replace the former ICSs. However, unlike under a prescriptive model, a modern approach gives the casino operator the freedom to draft and amend its SOPs as it sees fit without needing the regulator's approval.[60] The operator must provide current SOPs to the regulator and it is not inappropriate for the regulator to discuss with the operator any concerns it might have with a SOP, but any such concern does not prevent the operator from continuing with a SOP it has put in place.

This model assumes that the casino operator will have a properly functioning internal compliance section to assess each ICS and SOP before allowing the operational arms of the business to implement whatever procedure has been developed. In a modern, risk-based regime, a casino should have a properly functioning compliance team. If it does not, this model would not be appropriate.

By developing a modern ICM with supporting SOPs, the regulator can be satisfied that the SOPs will be developed consistent with the principles in the ICM. If they are not consistent, the casino operator will have breached its own ICM, which is a breach of the conditions of the casino licence[61] which would be grounds for disciplinary action under the Casino Control Act[62].

This modern approach is not unique. Victoria has successfully moved to this model, although it does take time to get there. It requires significant effort from the casino operator to re-draft its ICM and SOPs and it also cannot be achieved without a cultural shift in the thinking of a regulator which has been used to the older, prescriptive model which has served it well, albeit requiring the Authority to absorb too many of the operator's risks.

There is likely to be a transition period for The Star as it develops a new ICM and supporting SOPs to replace the current version. It is critical that the Authority support the change during the transition so that there is no uncertainty in the process.

A specific example of a highly prescriptive and unnecessarily restrictive obligation is the need for the casino operator to seek the approval of the Authority for position descriptions and organisational structures. When the 1990s model of regulation was implemented it was considered necessary for regulators to oversee the operator's structure. In doing so the regulator was, in effect, providing an audit step which implied the operator was unable to trust its own staff.

Since the 1990s, two significant shifts in thinking have changed the need for this form of oversight (if, indeed, it was ever required). Firstly, it is now considered to be better practice for the regulator to transfer these types of risks to the operator. In other words, the casino operator should have suitable controls in place to manage its own affairs without the need for the regulator to intervene.

Secondly, while structures in casinos may still be hierarchical, it should be up to the operator to decide whether it wishes to use a traditional model, a matrix structure or any other flexible option. The old, prescriptive approach limits innovation and flexibility in human resources management which adds costs and little, if any, benefit.

Furthermore, The Star and Crown Sydney employ large numbers across a variety of business units. Organisational structures may change regularly reinforcing both the need for the operators to have flexibility and the lack of value such information holds for the regulator.

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[60] Under the current model, The Star's SOPs do not require the approval of the Authority. However, this is in the context of a more prescriptive process with substantially more content in The Star's ICSs requiring the Authority's approval. The intention of the changes proposed here is that the SOPs under the new model will contain much of the detail in the current ICSs. It is this content which will be modified and transferred to the SOPs which should not require Authority approval.

[61] See section 124(4) of the Casino Control Act

[62] See section 23 of the Casino Control Act which states that a ground for disciplinary action is that the casino operator "has contravened a provision of this Act or a condition of the licence."

In addition, technological advances in matters such as CCTV, security systems and online audit tools provide the operator with additional controls minimising the risk of misbehaviour by the casino operator's own staff from remaining undetected.

A further example of a risk to be managed by the operators is the safe handling of cash. Not only is it important that cash be accounted for correctly, it is also critical that patron and employee safety not be compromised by cash handling not being undertaken in a safe and secure manner. Casinos recognise this need and include various measures which, apart from one matter, will not be raised here. One matter that needs to be addressed is the ability for the operators to vary their 'drop routes' and not disclose in advance what these routes will be.

'Drop routes' are, in summary, the paths by which the drop boxes for gaming tables and cash boxes for gaming machines are collected and transferred to count rooms. If 'drop routes' are fixed, formally approved by or even notified in advance to the regulator, it provides a risk that a person with the knowledge of those routes could take action to steal cash from the casino and in so doing put the safety of patrons and employees at risk. It is therefore essential that the operators not be required to have fixed drop routes, seek prior approval from the regulator or notify the regulator in advance of proposed drop routes. Rather, the operators should confirm through their ICS and SOPs that they will identify appropriate and varied drop routes which will be known only to relevant operational staff. By way of comparison, the Victorian regulator does not mandate any specific requirements for drop routes.

Section 124 of the Casino Control Act requires that the casino operator *"must ensure that the system approved for the time being under this section for the casino is implemented"* but does not specifically state that once implemented the controls must be followed. The casino operator is likely to follow its internal controls for self-interested reasons. However, one of the key features of a risk-based model of regulation is the transfer of much of the responsibility of compliance to the casino operator. Such a model relies significantly on the development and use of appropriate internal controls. The possibility that the Authority may be unable to take action should there be a breach by an operator of its approved system of controls is a matter which should be clarified and rectified if necessary. Without this being clear, the whole risk-based model is put at risk. Section 124 of the Act is included in full as part of Appendix 14.

Current best practice procedures and approaches for rebate play provisions

In Australian jurisdictions where rebate play is allowed, a lower rate of duty is paid on losses from players classified as rebate players. As a consequence, defining a rebate player not only impacts on the tax rate, but also requires procedures to be in place to make clear which revenues are taxed at the discretionary rate and which are not. Casinos have developed policies, approved by their relevant regulators, which manage these processes.

Examples of regulatory obligations are:

- that rebate play only be offered to non-residents of the jurisdiction
- that rebate play only be offered to players with a minimum amount of front money or buy-in
- that the play of rebate players can be readily identified, such as by use of specially marked chips or by being played on defined tables.

While all Australian jurisdictions with rebate play impose the requirement that it is only available to non-residents, the front money obligation is not consistent. In New South Wales, Victoria and Queensland, a minimum amount is required. In Western Australia there is no minimum amount allowing Crown Perth to make a commercial judgment about who it wishes to offer rebate play to.

There is an argument that the Western Australian model allows the casino operator to make a commercial decision which is more effective than a prescribed regime. However, a change to the current model in New South Wales should not proceed to follow the Western Australian model until the operators can show by appropriate economic and financial modelling to the satisfaction of NSW Treasury that any change in the front money minimum threshold, including the possibility of a complete abolition of the prescribed minimum, would not be detrimental to New South Wales.

An alternative which could also be considered is to replace the "front money" model with another criterion altogether. For example, it may be possible for the operators to identify a different formula – perhaps one which looks at past player expenditure or total property spend. It is not the purpose of this Review to specify a different parameter, only to point out that in a modern regulatory regime, paradigm shifts in traditional thinking should not be dissuaded from consideration. Should the operators identify a different mechanism for classifying a player as a rebate player, the proposed scheme should be assessed for suitability by the regulator and NSW Treasury.

While rebate play is predominantly the domain of table games, it is also available for gaming machine players at The Star. The program for gaming machines is administered, in effect, through the physical location of the gaming machine which must be located in the private gaming areas of the casino. More specifically, under a Ministerial direction issued under the Casino Control Act, 100 of The Star's gaming machines are permitted to be used for rebate play for *"players not normally resident in New South Wales participating in programs for gaming machine 'commission based' or 'rebate' play"*. A copy of that Ministerial direction is provided as Appendix 8.

As the technology can allow the play of individual players on gaming machines to be monitored, there is no technical reason preventing rebate play from being available on any gaming machine in The Star[63]. Extending rebate play in this way would have no impact on duty, so there is no need to consult with NSW Treasury nor is it necessary to require The Star to undertake a modelling exercise. For this recommendation to be implemented, however, The Star would have to develop appropriate controls and procedures which, for example, would show that the gaming machines would recognise which play is that of a rebate player and which is not to ensure that the duty is calculated correctly.

If the model of requiring gaming machines for rebate play to be in defined, private areas is retained, two issues need to be considered.

Firstly, should these machines, which are unavailable for New South Wales residents, be included in the cap of 1,500 gaming machines which forms part of the overall cap of 97,500 machines in the State? It could be argued that one of the reasons for the imposition of the statewide cap is as a harm minimisation measure for New South Wales residents. In addition, irrespective of when it was set, that cap takes into consideration the 100 machines available for rebate play which are not available to New South Wales residents. To exclude those 100 machines from counting towards The Star's 1,500 limit would consequently allow a further 100 machines to be added to the casino floor and therefore there would be another 100 machines available to New South Wales residents. Whether that is something which the State would want is beyond the scope of this Review. Accordingly, all this Review can say is that if the scheme for rebate play on gaming machines retains the current area restriction model, a decision whether to exclude the 100 machines used for rebate play from The Star's 1,500 cap should be made with the knowledge that it will allow for the potential of 100 more machines to be available to New South Wales players in the casino.

Secondly, given that the harm minimisation agenda for the State is primarily to protect its own residents, there is also an argument that the harm minimisation features included in gaming machines available for rebate play are not required. This would allow features not presently allowed on gaming machines in The Star, but allowed in some other jurisdictions, to

[63] This recommendation is separate from and should not in any way be used to argue for an extension of the exemption from smoking which is generally available to rebate players because of where they play.

be installed (or, conversely, not disabled) on those machines available for rebate play. The Ministerial direction provides some guidance by stating that,

> "there should be a presumption in favour of approving gaming equipment where that gaming equipment has been approved for use in another jurisdiction with a similar level of regulatory controls to those applying under the [Casino Control] Act"
>
> "up to a maximum of 250 of the gaming machines installed in the private gaming areas of the casino may have any bet limits requested by the casino operator"
>
> "there should be no limits on prizes or jackpots for any game played on a gaming machine at the casino".

Interpreting this guidance is not simple. Is it suggesting that the gaming machines available for rebate players should have any features allowed as long as they have been approved in at least one other jurisdiction? Or is it intended, by being specific in two of its clauses, that these Directions provide the limit to what should be allowed?

The Direction uses the words *"presumption in favour"* of approving gaming equipment rather than providing a more specific direction that any gaming equipment approved in another jurisdiction should be equally approved in New South Wales. Also this particular Direction is within the clause intended for the "size and style" of the casino rather than specifically for "gaming machines".

Accordingly, this Review has chosen to take a conservative view which is consistent with the precautionary principle when considering this matter. This Review is not interested in arguing the merits of each individual harm minimisation measure imposed. Rather, it takes the view that other than for the exemptions specified in the Ministerial direction, if a harm minimisation feature exists, it is there for a reason and should be made available to all players of gaming machines in the casino, irrespective of whether they are New South Wales residents or not. Should changes be made to the Australian/ New Zealand Gaming Machine National Standard or the Authority's Prohibited Features Register which impact on harm minimisation features on gaming machines in The Star, the impact should be across all gaming machines in the casino, irrespective of where they are placed or who plays them. Nevertheless, the Ministerial direction broadens the scope of the approval process for gaming machines in the casino so that, for example, when determining whether to approve gaming machines for The Star (and not just for rebate play), machines which meet the GLI-11 technical standard, which is widely used in many well-regulated jurisdictions, could be approved for use in the casino whether they meet the Australian/ New Zealand Gaming Machine National Standard or not.

If there is to be no change to the current requirement that there must be a minimum amount of front money for a player to be eligible to be a rebate player for table games or gaming machines, this Review has also considered how best to set the minimum front money level. The current requirement is in The Star's approved internal controls for international rebate play and as a requirement of the Authority for interstate rebate play. As the internal controls of each operator are confidential intellectual property, it is conceivable that each operator could have a different front money minimum for international players approved.

Attracting rebate players for table games is a matter which will clearly be competitive between The Star and Crown Sydney. The question of competitive neutrality therefore arises. On the one hand, if the regulatory framework including the minimum front money amount under which both casinos operate is the same, the "level playing field" that this would provide would ensure equity between the operators. On the other hand, restricting the operators to a single set of regulatory parameters may stifle competition, particularly the competition of ideas.

If the operators were allowed to propose changes to parameters which satisfied the regulator and NSW Treasury and by doing so provided themselves with a competitive advantage it may result in a better outcome for New South Wales. Conversely, an advantage of a single regulatory regime for rebate players which should not be ignored is the simplification of

regulation. A single scheme allows the regulator to develop one set of tools for audit and compliance purposes and makes easier the verification of duty payable and collected.

On balance, this Review considers that at this time there should be a single set of parameters applied equally to both operators to define a rebate player. To put this into effect, the minimum front money levels for international and interstate players should be in a single direction issued to each operator by the Authority using its power under section 29 of the Act[64] rather than in each operator's confidential, approved internal controls. In developing this instruction, the Authority should consult with the operators and NSW Treasury to determine the appropriate quantum for each.

Perhaps after the majority of other recommendations in this Review have been implemented, this matter could be re-considered. As is recommended elsewhere, modernisation of the casino regulatory scheme should not stop at the conclusion of this Review.

Appropriate arrangements for the regulation of liquor and related conduct within venues licensed under the Act

Licensing and related matters

As the regulation of casinos and liquor are consolidated within the same organisation (that is, the Authority and Liquor and Gaming NSW) there is sense in simplifying the licensing process for liquor provision at casinos.

The term "close associate" in the Casino Control Act is defined in section 3 to mean *"a close associate within the meaning of the* Gaming and Liquor Administration Act 2007*"*. Suitability of "close associates" for the purposes of approval under the Casino Control Act is highly specific. Conversely, the suitability of "close associates" for a liquor licence, determined under the *Liquor Act 2007,* is barely prescribed with the decision whether to approve a licence highly discretionary with no reference to "close associates" in the relevant provision. (The relevant provisions of the Casino Control Act and the Liquor Act are provided as Appendix 15.)

It would appear to make sense that if a person passes the test to be suitable as a "close associate" of a casino operator that same person must be suitable to be a "close associate" of the same entities' liquor licences. Accordingly, consideration should be given to eliminating any unnecessary duplication of effort by amending the legislation to make clear that an approved "close associate" of the casino operator is deemed to be suitable to be a "close associate" of the same entity upon consideration of that entity's application for any liquor licences without the need for any further investigation.

There are certain minimum expectations for The Star and Crown Sydney. While obviously not an exhaustive list, these include that the premises should be of a high standard, that the provision of gaming and liquor will be delivered responsibly and that there will be a range of food and beverage options available. It is therefore implicit that just as the casino licence allows gaming for the term of the licence, similarly each venue will be able to serve liquor for the term of any liquor licence issued. Given that it is expected that each of The Star and Crown Sydney will, while they operate as casinos also serve liquor, it makes sense to link the term of any liquor licences granted to the terms of their casino licences[65].

As is explained below, the regulation of liquor at casinos differs significantly from that at any other form of liquor point of sale or consumption. Just as the rules around gambling differ thereby necessitating a specific Act and accompanying regulations, there is sense in treating

[64] Section 29(1) of the Act states that, "The Authority may give a casino operator a written direction that relates to the conduct, supervision or control of operations in the casino". Section 29(2) makes it a condition of a casino licence that the operator must comply with such a direction.

[65] Clause 5.3 of The Star's Liquor Permit Agreement effectively links the terms of The Star's casino licence with its liquor approval.

the regulation of liquor differently at casinos from non-casino venues. For this reason, The Star and Crown Sydney should continue to have “standalone” liquor regulation and remain separate from the scheme in place for clubs and hotels.

Responsible liquor regulation

While the various administrative issues identified above are all important to streamline liquor licensing regulation, the most important consideration is the need to ensure the most responsible model of liquor control is in place.

NSW Police advised that non-casino licensed premises are classified under a risk-based model so that venues with the highest number of liquor-related problems (such as assaults), are classified as Level 1 premises. Such premises are required to have management plans developed in negotiation with NSW Police and have other obligations imposed upon them (such as higher licence renewal fees).

On raw numbers alone, The Star has the number of problems which would classify them as Level 1 other than for the fact that it is exempt from consideration under this model. Using raw numbers to calculate risk, however, is misleading in this instance given the physical size of the whole complex along with the average numbers of visitors per day, estimated to peak at approximately 40,000 on Fridays and Saturdays.

The Star meets monthly with Sydney Police Local Area Command and officers of the Authority to review every instance of liquor related criminal activity to determine strategies to prevent similar offences being committed in future. This approach is consistent with the strategies applied to Level 1 premises, so while that classification system may not apply to The Star, this approach is an example of how liquor-related issues can still be managed independently of that classification system. This Review endorses this approach as an example of a responsible direction. Given the approach now being taken by The Star, it is not necessary to classify The Star as a Level 1 premises.

When Crown Sydney opens, even though it will differ from The Star in that it will not have the broad range of service offerings, it will similarly need to adopt a pro-active approach to managing liquor issues. How that should proceed should be negotiated between Crown Sydney, NSW Police and the regulator and be put in place prior to Crown Sydney opening.

Whatever methodologies are adopted, both operators will need to commit to a sustainable methodology to ensure liquor related problems are minimised.

The Sydney CBD Entertainment Precinct is a prescribed zone within which certain obligations apply to liquor outlets. Among other things, these controls include lockouts of patrons from 1.30 am and a ban on sales of liquor after 3.00 am. The Sydney CBD Entertainment Precinct covers a broad area but does not incorporate the Pyrmont area or the Barangaroo site. As a result, neither The Star nor Crown Sydney is in the defined Sydney CBD Entertainment Precinct.

Exemptions from some of the restrictions automatically imposed on liquor outlets by their physical inclusion in the Sydney CBD Entertainment Precinct can be sought from the Authority on a case-by-case basis.

This Review has considered:

1) The desirability of expanding the Sydney CBD Entertainment Precinct to include the areas within which The Star and Crown Sydney are located and requiring those premises to operate under the conditions which automatically apply;

2) The desirability of expanding the Sydney CBD Entertainment Precinct to include the areas within which The Star and Crown Sydney are located and requiring those premises to seek case-by-case exemptions from the Authority from measures which automatically apply;

3) The option of excluding The Star and Crown Sydney from the Sydney CBD Entertainment Precinct, if it is otherwise expanded into Pyrmont and the Barangaroo site; and

4) The option of not expanding the Sydney CBD Entertainment Precinct to include the Pyrmont and Barangaroo sites.

The first option would be inconsistent with the accepted understanding of what a world class casino complex is. The Casino Control Act makes it a condition of the casino licence that the casino is open to the public for gaming *"on such days and at such times…as directed by the Authority."*[66] Consistent with the desire to make casinos in Sydney world class facilities, the Authority has required The Star to be open 24 hours a day and seven days a week in recognition that a casino is different from a club or hotel and should be available for patrons at any time of day.

If a casino is to continue to operate as a 24/7 facility, it needs to be able to offer all the services which would normally be expected at a casino, and not just gaming. As a consequence, any restriction on the serving of alcohol from 3.00 am and any attempt to impose a "lockout" at the casino would be inconsistent with this desire. Accordingly, option 1 above would not be an appropriate approach.

The second option has the attraction of allowing the features of the Sydney CBD Entertainment Precinct to apply except where the Authority has allowed specific exemptions. However, it is quite conceivable that the Authority could apply different exemptions or conditions on each property thereby providing one facility with an advantage. This would be inconsistent with one of the intentions of this Review which is to eliminate measures which negatively impact on competitive neutrality. This option would also provide the operators with too much regulatory uncertainty which would be unreasonable and fetter their ability to make sound investments on long-term assets. As a consequence, option 2 is not recommended.

Should the decision be made to expand the Sydney CBD Entertainment Precinct to incorporate the land in and around Pyrmont and Barangaroo, consideration should be given to specifying that the land on which The Star and Crown Sydney are located are specifically excluded. While this would mean that the conditions which apply in the Sydney CBD Entertainment Precinct would not apply, it would make both properties oases within an otherwise restricted zone which may exacerbate rather than ameliorate liquor related problems. Option 3 is therefore not recommended.

The final option – the option of not expanding the Sydney CBD Entertainment Precinct to include Pyrmont and the Barangaroo site – is preferred from a casino perspective. However, this Review is not tasked with determining policy for liquor regulation outside the casinos. Nevertheless, if possible, it would be best from a casino regulatory perspective if Pyrmont and the Barangaroo site are not included in the Sydney Entertainment Precinct. Like many of the other recommendations in this Review, this does not mean that each property should not comply with the general principles behind the purpose of that regulation. Each should be required to commit to liquor management plans developed in consultation with NSW Police and the regulator. As premium properties, both The Star and Crown Sydney have responsibilities to Sydney and the State as a whole to offer their services in a manner consistent with the high standards expected of world class gaming facilities on a 24/7 basis. There is no reason why both operators should not be exemplars of liquor service consistent with their desired status in the broader entertainment industry.

The Authority, at the request of the Police Commissioner, can issue a long-term banning order for up to 12 months under certain circumstances (primarily where the Authority is satisfied that a person has been charged with or found involved in a serious indictable offence where alcohol was involved). A person the subject of a temporary or long-term banning order is barred from entering any licensed premises in Kings Cross or the Sydney CBD. To enhance the amenity of The Star and Crown Sydney, consideration should be given to extending the coverage of those banning orders to those properties.

[66] Section 71

NSW Police believe that patrons moving from one liquor outlet to another within The Star with drinks in hand appear to exacerbate problems associated with liquor induced misbehaviour. The view of NSW Police is that, similar to the "breaks in play" argument for gamblers, an opportunity for a person to leave an outlet (meaning, for this purpose, a vendor such as a bar or nightclub outside the approved gaming area) without liquor in hand may encourage a more responsible approach by the patron. It should not be difficult to impose as a condition of The Star's or Crown Sydney's liquor licences that patrons leaving such licensed outlets cannot take with them liquor provided to them at that particular outlet.

A further measure proposed by NSW Police is to require that purchasers of liquor be limited to two glasses at a time after a specific time of day. While this does not prevent a person from returning to the bar to purchase more drinks (as might be anticipated when there is a large group of patrons), similar to the issue addressed above, the two glass limit may impress upon the purchaser the need to act responsibly with the purchase and consumption of liquor at that time of the evening. It is recommended that the time at which such a measure should commence should be consistent with the restrictions imposed under Schedule 4 of the *Liquor Act* 2007 for Level 1 venues.

A provision in the regulations which limits the sale of take-away liquor which can be sold by the casino operator is highly prescriptive. Section 10(4) of Schedule 6 limits the sale of liquor by the casino operator for take-away purposes in three ways. It may only be sold to a resident[67]; it must be ancillary to the provision of a meal; and the volume sold must not exceed 2 litres per resident per day. It seems somewhat capricious, arbitrary and pointless to impose those limits on the sale of take-away liquor when neighbouring licensees have no such restrictions. This provision could be excised from the regulation with no discernible harm.

There is no question that intoxicated people should not be able to gamble in the casino. While the Casino Control Act makes this clear, a minor improvement to the legislation would make accountability more appropriate. Section 163 of the Casino Control Act states that,

> (1) A casino operator must not:
> (a) permit intoxication within the gaming area of the casino, or
> (b) permit any indecent, violent or quarrelsome conduct within the gaming area of the casino, or
> (c) permit an intoxicated person to gamble in the casino.
> (2) A member of the staff of a casino must not:
> (a) sell or supply liquor to an intoxicated person who is in the gaming area of the casino, or
> (b) permit an intoxicated person to gamble in the casino.

This wording differs in one material way from that in place in Victoria where it states,

> A casino operator must not ***knowingly*** allow a person who is in a state of intoxication to gamble or bet in the casino[68] (emphasis added).

By adding the word "knowingly" so that 163(1) would start with "A casino operator must not knowingly:…" and so that 163(2) states "A member of the staff of a casino must not knowingly:…", the accountability of the operator or the staff member, as the case may be, is more absolute and would enable prosecution in the courts or via disciplinary action to be more pointed.

Section 71 of Schedule 6 of the *Casino Control Regulation 2009* states, in part, that:

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[67] *Resident* is defined as *"a person…who resides, or is staying overnight in, a part of the premises that has been set aside for the purpose of accommodation"*.

[68] Section 81AAC of the Victorian *Casino Control Act 1991*

(1) If a licensee that is a corporation contravenes (whether by act or omission) any provision of this Act, each person who occupies a position of authority in the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
(2) If a licensee that is a corporation is taken to have contravened (whether by act or omission) any provision of this Act or the regulations under the *Casino Control Act 1992* by reason of a contravention by the manager of the licensed premises, each person who occupies a position of authority in the corporation is taken to have contravened the same provision unless the person establishes that the person:
    (a) was not knowingly a party to any authorisation by the corporation of the contravention by the manager, and
    (b) took all reasonable steps (within the scope of the person's authority) to ensure that the corporation maintained control over and supervision of the activities of the manager of the licensed premises in an effort to prevent any such contravention by the manager occurring.

The inclusion of the word "knowingly" (twice) in this section juxtaposes with its absence in section 163 of the Act as described above reinforcing the need to include it in section 163.

With respect to section 71 of Schedule 6, it may be worth considering whether the broad scope of sub-section (1) makes compliance and enforcement action problematic. Certainly, if a person "knowingly authorised…(a) contravention", compliance action should be relatively easy to pursue, because the authorisation should be explicit and therefore attachable to a person.

On the other hand, in attempting to determine who "each person who occupies a position of authority" might be when investigating an action for a person who "knowingly …permitted (a) contravention" (if indeed the word "knowingly" is intended to qualify "permitted") may consume significant resources in any compliance investigation, particularly as "permitted" must have a different meaning to "authorise" and may therefore be unclear what is captured by the term. Accordingly, such investigations may not be worth pursuing. As such that part of this section which refers to permitting the contravention should be removed.

To overcome any concerns which might arise if section 71 is amended to remove the "permitted" reference, section 91 makes the manager (who must be an individual[69]) responsible on behalf of the licensee (meaning the holder of the casino licence or any other licensee, such as that held by a restaurant on the casino site[70]), and section 70 states that the licensee "is taken to have contravened any provision of this Act that the manager of the licensed premises has contravened as a result of section 91". As such, there is sufficient power under the Act for the Authority to take action when a contravention is identified without pursuing the matter back to the directors for any liquor-related breaches, other than those explicitly authorised.

NSW Police has suggested that prescribing defined timeframes for the production of CCTV material and mandatory crime scene prevention requirements for certain types of crimes (for example, assaults) should be considered. This Review is cognisant of the reasoning behind this request but believes that a prescriptive approach should not be necessary to implement in the first instance. Rather, NSW Police should make clear to the operators what their expectations are and only if there is an inability to reach agreement between an operator and Police or if there is systemic failure of an operator to fulfil its agreement should a prescriptive scheme be pursued.

This approach is consistent with the broader theme of this Review which recognises that the casino operators wish to comply with a regulatory scheme because it is essentially in their best interests if they wish to have a sustainable business to do so. If, however, an operator

[69] See regulation 67(1)(b) of Schedule 6.
[70] See section 10 of Schedule 6.

fails to reach the standard expected of them, the regulator has sufficient power to take action to ensure the NSW Police receives the cooperation they may reasonably expect.

Of course, both The Star and Crown Sydney are no less responsible than any club or hotel for their service of alcohol and ancillary issues. However, given the size of each property and the scope of services being offered, it makes sense to accept that the best approach is one which is tailored to the casino business. An example of this already exists with monthly meetings between The Star, the Authority and NSW Police to review alcohol-related problems and work toward solutions. However, should The Star or Crown Sydney fail to provide an approach to liquor service which meets the expectations of the Authority, the option to impose tougher controls, including incorporation of the property into the club and hotel scheme remains a possibility.

Any other relevant matters

Exclusions and withdrawal of licence

The words "ban" and "banning", which are not used anywhere in the legislative scheme, are deliberately used in this Review as generic terms to cover all the various forms of exclusion as well as the withdrawing of an individual's licence to be on the property of The Star or Crown Sydney. Each of the categories needs to be considered separately. In summary the following bans can apply under the Casino Control Act:

- Exclusion by the Police Commissioner[71]
- Non-voluntary exclusion by The Star or Crown Sydney[72]
- Voluntary exclusion exercised by the patron but implemented by The Star or Crown Sydney[73] (ie, self-exclusion)
- Third party exclusion exercised by a family member of the patron but implemented by The Star or Crown Sydney [74]
- Exclusion by the Authority[75]
- Withdrawal of licence[76]

The Police Commissioner has used the power available to direct a casino operator to exclude a person from a casino, that is, The Star, with it being a condition of the casino licence that the licensee complies. The effect of this order is that a person excluded cannot enter the casino, meaning the gaming floor. The casino operators and NSW Police would like to extend the ban from the casino gaming floor to the whole complex for both The Star and Crown Sydney. This will parallel the situation in Victoria (although via a slightly different mechanism. In Victoria, the Chief Commissioner of Police can ban a person directly rather than ordering the casino operator to do so.)

The Act already contemplates that the Police Commissioner's exclusion could be for the whole of the complex. Section 81(4) states that, *"the regulations may declare that the whole or a specified part of specified premises is to be considered to form part of a casino for the purposes of this section…"* However, no regulation has been made which activates this subsection. It is recommended, therefore, that a regulation be made which has the effect of converting a Police Commissioner's exclusion from one which is limited to the gaming floor to a ban from the whole casino precinct.

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[71] section 81 of the Casino Control Act
[72] section 79(1) of the Casino Control Act
[73] section 79(3) of the Casino Control Act
[74] section 79(3) of the Casino Control Act
[75] section 79(1) of the Casino Control Act
[76] section 77 of the Casino Control Act

This change will enhance the effect of the ban by moving people excluded in this way from being close to the gaming floor, consistent with one of the primary objects of the Act which is to ensure *"that the management and operation of a casino remain free from criminal influence or exploitation."*[77] In addition, the broadening of the ban improves the environment surrounding the complex consistent with the expectation that both properties will be world class tourism destinations.

A person banned by the exercise of the Police Commissioner's prerogative should be automatically banned from both The Star and Crown Sydney. As the process for implementing the ban requires each casino operator to ban that same person separately, it may be an opportune time to consider changing the provision in the legislation so that the power to exclude a person is directly exercised by the Police Commissioner.

This would have the following advantages:

- There would be no question of confusion or timing discrepancies between the banning at The Star and Crown Sydney as the individual concerned will be excluded from both properties simultaneously
- The message to the community of the action taken is stronger when it is seen to come directly from the Police Commissioner
- It would make the New South Wales scheme consistent in its execution with Victoria (although the current methodology in New South Wales is similar to that in Queensland).

However, there are some specific legal consequences which need to be considered before proceeding this way. If those consequences were to weaken rather than strengthen the process for implementing the Police Commissioner's exclusions the change to direct exercising of this power should not proceed. Advice may be available from the ANZPAA, the Australia New Zealand Policing Advisory Agency, which has also been looking at the best method for implementing Police Commissioner exclusions at a national level (including New Zealand).

The legislation which shows the different methodologies as used in New South Wales, Victoria and Queensland are provided at Appendix 16.

Apart from implementing an instruction from the Police Commissioner, the operators are also empowered to ban people of their own choosing. This power is generally used when people misbehave in the casino, including cheating (or attempting to cheat) as well as when behaviour is inappropriate. It is recommended that exclusion by one operator is valid for that operator's venue only. If a scheme were implemented where an operator exclusion automatically meant that person was banned from both The Star and Crown Sydney, it is conceivable that one operator could ban a player from its own premises in order to ensure that the person could not enter the competitor's casino.

Self-exclusion is a more complex issue. Technically a form of exclusion by the operator, it needs to be considered separately from other forms of operator exclusion. The key consideration with self-exclusion is to facilitate a scheme which is most helpful for those players who choose to use it. Consideration has been given to:

- Requiring players to request self-exclusion separately at each property
- An opt-out option, where players who exclude at one property are automatically excluded from the other property unless they take action not to be excluded
- An opt-in option, where players who exclude at one property will only be excluded from the other property if they take action to do so.

What complicates a decision as to the best method for operating a self-exclusion scheme is the process for revocation of self-exclusion. Both The Star and Crown Sydney will have self-

[77] Section 4A(1)(a) of the Casino Control Act

exclusion schemes which include a capacity for a person to request that their self-exclusion be revoked thereby allowing that player to re-enter the casino. The option of revocation is not often used, but it provides cognitive assistance to players who elect self-exclusion. The knowledge that the option of revocation exists can encourage some to exercise self-exclusion who might otherwise not do so because they believe they will subsequently overcome whatever reasons may have caused their need to request self-exclusion and eventually return to the casino.

Each operator has a unique approach to dealing with both the initial self-exclusion and possible revocation. For this reason, it makes it difficult to recommend that self-exclusion from one property should automatically apply to the second. On the other hand, it is not desirable to require a person who wishes to self-exclude with the obligation to have to visit two separate properties – the very places they wish to stay away from – to exercise the option of self-exclusion.

The best option would appear to be that self-exclusion at either property is unique to that property only. However, at the time of processing that self-exclusion, the operators should provide the player with all the information necessary to enable them to self-exclude from the other property without the need to physically visit that other property. Similarly, if a player seeks to have self-exclusion revoked at one property, it should not automatically revoke self-exclusion at the other. There is an argument that a person seeking revocation at one property should not be assisted to revoke self-exclusion at the other. On balance, however, if a person wishes to pursue revocation at one property, assistance should be provided so the person at least knows that revocation of self-exclusion at the other property (if indeed it was entered into) is not automatically revoked. A misunderstanding of the situation may inadvertently lead to that person breaching a self-exclusion order. Rather, upon pursuing revocation at one property, that person should be given information about how to pursue revocation of self-exclusion at the other property.

The mechanics of these self-exclusion and revocation processes have not been finalised. However, both operators will agree to work together to ensure a practical process is developed which recognises that the scheme has to be effective, simple and sympathetic to the needs of the individuals concerned.

"Third party exclusions" is not a term which exists *per se* in legislation. Rather it is a form of shorthand used to explain a particular form of exclusion by the casino operator using a responsible gambling ground when a player will not self-exclude. As explained in the most recent "Report of Investigation pursuant to Section 31 of the NSW *Casino Control Act 1992*" of the Authority,

> "A new category of responsible gambling was introduced in 2008-2009 and in that year, 12 people were excluded for that reason with it increasing to 25 the following year. Most of these exclusions follow intervention by a family member or observations by casino staff consistent with problem gambling. These exclusions occur in circumstances where the patron will not self exclude. About one third of these exclusions were issued after the patron continually breached a voluntary exclusion order."[78]

It is recommended that third-party exclusions should apply only at the property that exercises the exclusion. However, at the time of processing that exclusion, the patron should be given information as to how to self-exclude from the other property should he or she wish to do so.

Another form of banning from casino properties is the option of the operator withdrawing a person's implied licence to be on the property[79]. This form of banning is not an exclusion, *per se*, and is therefore not covered by the exclusion processes. Rather, it is similar to the common law right any landlord or tenant has to bar a person from entering their premises. It is generally used to keep people who are nuisances out of the whole complex and not just the

[78] Report of December 2011, page 50

[79] See section 77 of the Casino Control Act

gaming floor. It differs from exclusions in that a person subject to exclusion (other than self-exclusion) can be penalised 50 penalty units or imprisonment for 12 months, or both[80]. Instead, a person who's licence to enter the complex is withdrawn faces charges of trespass if found on the premises. Furthermore, exclusions can be appealed to the Authority; withdrawal of licence cannot. Because withdrawing the licence of someone to be on the premises is unique to a particular property, the withdrawal process clearly does not extend from one property to another. Should one operator withdraw a person's licence to remain on its property, it should not extend to the other operator's property.

While casino operators in Australia have been diligent in keeping banned people out of their casinos, the reality is that some people have breached their exclusion orders or withdrawal of licence and sometimes are subsequently identified at a gaming table or gaming machine. To assist with the exercise of any form of ban (ie, exclusion or withdrawal of licence), the legislative scheme should also make clear that a banned person should not be able to be paid any winnings. When this measure was introduced in Victoria it had an almost immediate effect of stopping some of the worst recidivists from breaching their exclusion orders. The Victorian legislation makes clear that any winnings withheld from excluded players are not kept by the operator but are paid into the Community Support Fund, which is used, amongst other things, to fund problem gambling assistance services. A similar provision could be added to the Casino Control Act with winnings withheld from banned players being paid into the Responsible Gambling Fund created under section 115 of the Act.

Section 83 of the Act requires that the operators keep their list of excluded persons up-to-date. That section also makes it a condition of the casino licence that the operator provides *"a copy of the list"* of excluded persons every day to the Authority. There is no reason why that obligation cannot be fulfilled by the operators providing the Authority with unfettered access to that information online.

Problem gambling counselling

It is expected that casino operators will offer their gambling product in a manner which is consistent with the highest standards of responsible gambling. As experienced and premium operators the Authority should only have to intervene if concerned that the operators are not meeting expectations. Section 72A of the Casino Control Act states,

> (1) A casino operator must, in accordance with the regulations, enter into arrangements for problem gambling counselling services to be made available to the patrons of the casino.
> (2) The regulations may make provision for or with respect to the following:
> (a) the persons or bodies who are to provide the counselling services,
> (b) the nature of the arrangements to be made with such persons or bodies,
> (c) the nature of the counselling services that are to be made available,
> (d) the manner in which those services are to be provided.

The relevant regulation, found in regulation 37 states,

> (1) The persons or bodies that are to provide problem gambling counselling services as referred to in section 72A of the Act include, but are not limited to, any person or body that receives funding from the Responsible Gambling Fund for the specific purpose of providing gambling-related counselling or treatment services.
> (2) A casino operator is required to make available at all times to the patrons of the casino information as to the name and contact details of a problem gambling counselling service made available by a service provider.
> (3) A casino operator must also provide the information referred to in subclause (2):
> (4) …"

[80] See section 84(1) of the Casino Control Act

While it is perhaps well intentioned it is unclear why the legislation requires the casino operators to *"enter into arrangements for problem gambling counselling services"* rather than providing their own. This is not to criticise the providers of the services but if a casino is to be expected to appreciate harm minimisation it may be better if it has the option of providing those services itself rather than transferring the patron with the problem elsewhere.

Not only would that be consistent with the idea that the provider of a service should take responsibility for negative outcomes, for some patrons the immediate availability of the in house counselling service may be more effective than being sent to an outside provider, a visit which may never be made.

It is not suggested that the operators should be expected to provide counselling services in house – but they should not be prevented from doing so if the service being offered meets requirements that can be set by the Authority. A minor amendment should be made to the regulatory scheme to make clear that the casino operator must either provide an in house counselling service which satisfies the Authority or it can engage an outside provider as allowed for in the current scheme.

Responsible gambling training

The Authority has developed standards for responsible gambling training for The Star. That training has been specifically developed for the unique offer of The Star. With the commencement of a second operator the Authority should consider developing a single set of responsible gambling training standards in consultation with the operators to ensure a consistent approach to the training of employees in responsible gambling.

While this Review has generally supported competition in as many areas as possible, the area of training in responsible gambling is one matter where consistency is likely to be helpful. With an expectation that some employees will transfer between operators, a modular approach to responsible gambling training may be beneficial. In this way, employees who move from one operator to the other may only have to update their training by completing those modules unique to that operator.

Minors

This Review to date has separated discussion on gambling matters from those associated with liquor. When it comes to minors, the regulatory schemes for casinos and liquor can be considered together. As such, this Review has consolidated the discussion about minors under the heading of "Any other relevant matters". This does not mean, however, that the regulatory scheme for minors should be treated as an afterthought.

Part 6 (section 91 to 101) of the Casino Control Act is dedicated to regulatory issues about minors. It is similar in principle, if not wording to the provisions on minors found in Victoria's *Gambling Regulation Act 2003*[81] and Queensland's *Casino Control Act 1982*[82].

There are significant difficulties with regulating the involvement of minors in gambling. As was described earlier in this Review, the regulatory issues associated with minors is an example of how using Braithwaite's Pyramid as a guide can result in different approaches. The main problem with regulating breaches of the provisions in the Act is that the circumstances can vary so much. Just considering the question of whether a minor enters a casino, the following examples show how different approaches may be necessary:

(a) a minor who from looks alone cannot be judged to be over the age of 18 enters the casino without being questioned by the security officer;

(b) a minor who is over 200 cm tall and clearly looks over the age of 18 enters the casino without being questioned;

(c) a minor who clearly looks over the age of 18 enters the casino after showing fake ID which is accepted as genuine by the security officer;

[81] See sections 10.7.1 to 10.7.13

[82] See section 102

(d) a minor who clearly looks over the age of 18 enters the casino after showing real ID for a different person who looks similar to the minor in question;

(e) a minor finds a way into a casino with the assistance of an adult by climbing over a high barrier which is meant to keep all people out;

(f) a minor who is in a pram is wheeled into the casino by his or her parent without being stopped by a security officer;

(g) a minor who is in a pram is wheeled into the casino by his or her parent after being invited to do so by a security officer because the mother who is pregnant needs to visit the nearest toilet, which happens to be inside the casino boundary;

(h) a minor who is a toddler runs into the casino without being stopped by a security officer;

(i) a minor is invited to join the casino's loyalty scheme and subsequently enters the casino's "invitation only" area after having provided inadequate evidence of age at the time of being accepted into the loyalty scheme.

Most of the above examples are similar to matters investigated by Australian regulators. Every case needs individual consideration and no form of language in the Act is ever going to provide a pathway for the regulator to take for every example cited above.

Consideration has been given to suggesting that the Act be amended to incorporate some subjective assessment criteria in Section 94. For example, perhaps the current wording of section 94(1) which states,

> "If a minor enters a casino, the casino operator is guilty of an offence"

could be amended to state,

> "If a minor enters a casino, the casino operator is guilty of an offence if the operator or an employee is aware, or ought to have been aware, that the person may be reasonably suspected of being a minor."

However, this wording adds nothing if the regulator chooses to take the approach of taking action only for the most egregious of breaches where the casino operator (including its security officers) has been negligent by inviting a minor into the casino or by not stopping a person who clearly might be a minor from entering. In summary, the better approach is not to change the legislation but to educate the regulator in how to assess individual sets of circumstances to find the appropriate action to take.

While amending section 94(1) is not recommended, a change to section 94(2) will be required if another recommendation in this Review is accepted. Section 94(2) states,

> "If a minor is in a casino, the casino operator must forthwith notify an inspector, and then remove the minor, or cause the minor to be removed, from the casino."

The obligation to notify an inspector forthwith should be replaced with an obligation to notify the regulator as soon as practicable. That notification could be by electronic means such as by email or some other online form which meets the regulator's requirements.

A further amendment to the scheme is recommended. Similar to the recommendation for excluded persons, a minor who gambles should not be able to be awarded any winnings. As is recommended for excluded persons, any winnings to which a minor would otherwise be entitled should be paid into the Responsible Gambling Fund.

An alternative approach is to transfer a greater level of responsibility to minors. The current scheme makes it an offence for a minor to use "evidence purporting to be evidence of his or her age in order to obtain entry to or remain in a casino…if the evidence is false in a material particular in relation to the minor"[84]. In other words, it is an offence for a minor to use a fake ID or someone else's real ID. While the maximum penalty is 20 penalty units (about $2,200)

[84] See section 97 of the Casino Control Act.

on-the-spot fines of $110 (equivalent to one penalty unit) are now used when breaches are identified. One consideration is to increase the quantum of the on-the-spot fine to a higher level, such as $550 (or five penalty units) per instance. While this increase in penalty may or may not act as a greater deterrent, it will almost certainly result in an increase in the level of fine defaulting and increase the administrative costs of managing those unpaid fines. Section 99 of the Act makes clear that a minor *"may not be imprisoned, or detained in a detention centre, as a consequence of a failure to pay a penalty"* imposed in this Part of the Act, so the incentive for a minor to pay a fine, whatever the level imposed is not particularly high. Given the likelihood that the level of deterrence may not increase by that much but the level of fine defaulting probably will, the current on-the-spot fine level should remain as it is.

The question of managing problems associated with minors gaining access to liquor on the casino property also needs to be considered. However, during the stakeholder consultation program there was little concern raised with the way the regulatory scheme works now. As such, no recommendations specific to the regulation of liquor as it applies to minors is made in this Review.

Entry signage

Every entry to the casino is required to display signs approved by the Authority. While these signs cover important matters such as the banning of minors from entering and harm minimisation messages, the volume of information that the operators are required to display raises the question of whether the signs are capable of fulfilling their purpose. The Authority should review its suite of mandated signs and minimise the volume in order to maximise the effect.

It may be that the display of the signs provides some legal cover to the operators or simply assists security officers who can refer to those signs when they deny entry to individuals who are excluded or cannot prove they are over the age of 18. If this is the case, then the responsibility for displaying signs for this purpose should rest with the operator.

Changes in the state of affairs of an operator

The Act requires that a casino operator advise the Authority of a number of matters which are divided into *"major changes"* and *"minor changes"*. For *"major changes"*, the operators are required, except in some specified circumstances, to receive prior approval of the Authority before allowing the *"major change"* to take effect.

The specified circumstances where prior approval for a *"major change"* is not required are those which are outside the control of the operator, which instead require the operator to inform the Authority within three days of the "*major change"* having occurred.

A *"major change"* is defined in section 35 of the Act as either:

> "(a) any change in that state of affairs which results in a person becoming a close associate of the casino operator, or
> (b) any other change in that state of affairs which is of a class or description prescribed as major for the purposes of this section."

Schedule 1 of the *Casino Control Regulation 2009* prescribes those matters to be considered as *"major changes".* The complete list of matters listed in Schedule 1 is provided as Appendix 17.

For *"minor changes"*, the operators are required to advise the Authority within 14 days after becoming aware that the change has occurred. A *"minor change"* is defined in section 35 of the Act to be,

> "…any change in that state of affairs that is prescribed as a minor change for the purposes of this section."

Schedule 2 of the *Casino Control Regulation 2009* prescribes those matters to be considered as *"minor changes".* The complete list of matters listed in Schedule 2 is included in Appendix 17.

The complete suite of matters prescribed as *"major changes"* and *"minor changes"* should be reviewed, with some matters considered to be *"major changes"* shifted to the category of *"minor changes"* or dropped altogether. Some *"minor changes"* could also be removed from Schedule 2.

In particular, the following matters which are in the list of *"major changes"* could be re-categorised as *"minor changes"* as it is not clear what value is achieved by the Authority having to provide prior approval before such a change can take place:

- A change in the name of the casino operator
- A change in the principal business address of the casino operator
- A person ceasing to be a close associate of the casino operator
- A change in the nominal paid-up capital of the casino operator.

In addition, the 5% threshold identified in clause 4 (effectively, the ownership provision) should change to 10%, consistent with the standard probity threshold for approval of close associates of the casino operator. The 5% threshold, which is consistent with Victoria's requirement[85], is intended to serve the purpose of ensuring the Authority is able to be satisfied with probity of the person (an individual or corporate entity) before that person takes possession of 5% of the casino operator. It is inconsistent with the standard requirement elsewhere in gaming in Australia and most other jurisdictions where that threshold is usually 10%.

The Authority should review the complete list of matters prescribed in Schedule 1 in consultation with the operators and advise the Minister of any further recommended changes. That review should be undertaken consistent with the risk-based approach recommended for casino regulation described in this Review.

Some changes are also recommended for Schedule 2, the list of matters prescribed as *"minor changes"*. For example, clause 2(a) is very broad and could perhaps be narrowed. At the moment, clause 2(a) obliges casino operators to report every staff dispute that goes to court or to an alternative dispute resolution. Similarly, any invoice disputes with suppliers to the casino which end up with civil proceedings or alternative dispute resolution must be reported. This provision should be narrowed so that only those civil proceedings which might reflect on the suitability of the casino operator and all disputes which are associated with game play should be reported.

If employee licensing is to be abolished as is recommended elsewhere, clause 3 will need to be reworded if it is retained (which is recommended) to ensure that "casino employee" is clearly understood.

Clause 6 of Schedule 2, which requires disclosure of any casino employee at a remuneration level of $185,000 or more per annum is unnecessary and can deleted altogether. The Act already requires any person considered to be able to influence the operation of the casino to be approved as a close associate.

Similar to the recommendation above with respect to *"major changes"*, the Authority should review the complete list of matters prescribed in Schedule 2 in consultation with the operators and advise the Minister of any further recommended changes. That review should be undertaken consistent with the risk-based approach recommended for casino regulation described in this Review.

[85] See clause 22.1(f) of the Casino Agreement

Tips and Gratuities

Many jurisdictions around the world allow tips and gratuities to be accepted by dealers. In those jurisdictions, the operators develop internal policies which determine how to distribute tips left by players.

In jurisdictions where tips and gratuities are not allowed in the casino, some players still leave a tip which then has to be disposed of by the operator in a manner which does not benefit the staff members involved.

Tips and gratuities are not allowed in any Australian casino. If they were, there is a possibility of the perception of the integrity of gaming being compromised by players believing that those leaving the tips might be getting some form of improper benefit, such as advanced knowledge of what or where to place a winning bet or a better payout ratio than that available to players who do not tip. While this would not occur it is nevertheless important that the perception of the integrity of gaming not be compromised. For this reason, this Review recommends continuing with the ban on tips and gratuities.

The Casino Control Act states that a person who is a special employee must not *"solicit or accept any gratuity, consideration or other benefit from a patron in the casino."*[86] This legislation varies slightly from that in other jurisdictions where it is made clear that gifts can be provided to licensed employees by patrons when the employee is not performing those duties. This avoids any complications which might occur if an employee receives a gift from someone at home, perhaps from a family member who is also a patron at the casino. Advice should be sought to determine whether the wording in the New South Wales Act which refers to a benefit from a patron *"in the casino"* means that the benefit has to be given in the casino. If it is unclear, it may be necessary to clarify the wording.

Information

In prescriptive models of regulation there is often an obligation on operators to provide an excessive amount of information to the regulator. There are a number of problems with this model not least being the storage requirements of the regulator (whether the information is paper-based or digital). Further, the regulator is deemed to have implied knowledge of the content in everything it receives, whether it reviews that information or not.

This Review has already made some recommendations on specific information requirements which it recommends are no longer necessary to be provided. Examples include marketing plans, consumer satisfaction surveys, organisational charts and the list of excluded persons.

Very few mandatory reporting obligations are necessary. The better method is to mandate that the operator store the information which it must make available to the regulator on request.

Section 129 of the Casino Control Act makes it a condition of a casino licence that,

> "...all books, records and documents relating to operations of the casino are:
>
> (a) kept at the casino, and
>
> (b) retained for not less than 7 years after the completion of the transactions to which they relate."

Sub-section (2) of that section goes on to state,

> "The Authority may by instrument in writing grant an exemption to a casino operator from all or specified requirements of this section in respect of all or specified, or specified classes of, books, records or documents and may grant such an exemption subject to conditions."

[86] See section 86(2)(b). (Note: If employee licensing is abolished as is recommended elsewhere, this section will need to be amended to ensure employees registered with the casino cannot accept gratuities.)

Storage space is an issue not just for regulators. The above provision allows the Authority to determine whether records should be kept on-site or in an approved location or in an approved form. The regulator should be sympathetic to any request from an operator to store materials in an approved, off-site location and should also review the period of time such information should be required to be kept on the casino site and subsequently at the approved off-site location[87]. It should be a condition of any approval granted under sub-section 129(2) that the information should be available in an unfettered form (and at no charge) to the regulator on request.

Another risk sometimes unnecessarily taken by regulators is to use the power it has to request information for inappropriate purposes. As an example, section 149 of the Act requires an operator to provide information to the Authority which is clearly intended to assist defined law enforcement agencies. It is also apparent that this section is intended to enable the collection of information about patrons and perhaps employees of the casino operator. However, as the power is specifically about information concerning the operations in the casino or in another casino operated by the company, it would not be an appropriate use of this power for the Authority to request information concerning the corporate parents of the casino operators to pass on to law enforcement agencies. Section 149 is included as Appendix 18.

Forms

Similar to information requirements, prescriptive models of regulation often mandate that various forms not only have to be completed by the operator but the form itself needs to receive prior approval of the regulator.

It has not been possible in the time allocated for the Review to identify and analyse every form used. However, the scheme in New South Wales requires that more forms are required by the Authority to be completed by the operators than the VCGLR requires for similar activities in Victoria. As part of the implementation of the recommendations of this view, there will be many changes required to procedures and consequently, many of the forms currently mandated may need to be changed or eliminated altogether.

It is recommended that rather than a project of reviewing every form, the regulator act on the other recommendations in this Review. In so doing, where the process being modified includes a mandatory form, the regulator should take this opportunity to assess whether the form needs to be approved by the regulator and if so, does it need to be in its current form.

Once the recommendations of this Review are substantially implemented, the regulator should assess other mandatory forms to determine whether they are still required.

The Role of Gaming Inspectors

Given one of the overriding themes of this Review is to transition the regulatory regime from one of prescriptive regulation to one which is primarily risk-based, the responsibilities of the regulator change. This change is a significant shift in emphasis which impacts on the methodological approach of the regulator. One of the major impacts on the regulator with the move from prescriptive regulation, with its emphasis on pre-approval, to a risk based methodology, where much of the work transfers to monitoring and auditing, is that a permanent on-site presence of inspectors is not necessary.

Whereas 1990s-style casino regulation often saw standalone casino regulators, modern practice is to have all gambling regulatory activities in a single agency, usually with responsibilities divided by function (eg, licensing, compliance, etc) rather than by product (casino, lotteries, etc). Over time, the Casino Control Authority (howsoever named) in Victoria, New Zealand, New South Wales and many other places have been fully integrated. Today there are very few standalone casino regulators, with Singapore's Casino Regulatory Authority a notable exception.

[87] Any instruction from the regulator as to retention times does not over-ride obligations from other agencies, such as the Australian Taxation Office.

Consolidation has meant that the functions of casino inspectors have generally been consolidated with those of non-casino gaming inspectors. This can be managed in a number of ways. For example, in Victoria, the process of consolidation saw inspectors rotate through various functions on a fixed roster basis. For example, inspectors would spend (say) nine weeks on casino duty, followed by 18 weeks of non-casino activity. This method provided inspectors with a more diverse workload, which most eventually appreciated, and reduced the risk of regulatory capture of inspectors by the casino operator.

With respect to their casino activities, the major change in activity, apart from the structural change, will be in the specific functions undertaken. The changes recommended in this Review which would change the focus from prescriptive to a risk-based methodology reduce the involvement of the inspectorate in day-to-day activities of the casino operators. In particular, much of the pre-approval responsibility often requiring urgent attention is removed and replaced with audit activities, which can be conducted at any time.

As a consequence of this substantive change, inspectors no longer have to be located in the casino on a permanent basis. Around the world the presence of inspectors in casinos is highly varied, depending on local conditions. In Victoria, inspectors are still in the casino on a 24/7 basis, although most of their work is now audit-based rather than undertaking prescriptive regulation. In Queensland, inspectors are no longer permanently present while in Nevada, inspectors are not on the premises at all.

The addition of a second casino property extends the inspectorate role and makes it less efficient to maintain a permanent presence. The better option is to have inspectors visit the casino premises when undertaking a specific task, such as auditing an operator's compliance with its internal controls.

If it provides an additional level of confidence for the community, images captured by CCTV which are currently directed to the Inspectors' Office in the casino could be re-directed to the offices of Liquor and Gaming NSW, although, in reality, such a tool is likely to be of limited value.

The operators should still be required to provide appropriate working space for the inspectors when they visit, including access to the various CCTV networks and databases which are necessary to enable effective regulation. In addition, changes may be necessary to The Star's internal controls and procedures to reflect the absence of a permanent inspectorate, although given the breadth of measures recommended to be changed as part of this Review, such changes will likely be absorbed in the raft of other changes The Star will have to make.

Rate of duty

Duty is paid by the casino operators on players' losses. The power to set the rate of duty payable is found within section 114 of the Casino Control Act which states that the amount of duty is to be *"as agreed from time to time by the Treasurer and the casino operator concerned"* or, if there is no such agreement, by the Treasurer *"from time to time".* Setting or changing the rate of duty is therefore a matter for negotiation between the operators and NSW Treasury (on behalf of the Treasurer).

Crown Sydney negotiated its rate of duty which is specified in the *"Stage 3 Outcomes and Transactions Summary"*. How that rate was determined is beyond the scope of this Review. Similarly, should The Star wish to negotiate changes to its rate of duty it should make representations to NSW Treasury and explain with appropriate financial and economic modelling how a change in the rate of duty will benefit New South Wales.

Matters Raised but outside Scope of the Review

As part of the consultation with stakeholders, a number of matters were raised which were outside the scope of this Review. They included matters which related to:

- differences in regulation of the casinos compared with clubs and hotels
- technical matters regarding the operation of gaming machines in clubs and hotels

- harm minimisation issues relevant to clubs and hotels
- treatment services for problem gamblers
- tax rate for gaming machine play in clubs
- controls over the location of gaming machines in clubs and hotels
- co-morbidities between gambling and other risk-taking behaviours
- various suggested consumer protection and harm minimisation initiatives.

As all these matters were outside the scope of this project, no commentary is provided on any of these matters as it would be inappropriate to do so.

Recommendations

The following recommendations are all addressed in more detail in this report. For convenience they are presented in the order in which they are discussed in this report.

The list below is a snapshot summary of each recommendation made in this Review, and as such care should be taken not to take the recommendation out of context. In particular, some of the recommendations while written in brief form below require other measures to be implemented such as alternative mitigating controls.

The page numbers given are a guide only as some matters will be addressed in multiple sections of the Review. The page numbers given are the primary location for the relevant discussion.

Recommendation 1: Risk-Based Regulation

The model of regulation which should be pursued should be risk-based rather than the current model which is primarily prescriptive in nature. Specific recommendations which will follow implement a number of specific changes with that policy in mind. [See page 17]

Recommendation 2: Continuous review

The casino regulatory scheme should be under continuous review. When making subsequent decisions, the focus should continue to be on implementing a risk-based model. [See page 20]

Recommendation 3: Consequences of regulatory error

It should be made explicitly clear to the operators that the change to a risk-based regulatory methodology requires them to accept that penalties for disciplinary actions may increase. [See page 20]

Recommendation 4: Timing of changes

Any changes which result from the recommendations in this Review should be implemented as quickly as possible, but only when all steps necessary to implement each recommendation are in place. [See page 21]

Recommendation 5: The Star and Crown Sydney are different

Because The Star and Crown Sydney have various differences, as recognised by their licences, it is not an automatic conclusion that every measure in the regulatory scheme needs to operate in the same way for both operators. [See pages 21-22]

Recommendation 6: Site for Significant Development

Subject to further consultation, it may be appropriate to designate The Star's Pyrmont site as a Site for Significant Development. [See page 23]

Recommendation 7: Amending casino boundaries

The process for amending a casino boundary should be consistent for both The Star and Crown Sydney. This should be achieved by removing the power of the Authority to amend The Star's boundary unilaterally. [See page 24]

Recommendation 8: Amending a casino licence

Section 22 of the Casino Control Act should be amended to remove the power of the Authority to amend The Star's casino licence unilaterally. [See page 25]

Recommendation 9: Auditing game availability at Crown Sydney

The regulator should undertake an audit program to confirm that gaming is available only on traditional table games, semi-automated table games and fully automated table games and

not on poker machines as required in clause 4 of the Restricted Gaming Licence. [See pages 25-26]

Recommendation 10: Minimum bet levels at Crown Sydney

The regulator should undertake an audit program to ensure that minimum bet levels are maintained as required in clause 5 of the Restricted Gaming Licence. [See page 26]

Recommendation 11: VIP membership at Crown Sydney

The regulator should undertake an audit program to ensure that Crown Sydney has and follows a Membership Policy as required by cause 6 of the Restricted Gaming Licence. [See page 26]

Recommendation 12: VIP membership at The Star

The VIP membership policies at The Star should not be required to match those of Crown Sydney. [See page 26]

Recommendation 13: Staff training facilities and employment program

The regulator must monitor Crown Sydney's compliance with its staff training and employment program obligations. [See page 26]

Recommendation 14: Keno availability

The regulator should undertake an audit program to confirm that keno is not made available at Crown Sydney. [See page 27]

Recommendation 15: Directions as to availability of games

The power vested in the Authority to mandate that specific games be made available in The Star only should be abolished. [See page 27]

Recommendation 16: Times of operation

The Star should always be able to offer on the same days and hours available to Crown Sydney that part of its offering which matches that provided by Crown Sydney. [See pages 27-28]

Recommendation 17: Exemptions from smoking ban

To facilitate competitive neutrality, the exemption from the ban on smoking should be extended to the Sovereign Room at The Star. [See pages 28-30]

Recommendation 18: Air quality monitoring

The conditions imposed on The Star which allow exemptions to smoking bans should be replaced with the same air quality equipment, air testing and reporting obligations in place for Crown Sydney. [See pages 28-30]

Recommendation 19: Consistent smoking exemption legislation

The provisions which allow for The Star's exemptions from smoking should be repealed from the Smoke-free Environment Act and replaced with obligations under the Casino Control Act. [See page 30]

Recommendation 20: Casino supervisory levy

If The Star wishes to negotiate changes to the casino supervisory levy, it should provide modelling which shows the implications for Government revenue of the proposed change. [See pages 30-31]

Recommendation 21: Monitoring competition between operators

A government agency should monitor the performances of The Star and Crown Sydney to determine whether competition between the two operators is occurring and whether the maximum benefits from that competition are being achieved. [See page 31]

Recommendation 22: Choice of agency

Which agency should be monitoring competition between the operators is a decision for Government. Given the regulator has access to data, powers to seek information and specialised understanding of gaming, it may be appropriate for the Authority or Liquor and Gaming NSW to monitor competition. [See page 31]

Recommendation 23: Competition limits

Whichever agency is monitoring competition, it needs to be clear that the remit is limited to competition between casino operators and not the broader gambling industry as a whole. [See page 31]

Recommendation 24: External advertising

The requirement for The Star to receive prior approval of the Authority for any external advertising on its property should be abolished. [See page 32]

Recommendation 25: Approval for light displays

The obligation on The Star to seek the approval of the Authority for particular external lighting should be abolished. [See page 32]

Recommendation 26: Marketing

The requirement for The Star to advise the Authority of its marketing, advertising and promotions expenditure is unnecessary and should be abolished. [See page 33]

Recommendation 27: Customer satisfaction surveys

The requirement that The Star provide regular customer satisfaction survey reports to the Authority should be abolished. [See page 33]

Recommendation 28: Insurance

The obligation for The Star to take out insurance should be limited to those matters of direct concern to the State, such as business interruption insurance and any insurance required to protect the State as owner of the premises. [See pages 33-34]

Recommendation 29: Approval of insurance

The Star should confirm with the Authority the suitability of business interruption insurance while the suitability of insurance required to protect the State as owner should be confirmed with the landlord. [See pages 33-34]

Recommendation 30: Premises name

The obligation on The Star to obtain prior approval of the lessor for the name of its premises should be abolished. [See page 34]

Recommendation 31: Premises alterations

If the ownership of the land on which The Star is located is transferred from the Authority (see Recommendation 33), the requirement to obtain the permission of the Authority for any alterations or additions to the premises should be abolished. [See page 34]

Recommendation 32: Single landlord

If it is possible to do so, The Star and Crown Sydney should have the same landlord. [See page 35]

Recommendation 33: The Authority should not be the landlord

The Authority should be replaced as the landlord of The Star. [See page 35]

Recommendation 34: Additional competitive neutrality restrictions

Other regulatory or administrative restrictions to competition may be discovered. If possible, they should be resolved at the same time as other recommendations identified in this Review. [See page 35]

Recommendation 35: Single regulator

The same regulator should regulate both The Star and Crown Sydney to ensure consistency in regulation. [See page 36]

Recommendation 36: Regulatory activities to be divided by function

Within the regulator, the division of responsibility should be by function rather than by casino property. [See page 36]

Recommendation 37: Single positions for gaming regulatory functions

Within Liquor and Gaming NSW there should be a single person (position) with ultimate management responsibility for all casino operator gaming approvals and a single person (position) with responsibility for all casino operator monitoring and compliance functions. [See page 36]

Recommendation 38: Single position for liquor regulatory functions

Within Liquor and Gaming NSW there should be a single person (position) with ultimate management responsibility for all liquor regulatory issues at both The Star and Crown Sydney. [See page 36]

Recommendation 39: Section 31 review

The mandatory review of the casino licence and operator required by section 31 should be abolished. [See pages 36-39]

Recommendation 40: Alternative to abolishing section 31 review

If the recommendation to abolish the section 31 review is not accepted, the review should be made meaningful by broadening its scope. [See pages 36-39]

Recommendation 41: Methodology of section 31 review

If the recommendation to abolish the section 31 review is not accepted, the review should be conducted in-house rather than fully outsourced. [See pages 36-39]

Recommendation 42: 2016 mandatory section 31 review

Irrespective of any other decision (ie, whether to abolish the section 31 review altogether or, if it is to continue, to undertake future reviews in-house), the mandatory section 31 review of The Star due to be completed by December 2016 will likely have to be out-sourced. [See pages 36-39]

Recommendation 43: Internal Audit program

Consideration should be given to undertaking a rolling internal audit program of the regulator to improve performance and reduce risks. [See page 39]

Recommendation 44: Perceptions of bias

To avoid any perceptions of bias toward one casino operator or the other, the Authority should attempt to make public as much as it can of its decision making and the reasons for its decisions. [See page 39]

Recommendation 45: Guidance notes

Where matters might impact on both operators, the Authority should consider issuing guidance notes to ensure each operator receives the same information at the same time. [See page 39]

Recommendation 46: Abolish employee licensing

The licensing of casino employees should be abolished. [See pages 39-42]

Recommendation 47: Licensing of security officers

If licensing of casino employees is not abolished, security officers should not need to be licensed as casino employees as well as under the Security Industries Act. [See pages 42-44]

Recommendation 48: Disciplinary action against security officers

If licensing of casino employees is not abolished, the Police Commissioner should be advised of any disciplinary action taken by the Authority against a security officer. [See pages 42-44]

Recommendation 49: Non-gaming employees not to require licensing

Employees who do not have a role in gaming-related activities should not be required to hold a casino special employees licence. [See pages 42-45]

Recommendation 50: Special circumstances exemption from requiring a licence

If licensing of casino employees is not abolished, an exemption from the requirement for licensing should be made for defined "special circumstances" which might include during industrial action or where security officers leave their posts at a casino entry to intervene in an actual or potentially violent confrontation. [See pages 42-45]

Recommendation 51: Fingerprinting of applicants for special employees licences

If licensing of casino employees is not abolished, the requirement that applicants for special employee licences have their fingerprints taken and checked should be abolished. [See pages 45-46]

Recommendation 52: Information used for determining licence applications

If licensing of casino employees is not abolished, decisions on whether to approve applications should use criminal records but not criminal intelligence. [See pages 45-46]

Recommendation 53: Mutual recognition

If licensing of casino employees is not abolished, mutual recognition of casino special employee licences from all other Australian jurisdictions should continue, but operators should consider whether a fresh application for that same person may nevertheless be a better way forward. [See page 46]

Recommendation 54: Prescribed identification

Whether employee licensing continues or not, a visible form of identification is required, but there is no need for the form of that identification to be approved by the Authority. [See pages 46-47]

Recommendation 55: Identification for back of house employees

There appears to be no valid reason for employees who are not licensed to wear identification approved by the Authority while carrying out their duties in areas of a casino to which the public does not have access. [See pages 46-47]

Recommendation 56: Certificates of competency

The obligation for employees to have a certificate of competency should be abolished. [See pages 47-48]

Recommendation 57: Disciplinary action timeline

If licensing of casino employees is not abolished, a prescribed timeline should not be imposed on the Authority during which a potential disciplinary action process must be concluded.

However, it should be appreciated by the Authority that disciplinary action processes should proceed as quickly as possible. [See page 48]

Recommendation 58: Term of special employees licence

If licensing of casino employees is not abolished, the term of a special employees licence should be extended from 5 to 10 years (unless the licensee dies, has the licence cancelled by disciplinary action or voluntarily chooses to surrender the licence). [See page 48]

Recommendation 59: Transferability of employee licences

If licensing of casino employees is not abolished, section 55(c) of the Act will need to be amended to allow a licensed employee to move between operators without having to obtain a new employee licence. [See page 48]

Recommendation 60: Special employee licence application fee

If licensing of casino employees is not abolished, the application fee for a special employees licence should be reviewed. [See page 48]

Recommendation 61: Definition of "operations"

To make explicit that the modern approach to casino regulation is to be a risk-based model, the definition of "operations" should be narrowed to limit it to the conduct of gaming rather than open ended as it is now. [See page 49]

Recommendation 62: Approved gaming machines

The Authority should approve for use in the casino gaming machines which meet either the Australian/New Zealand National Standard or the GLI-11 Standard. [See pages 49-50]

Recommendation 63: Tournament machines

Tournament machines should count toward the 1,500 allowed in The Star. [See pages 49-50]

Recommendation 64: Installation and movement of gaming machines

Subject to appropriate procedures being developed, Gaming Inspectors need not be present when new gaming machines are installed or moved around the floor of The Star. [See pages 50-51]

Recommendation 65: Installation of new gaming tables

Subject to appropriate procedures being developed, Gaming Inspectors need not be present when gaming tables are installed or moved around the floor of The Star or Crown Sydney. [See page 51]

Recommendation 66: Live trials of new table games

Live trials of new table games should not be allowed. [See pages 51-52]

Recommendation 67: Process for approving new tables

The process for approving new table games should be reviewed to eliminate any unnecessary delays. [See pages 51-52]

Recommendation 68: Pre-shuffled cards

Subject to appropriate procedures being developed, the Authority should accept pre-shuffled cards and not require additional shuffling before use. [See page 52]

Recommendation 69: Disposal of gaming equipment

The disposal of gaming equipment should be a notification obligation rather than one that requires the prior approval of the Authority. [See page 52]

Recommendation 70: Audit program of equipment destruction

To ensure the community maintains confidence in casino gaming, the regulator should maintain an audit program of equipment destruction. [See page 52]

Recommendation 71: Off-site locations

The servers which operators use to support gaming machine and table game play should be allowed off-site, subject to suitable security and accessibility requirements being met. [See page 52]

Recommendation 72: On-site gaming

Play on gaming machines and table games should not be allowed outside the approved gaming floor. [See pages 52-53]

Recommendation 73: Complimentary chip vouchers

Amend section 70(1)(c) of the Casino Control Act to make clear that chips can be purchased with complimentary chip vouchers. [See pages 53-54]

Recommendation 74: Complimentary bet vouchers

Amend section 70(1)(d) of the Casino Control Act to allow bets to be made with complimentary bet vouchers or chips purchased with complementary bet vouchers. [See pages 53-54]

Recommendation 75: Chip redemption

Make clear in section 70(2)(c) that redemption of chips for cash or cheque does not apply for chips used in tournaments or for training purposes and that complimentary bet chips cannot be exchanged for cash. [See pages 53-54]

Recommendation 76: Inconsistent approach to duty on promotional play

The inconsistent approach to treatment of promotional play for gaming machines and table games should be rectified. [See page 54]

Recommendation 77: Duty on table game promotional play

Duty should not be payable on table game promotional play. [See page 54]

Recommendation 78: Betting in foreign currency

Subject to each operator establishing procedures which satisfy the regulator, betting by sophisticated gamblers in foreign currency should be permitted. [See page 54]

Recommendation 79: Minimum and maximum bet signage

The requirement that multi-terminal gaming machines have physical signs displaying maximum and minimum bets should be abolished. [See pages 54-55]

Recommendation 80: Minimum bet changes for empty tables

The 20 minute notification period for changing minimum bets should not apply to a table where there are no players. [See pages 54-55]

Recommendation 81: Minimum bet changes for new players to a table

Subject to each operator establishing procedures which satisfy the regulator, the 20 minute notice period for a change upward in the minimum bet should only apply to players at that table at the time the notice is made. [See pages 54-55]

Recommendation 82: Implementation of alterations to minimum bet changes

The implementation of alterations to the obligation for minimum bet changes may be best achieved by amending the provision in sub-section 72(2) of the Casino Control Act by broadening the scope of the exemptions available to the Authority. [See pages 54-55]

Recommendation 83: Game rules

Game rules for tables and gaming machines should be the property of the casino operators who should seek approval from the Authority for their own rules. [See page 55]

Recommendation 84: Rules to include reference to unclaimed prizes and credits

The game rules developed by the operators should explain how unclaimed prizes and credits will be handled, with procedures developed to administer the process. [See pages 55-56]

Recommendation 85: Unclaimed prizes and credits to Responsible Gambling Fund

Unclaimed prizes and credits should be transferred to the Responsible Gambling Fund. [See pages 55-56]

Recommendation 86: Publishing of approved game rules

The obligation to publish approved rules of games should be transferred to the operators. [See page 56]

Recommendation 87: Availability of approved game rules

The casino operators must make copies of the approved game rules available in a readily accessible form for players to access inside the casino. [See page 56]

Recommendation 88: Availability of game information

The Authority should not be required to approve the text of summaries of game rules. Instead, the Authority's role should be to ensure that any information the operators choose to publish is accurate, not misleading and not inconsistent with harm minimisation requirements. [See page 56]

Recommendation 89: Enforcing game information accuracy

An amendment of sub-section 72(1)(b) is recommended to make clear the responsibility of providing information belongs to the operators and the role of the Authority is to ensure that information is accurate, not misleading and does not breach harm minimisation requirements. [See page 56]

Recommendation 90: Supervision levels

The operators should use risk assessments to determine suitable supervision levels for game play with the Authority approving the internal controls which determine the process for allocating and managing the risk. [See pages 56-57]

Recommendation 91: CCTV minimum technical standards

The Authority should establish minimum technical standards for CCTV equipment in consultation with the operators. [See page 57]

Recommendation 92: Operator surveillance located off-site

Subject to appropriate controls being put in place, the operators should be able to accommodate their surveillance teams in an off-site location. [See page 57]

Recommendation 93: Interstate locations for operator surveillance

If an operator wishes to locate its off-site surveillance in an interstate location, the Authority should issue a direction which makes clear that the operator will treat its interstate surveillance as if it were in New South Wales. [See page 57]

Recommendation 94: Dedicated surveillance

If an operator wishes to locate its off-site surveillance in an interstate location, the operator must ensure that it has a team dedicated to its Sydney casino. [See pages 57-58]

Recommendation 95: Controlled contracts

Subject to appropriate controls and procedures being in place the operators should notify the Authority of contracts entered into rather than waiting for pre-approval. The Authority could

then include reviewing controlled contract assessments in its regular audit program. [See pages 58-59]

Recommendation 96: Cheating at roulette

Consideration should be given to strengthening Section 87 of the Casino Control Act to make it an offence to use equipment to monitor roulette wheels for the purpose of gaining an advantage. [See page 59]

Recommendation 97: Casino operator to be allowed cheating instruments

If section 87 is amended as suggested in the previous recommendation, it should also be amended to allow a casino operator to be in possession of this same equipment to allow for training of staff. [See page 59]

Recommendation 98: Recognising modern technology in game rules

Game rules need to be modernised to reflect the reality that smartphones are used by patrons in the casino. [See page 59]

Recommendation 99: Provision of credit to premium players

The Star should be able to extend credit to players on a premium play program. [See pages 59-60]

Recommendation 100: Credit not to be extended to NSW residents

The Star should not be able to provide credit to any resident of New South Wales. [See pages 59-60]

Recommendation 101: Deposited funds in related company accounts

Funds deposited with an operator's sister property should be considered to be available for play at The Star or Crown Sydney without the player having to withdraw and deposit them. [See page 61]

Recommendation 102: Irrecoverability of debts

The requirement that the discharge of gaming debts requires the Authority's prior approval should be abolished. [See page 61]

Recommendation 103: Tax rebate on unpaid debts

The rebate provided to the operators for tax paid on losses which are subsequently unpaid gaming debts should be abolished. [See page 61]

Recommendation 104: Accepting cheques

The operators should be able to accept a cheque from a player who previously presented a cheque that bounced. [See pages 61-62]

Recommendation 105: ATM rules for casinos, clubs and hotels

There are differences between casinos on the one hand and clubs and hotels on the other which means that any recommendations made for the location of ATMs at clubs and hotels may not necessarily suit casinos. [See pages 62-63]

Recommendation 106: EFTPOS rules

EFTPOS should be allowed on the gaming floor, but only for non-gaming services such as food and beverage payments. [See page 63]

Recommendation 107: Use of debit and credit cards

International players on a premium play arrangement or a junket should be able to use debit or credit cards to purchase gaming chips directly. [See page 63]

Recommendation 108: Cash access controls based on harm minimisation principles

The specificity in the current legislation of *"automatic teller machine and any like device"* may be better replaced with wording which reflects harm minimisation principles rather than a technological solution to cash access controls. [See page 63]

Recommendation 109: Remove Development Approval obligation

The obligation imposed on The Star with respect to the placement of ATMs should be removed. [See pages 63-64]

Recommendation 110: Await research findings before amending the Act

Until the findings of the research into ATM placement are known, section 73 of the Casino Control Act should not be amended. [See pages 62-64]

Recommendation 111: Inducements

The inclusion of inducement provisions in section 76 of the Casino Control Act appears to be mis-placed and should be moved. [See page 64]

Recommendation 112: Junkets - Fix apparent drafting error in Regulation 16

Regulation 16(2)(b) of the *Casino Control Regulation 2009* requires information to be provided to the Authority which should more logically be provided to casino operators. [See pages 64-65]

Recommendation 113: Junkets - Consider repealing Regulation 17

As junket promoters are no longer approved by the Authority it is unclear what it is meant to do with information provided regarding convictions of junket promoters. Regulation 17 of the *Casino Control Regulation 2009* should be repealed. [See pages 65-66]

Recommendation 114: Junkets – Changes to Regulation 17 if not repealed

If Regulation 17 of the *Casino Control Regulation 2009* is not repealed, it should be amended to limit the range of information which needs to be provided to the Authority. [See pages 65-66]

Recommendation 115: Junkets – law enforcement needs

The Authority should discuss with law enforcement what information it needs for legitimate law enforcement purposes which it does not already receive regarding junket play. If necessary, the Authority could issue a notice under regulation 18 prescribing what information operators need to provide beyond what is already being provided. [See pages 65-66]

Recommendation 116: Junkets – regulation via the operators' internal controls

The best method for regulation of junkets is by use of the operators' approved internal controls. [See pages 65-67]

Recommendation 117: Junkets – importance of audit program

Using the operator's internal controls as the primary tool of regulation requires the regulator to undertake regular audit activity to ensure the operators are complying with their obligations. [See pages 65-67]

Recommendation 118: Junkets – ongoing value of regulations 14 to 18

While the best method of regulating junkets is through the operator's approved internal controls, Regulations 14 to 18 of the *Casino Control Regulation 2009* should remain as a "fallback" position (amended as recommended elsewhere) in the event that a casino operator fails to fulfil its obligations adequately through its approved system of internal controls. [See pages 65-67]

Recommendation 119: Junkets – maintain regulation 19

While there are questions about the usefulness of a number of the regulations under the *Casino Control Regulation 2009* which are intended to regulate junkets, for the avoidance of doubt, regulation 19 should remain as it assists the Authority differentiate duty payments from junket and non-junket play. [See pages 65-67]

Recommendation 120: Passports and flight tickets

The obligation to provide copies of all passports and flight tickets for all international premium play and junket participants should be replaced with an obligation imposed on the operators to collect such information and make it available to the Authority to review on request. [See pages 65-67]

Recommendation 121: Move to principles-based system of Internal Controls

The casino operators should develop a principles-based Internal Control Manual which is supported by detailed Standard Operating Procedures. [See pages 67-68]

Recommendation 122: Standard Operating Procedures replace former ICS

While the Standard Operating Procedures (SOPs) in a modern system of internal controls effectively replace the Internal Control Statements in the traditional model, the SOPs should not require approval from the Authority. [See page 68]

Recommendation 123: Standard Operating Procedure consultation

The operators must provide SOPs to the regulator who should raise any concerns about the SOPs with the operator. However, those concerns should not prevent the operator from continuing with a SOP it has put in place. [See page 68]

Recommendation 124: Transitioning to new model of Internal Controls

As the transition by The Star to the new principles-based model of internal controls will take time, the Authority must support the change during the transition to ensure there is no uncertainty in the process. [See page 68]

Recommendation 125: Approval of position descriptions and organisational charts

The obligation to seek the Authority's approval of position descriptions and the operators' organisational charts should be abolished. [See page 68]

Recommendation 126: Operators' drop routes

The operators should confirm through their system of internal controls and SOPs that they will identify appropriate and varied drop routes which should not require the prior approval of or notification to the Authority. [See pages 68-69]

Recommendation 127: Breaches of internal controls and SOPs

The possibility that the Authority may be unable to take action should there be a breach by the operator of its approved system of controls should be clarified and rectified if necessary. [See page 69]

Recommendation 128: Rebate play front money minimum

There should be no change to the minimum front money threshold until the operators provide economic and financial modelling to the satisfaction of NSW Treasury. [See pages 69-70]

Recommendation 129: Change to rebate play front money model

Should the operators wish to propose a change to the front money model, NSW Treasury and the regulator should have an open mind to any proposal presented. [See pages 69-70]

Recommendation 130: Rebate play on gaming machines

Subject to The Star developing appropriate controls, rebate play should be allowed on all gaming machines at The Star. [See page 70]

Recommendation 131: Gaming machine cap

Gaming machines used for rebate play should continue to be included within The Star's absolute cap on gaming machine numbers. [See page 70]

Recommendation 132: Gaming machine harm minimisation features

Harm minimisation features on gaming machines in the casino should be the same on machines whether they are used for rebate or non-rebate play. [See pages 70-71]

Recommendation 133: GLI-11 standard

Consistent with the Ministerial direction, gaming machines approved for use in The Star should be considered suitable if they meet the GLI-11 standard, whether they meet the Australian/ New Zealand Gaming Machine National Standard or not. [See page 71]

Recommendation 134: Single set of rebate play parameters

Both operators should be required to administer their rebate programs under the same regulatory parameters. [See pages 71-72]

Recommendation 135: Future changes to rebate play parameters

At a later date, the idea of allowing the operators to manage their rebate programs under different regulatory parameters should be considered. [See page 72]

Recommendation 136: "Close associates" of casino and liquor licences

A person approved as a "close associate" of a casino licensee should be deemed to be suitable to be a "close associate" of that entity's application for a liquor licence. [See page 72]

Recommendation 137: Casino licence and liquor licence terms

The terms of any liquor licences granted to the casino licensees should have the same term as the casino licence. [See page 72]

Recommendation 138: Categorisation as a Level 1 premises

The Star should not be categorised as a Level 1 premises. [See page 73]

Recommendation 139: Crown Sydney approach to liquor regulation

When Crown Sydney opens it will need to adopt a pro-active approach to managing liquor issues in negotiation with NSW Police and the Authority. [See page 73]

Recommendation 140: Casinos differ from clubs and hotels

The scheme for regulating liquor at casinos should be treated differently from that in place for clubs and hotels. [See pages 73-74]

Recommendation 141: Sydney CBD Entertainment Precinct

The Star and Crown Sydney should continue to be excluded from the Sydney CBD Entertainment Precinct. [See pages 73-74]

Recommendation 142: Liquor management plans

The Star and Crown Sydney should be required to develop and maintain liquor management plans. [See page 74]

Recommendation 143: Banning orders should be extended to The Star and Crown Sydney

A person the subject of a banning order issued by the Authority should have the scope of that ban extended from Kings Cross and Sydney CBD to include the premises of The Star and Crown Sydney. [See page 74]

Recommendation 144: Carriage of open liquor

Patrons leaving a specified licensed liquor outlet within casino premises should not be able to take a glass of liquor with them. [See pages 74-75]

Recommendation 145: Two glass limit

Patrons purchasing liquor after a set time should not be able to purchase more than two glasses at a time. [See page 75]

Recommendation 146: Take-away liquor restrictions

The limits on the sale of take-away liquor imposed on the casino licensee should be repealed. [See page 75]

Recommendation 147: Allowing intoxicated patrons to gamble

A casino operator should not knowingly allow an intoxicated person to gamble. [See pages 75-76]

Recommendation 148: "permitting a contravention"

The reference to "permitting" a contravention of the liquor provisions should be clarified. [See pages 75-76]

Recommendation 149: Applying accountability where it matters

As the scheme appropriately empowers the Authority to take action against the licensee and the manager of a licensed liquor outlet, the power to take action against the directors of the parent company should be limited to only those circumstances where the directors expressly authorised the contravention. [See pages 75-76]

Recommendation 150: Production of CCTV footage

A prescriptive timeframe for the production of CCTV footage of liquor-related incidents should only be pursued if there is a lack of cooperation from a casino licensee. [See page 76]

Recommendation 151: Option of tougher regulation if required

Should either casino operator fail to provide an approach to liquor service which meets the expectations of the Authority, the option to impose tougher controls, including incorporation of the property into the club and hotel scheme remains a possibility. [See page 77]

Recommendation 152: Police Commissioner's exclusions – boundary change

A Regulation should be made to extend the Police Commissioner's exclusions from the casino gaming floor to the whole property. [See pages 77-78]

Recommendation 153: Police Commissioner's exclusion from both properties

A person excluded by the Police Commissioner should be automatically banned from both The Star and Crown Sydney. [See pages 77-78]

Recommendation 154: Police Commissioner's exclusion power directly exercised

Subject to consideration of the legal consequences, the power to exclude a person should be directly exercised by the Police Commissioner rather than by the casino operators at the direction of the Police Commissioner. [See pages 77-78]

Recommendation 155: Operators' exclusions (non-voluntary)

Exclusion by one operator (other than self-exclusion) should be valid for that operator's property only. [See pages 77-78]

Recommendation 156: Exercising self-exclusion at one property

If a person self-excludes from one property it should have effect at that property only. [See pages 77-79]

Recommendation 157: Providing information on how to self-exclude at the other property

If a person self-excludes from one property, that person should be given all the information necessary to enable self-exclusion from the other property without the need to visit that other property. [See pages 77-79]

Recommendation 158: Revocation of self-exclusion at one property

If a person's self-exclusion is revoked at one property it should have effect at that property only. [See pages 77-79]

Recommendation 159: Providing information on how to revoke self-exclusion at the other property

Upon pursuing revocation of self-exclusion at one property, that person should be given information about how to pursue revocation of self-exclusion at the other property. [See pages 77-79]

Recommendation 160: Operators developing an agreed protocol

Before Crown Sydney opens the two operators should work together to develop agreed protocols for implementing a practical process for implementing a self-exclusion scheme and revocations of self-exclusion which should be effective, simple and sympathetic to the needs of the individuals concerned. [See pages 77-79]

Recommendation 161: Third-party exclusions – single property

Third-party exclusions should apply only at the property that exercises that exclusion. [See pages 77-80]

Recommendation 162: Assisting people subject to third-party exclusion

At the time of processing a third-party exclusion, the patron should be given information as to how to self-exclude from the other property should the person wish to do so. [See pages 77-80]

Recommendation 163: Withdrawal of licence

Should one operator withdraw a person's licence to remain on its property, it should not extend to the other operator's property. [See pages 79-80]

Recommendation 164: Withholding winnings of banned persons

To assist with the enforcement of any form of exclusion or withdrawal of licence, the legislative scheme should make clear that a banned person should not be able to be paid any winnings. [See page 80]

Recommendation 165: Withheld winning paid into Responsible Gambling Fund

Any winnings withheld from excluded persons should be paid into the Responsible Gambling Fund. [See page 80]

Recommendation 166: Copies of lists of excluded persons

The obligation to provide a "copy of the list" of excluded persons should be satisfied by the operators providing the Authority with unfettered access to that information online. [See page 80]

Recommendation 167: Problem gambling counselling

The obligation for a casino operator to enter into an arrangement with an external provider of problem gambling counselling services should also allow the alternative of those services being provided by the operator itself, subject to meeting the requirements of the Authority. [See pages 80-81]

Recommendation 168: Responsible gaming training standards

The Authority should consider developing a single set of responsible gambling training standards to ensure a consistent approach to the training of employees in responsible gambling. [See page 81]

Recommendation 169: Modular responsible gambling training

A modular approach to responsible gambling training should be considered so that employees who move from one operator to the other may only have to update their training by completing those modules unique to that operator. [See page 81]

Recommendation 170: Action against operators for minors in the casino

The Authority should explain to the operators what approach it intends to take when minors are found to be in the casino. The approach recommended is that disciplinary action should be taken when the casino operator has been negligent. [See pages 81-82]

Recommendation 171: The legislation regarding minors needs to reflect the modernised regime

The obligation in section 94(2) of the Casino Control Act which requires the operator to notify an inspector forthwith if a minor is found in the casino will need to be replaced with an obligation to notify the Authority as soon as practicable should the recommendation to remove inspectors from a 24/7 presence (which is recommended elsewhere) is adopted. [See pages 81-82]

Recommendation 172: Winnings of minors

Any winnings which may be due and payable to a minor should be withheld and paid into the Responsible Gambling Fund. [See pages 81-82]

Recommendation 173: On-the-spot fines for minors presenting fake ID

There should be no change to the value of the on-the-spot fine issued to minors who use fake ID or another person's ID in an attempt to obtain entry into the casino. [See pages 81-83]

Recommendation 174: Entry signage

The mandatory signage which operators are required to display at every entrance to the casino should be reviewed to determine whether it can be streamlined. [See page 83]

Recommendation 175: Major changes and minor changes

The complete list of matters prescribed as *"major changes"* and *"minor changes"* should be reviewed. [See pages 83-84]

Recommendation 176: Specific amendments to "major changes"

A change to the name of the casino operator, a change in the principal business address of the casino operator, a person ceasing to be a close associate and a change in the nominal paid-up capital of the casino operator should all be re-categorised as *"minor changes".* [See pages 83-84]

Recommendation 177: The 5% threshold

The 5% threshold (effectively the ownership provision) should be changed to 10% to be consistent with the standard probity threshold for approval of close associates of most other gaming licensees elsewhere in Australia. [See pages 83-84]

Recommendation 178: Narrowing matters considered to be "minor changes"

Some matters prescribed as minor changes are broadly applied and should be narrowed so that only matters which might impact on the suitability of the casino operator are listed. [See pages 83-84]

Recommendation 179: "Minor changes" should reflect the modernised regime

If employee licensing is abolished as is recommended elsewhere in this Review, clause 3 of Schedule 2 will need to be reworded if it is to be retained to make clear what a "casino employee" is. [See pages 83-84]

Recommendation 180: Disclosure of casino employee remuneration

Clause 6 of Schedule 2, which requires disclosure of any casino employee at a remuneration level of $185,000 or more per annum, is unnecessary and can deleted. [See pages 83-84]

Recommendation 181: Tips and gratuities

The ban on tips and gratuities should be maintained. [See page 85]

Recommendation 182: Clarify meaning of "benefit from a patron in the casino"

Advice should be sought to determine whether the wording in the Casino Control Act which refers to a benefit from a patron "in the casino" means that the benefit has to be given in the casino. If it is unclear, the wording should be amended as necessary. [See page 85]

Recommendation 183: Shift from mandatory reporting to information availability on request

The obligation for mandatory reporting should, where possible, change to one where the operators make information available to the regulator on request. [See page 85]

Recommendation 184: Off-site storage of information

The Authority should be sympathetic to any request from an operator to store materials in an approved, off-site location as long as that information remains readily available to the Authority. [See pages 85-86]

Recommendation 185: Retention periods

The Authority should review the period of time information should be required to be kept on the casino site and subsequently at the approved off-site location. [See pages 85-86]

Recommendation 186: Limitations to collecting information for law enforcement agencies

The Authority must ensure that information it collects for law enforcement agencies is limited to the scope defined in section 149 of the Casino Control Act. [See pages 85-86]

Recommendation 187: The need for required forms

The Authority should review the need for every form that it requires to be completed by the operators. [See page 86]

Recommendation 188: Content of required forms

Each form that the Authority confirms the operators are required to complete should be assessed for its content to ensure that it seeks only that information which is necessary. [See page 86]

Recommendation 189: Consolidate inspector functions

The functions of casino inspectors should be consolidated with non-casino gaming inspectors to make a single inspectorate. [See pages 86-87]

Recommendation 190: Remove permanent presence of inspectorate from casinos

Under a risk-based model, the change in focus of the work performed by inspectors means that the permanent presence of inspectors at the casinos is no longer necessary. [See pages 86-87]

Recommendation 191: Casino CCTV pictures

If considered necessary, the CCTV pictures which are currently made available to the inspectorate office at the casino could be re-directed to the offices of Liquor and Gaming NSW. [See pages 86-87]

Recommendation 192: Casinos to continue to provide inspectors with access

While it is recommended that inspectors no longer have a permanent presence at the casinos, it is still necessary for the operators to provide the inspectors with appropriate working space and access to CCTV networks and databases when the inspectors attend the casinos. [See pages 86-87]

Recommendation 193: Changes required to internal controls and procedures

The Star will need to change some of its Internal Controls and Standard Operating Procedures to adapt to the removal of the inspectors from the casino. [See pages 86-87]

Recommendation 194: Rate of duty

Should The Star wish to negotiate changes to its rate of duty it should make representations to NSW Treasury and explain with appropriate financial and economic modelling how a change in the rate of duty will benefit New South Wales. [See page 87]

Summary of Appendices

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Appendix 1 Stakeholders

The following list identifies all stakeholders who were invited to contribute to this Review and whether they provided a written submission, made oral representations to the author or both.

Organisation	Written submission provided	Oral representation
AHA NSW	×	✓
AUSTRAC	×	✓
Casino & Resorts Australasia	✓	×
Clubs NSW	✓	✓
Crown Resorts	✓	✓
Department of Premier and Cabinet	×	✓
Department of Police and Justice	×	×
The Star Entertainment Group	✓	✓
Gaming Technologies Association	×	✓
ILGA	✓	✓
Ministry of Health	✓	×
NCOSS	✓	✓
NSW Crime Commission	×	✓
NSW Police Force	✓	✓
NSW Treasury	×	✓
The Salvation Army	×	✓
Wesley Mission	×	×

Appendix 2 Casino boundary

Sections 19 and 19A of the C*asino Control Act 1992.*

19 Authority to define casino premises

(1) The boundaries of a casino are to be defined initially by being specified in the casino licence.

(2) The boundaries of a casino may be redefined by the Authority:

(a) on its own initiative, or

(b) on the application of the casino operator.

(2A) The Authority is not to redefine the boundaries of a casino on its own initiative unless it:

(a) notifies the casino operator in writing of the proposed change and gives the casino operator at least 14 days to make submissions to the Authority on the proposal, and

(b) takes any such submissions into consideration before deciding whether to redefine the boundaries.

(3) The redefining of the boundaries of a casino takes effect when the Authority gives written notice of it to the casino operator or on such later date as the notice may specify.

(4) This section does not apply in relation to the Barangaroo restricted gaming facility.

19A Boundaries of Barangaroo restricted gaming facility

(1) The boundaries of the Barangaroo restricted gaming facility are to be defined initially by being specified in the restricted gaming licence for the facility.

(2) The boundaries of the Barangaroo restricted gaming facility may be redefined by the Authority but only on application made at any time by the holder of the restricted gaming licence.

(3) In defining or redefining the boundaries of the Barangaroo restricted gaming facility, the Authority is:

(a) to have regard only to matters of public health and safety and matters that relate to the integrity of gaming in the facility in accordance with this Act, and

(b) to ensure that the total gaming area within the Barangaroo restricted gaming facility does not exceed 20,000 square metres.

Appendix 3 Casino layout

Section 65 of the *Casino Control Act 1992*

65 Casino layout to be as approved by Authority

(1) It is a condition of a casino licence that gaming is not to be conducted in the casino unless the facilities provided in relation to the conduct and monitoring of operations in the casino are in accordance with plans, diagrams and specifications that are for the time being approved by the Authority under this section.

(2) The Authority may approve plans, diagrams and specifications indicating the following:

(a) the situation within the casino of gaming facilities, counting rooms, cages and other facilities provided for operations in the casino,

(b) the facilities provided for persons conducting monitoring operations and surveillance operations in the casino.

(3) The Authority may amend an approval under this section on the application of the casino operator or by giving not less than 14 days' written notice of the amendment to the casino operator or such lesser period of notice as the operator agrees to accept in a particular case.

(4) This section does not apply in relation to the Barangaroo restricted gaming facility.

(5) However, it is a condition of a restricted gaming licence that:

(a) the facilities and equipment provided for persons conducting monitoring operations and surveillance operations in the Barangaroo restricted gaming facility must be to a standard approved by the Authority, and

(b) the location and orientation of those facilities and equipment must be as approved by the Authority.

Appendix 4 Exemptions from smoking bans

Relevant legislation is found in various sections of the *Smoke-free Environment Act 2000* and section 89A of the *Casino Control Act 1992*.

Relevant provisions of the *Smoke-free Environment Act 2000*

The complex nature of the structure of the *Smoke-free Environment Act 2000* means that excerpts have been heavily edited to focus on the relevant provisions. (Penalty provisions in Section 10 have also been excised.)

Section 4 Definitions

In this Act:

...

exempt area has the meaning given by section 11.

...

Section 6 Smoke-free areas – enclosed public places

1. Every enclosed public place is a smoke-free area for the purposes of this Act.
2. ...
3. An enclosed public place is not a smoke-free area if it is an exempt area (See section 11).

Section 10 Duty to prevent spread of smoke

(1) If a smoke-free area forms a part of premises in which smoking is elsewhere allowed, the occupier of the smoke-free area must take reasonable steps to prevent smoke caused by smoking in other parts of those premises from penetrating the smoke-free area.

(2) If a smoke-free area forms a part of premises in which smoking is elsewhere allowed, the occupier of the other parts of those premises in which smoking is allowed must take reasonable steps to prevent smoke caused by smoking in those other parts from penetrating the smoke-free area.

(3) The Minister may issue guidelines from time to time as to what constitutes reasonable steps to prevent the penetration of smoke into smoke-free areas.

(4) An occupier who, in relation to premises or a part of premises, complies with any guidelines in force for the time being under subsection (3) is to be considered as having taken all reasonable steps as referred to in subsections (1) and (2) in relation to those premises or that part.

Section 10A Definitions

(1) In this Part:

...

casino means premises, or part of premises, defined as a casino for the time being under section 19 of the *Casino Control Act 1992* and includes the whole or a specified part of any premises the subject of an order under section 89 (3) of that Act.

casino private gaming area means an area in a casino that is used substantially for gaming by international visitors to the casino other than an area used substantially for the purposes of gaming machines.

...

gaming machine room means room used substantially for the purposes of gaming machines.

Section 11 Meaning of an "exempt area"

In this Act, ***exempt area***, in relation to a club, hotel nightclub or casino, means the area set aside in accordance with section 11A[88] or 11B or a casino private gaming area, but does not include any area:

(a) Required to be designated as a smoke-free area under regulations referred to in section 12, or

(b) That is the subject of a declaration in force under section 13.

Section 11C Review of casino private gaming area exemption

(1) The Minister is to review regularly the exemption for a casino private gaming area to determine whether the exemption is justified on the grounds of maintaining parity with the smoking restrictions in casinos in other States and Territories.

(2) A review is to be undertaken within one month after 1 January each year and the first such review is to take place in 2006.

(3) A report on the outcome of each review is to be tabled in each House of Parliament no later than 1 June of the year in which the review is undertaken.

Section 12 Premises containing exempt areas to comply with certain requirements

(4) The regulations may make provision for or with respect to requirements with which premises containing an exempt area must comply.

(5) Without limiting the generality of subsection (1), the regulations may make provision for or with respect to any one or more of the following in relation to any premises containing an exempt area:

(a) requirements relating to the erection of partitions or barriers to prevent the penetration of smoke into smoke-free areas,

(b) requirements relating to ventilation,

(c) requirements as to the designation of areas as smoke-free areas.

(6) An exemption under this Part does not affect any duty a person may have under the *Work Health and Safety Act 2011*.

Section 13 Removal of exemption by Director-General

(1) The Director-General may declare that any particular area ceases to be an exempt area if satisfied that:

(a) any requirement of this Act or the regulations has not been complied with in relation to the premises containing the exempt area, or

(b) any guidelines in force under section 10 have not been complied with in relation to the premises containing the exempt area.

(2) The Director-General may only make a declaration under this section:

(a) after having given the occupier of the premises concerned:

[88] Sections 11A and 11B refer solely to temporary measures in place between 2005 and 2007 and are now irrelevant. As such they are not included here.

(i) written advice of the Director-General's intention to make the declaration, and

(ii) the reasons why the Director-General intends to make the declaration, and

(iii) an opportunity to make submissions within the period specified in the advice (being not less than 14 days), and

(b) after having considered any submissions made by the occupier within that period.

(3) A declaration under this section:

(a) must be in writing, and

(b) must be given to the occupier of the premises concerned, and

(c) takes effect on the day on which the declaration is given or on a later day specified in the notice.

(4) The Director-General may, at any time, revoke a declaration under this section by notice in writing given to the occupier of the premises concerned.

Relevant provisions of the *Casino Control Act 1992*

89A Application of Smoke-free Environment Act 2000

(1) The *Smoke-free Environment Act 2000* does not apply to or in respect of the Barangaroo restricted gaming facility on and from 15 November 2019.

(2) However, the conditions imposed by the Authority on a restricted gaming licence must:

(a) require air quality equipment that is of an international best practice standard to be installed, maintained and operated in the Barangaroo restricted gaming facility, and

(b) provide for an independent person appointed by the holder of the licence to test the equipment on a quarterly basis and to report annually to the Minister for Health on the result of those tests.

(3) The Minister for Health is to cause each annual report under subsection (2) (b) to be tabled in both Houses of Parliament as soon as practicable after receiving the report.

Appendix 5 Insurance provision in Casino Agreement (Victoria)

Excerpt from the Casino Agreement, an agreement between Crown Melbourne and the VCGLR.

35.1 The Company must:

(a) insure and keep insured all of its Assets and Rights for the following:

(i) business interruption insurance (including insurance for the payment of all casino taxes) for the Melbourne Casino;

(ii) products and public liability insurance; and

(iii) real and personal property (also known as building and contents or industrial special risks) insurance (at replacement value) for the entire Melbourne Casino Complex,

and for each insurance policy the interests of the State, the Commission and any Mortgagees must be noted by endorsement on the policy or if the Commission so directs, in the joint names of the Company and the State and the Commission for their respective rights and interests;[89]

(b) immediately deliver the insurance policies referred to in paragraph (a) to the Authority (unless the Company is unable to do so under the terms of a Permitted Encumbrance which has priority over the Fixed and Floating Charge, in which case copies will be sufficient) and, on request, deliver certificates of currency in respect of those insurance policies;

(c) punctually pay all premiums and sums necessary (including stamp duty) for effecting and keeping current every insurance policy and, promptly on request, hand to the Authority the receipt for any premium or sum paid;

(d) immediately after they are effected, deliver to the Authority all variations, alterations and additions to any existing insurance policies and all additional or substitute insurance policies (unless the Company is unable to do so under the terms of a Permitted Encumbrance which has priority over the Fixed and Floating Charge, in which case copies will be sufficient); and

(e) notify the Commission on a monthly basis of any occurrence wholly or partly within the Melbourne Casino Complex which gives rise to a claim under any insurance policy where the State is a party to the claim or the claim may adversely affect the State.[90]

35.2 The Company must not:

(a) do or allow to be done anything which might cause any policy of insurance to be prejudiced or rendered void, voidable or unenforceable;

(b) without the prior consent in writing of the Authority, cause, or take any steps to bring about, the cancellation of, or a material change or reduction in, the cover provided under any insurance policy;

89 Amended by clause 2.14 of the Ninth Variation Agreement to the Casino Agreement dated 8 July 2005

90 Amended by clause 2.14 of the Ninth Variation Agreement to the Casino Agreement dated 8 July 2005

(c) effect any insurance in respect of the Assets and Rights other than as specified in clause 35.1; or

(d) make, enforce, settle or compromise a claim or do anything inconsistent with the powers or interests of the Authority.

35.3 Subject to the Master Security Agreement, all proceeds of insurance received by the Company as a result of any claim must be applied by the Company to rectify, remedy or repair the property involved or loss or damage which gave rise to the claim.

Appendix 6 Security officers

Relevant sections of the *Casino Control Act 1992* and the *Security Industries Act 1997* which show the different test to determine suitability to be granted a licence under each Act.

The relevant section of the *Casino Control Act 1992*:

Section 52 Determination of applications

(1) The Authority is to consider an application for a licence and is to take into account the results of its investigations and inquiry and any submissions made by the applicant within the time allowed.

(2) The Authority is not to grant a licence unless satisfied that the applicant is a suitable person to hold a licence.

(3) For that purpose, the Authority is to make an assessment of:

(a) the integrity, responsibility, personal background and financial stability of the applicant, and

(b) the general reputation of the applicant having regard to character, honesty and integrity.

(c) (Repealed)

(4) The Authority is to determine the application by either granting a licence to the applicant or declining to grant a licence, and is to notify the applicant in writing of its decision.

(5) The Authority is not required to give reasons for its decision but may give reasons if it thinks fit.

The relevant sections of the *Security Industries Act 1997*

15 Restrictions on granting licence—general suitability criteria

(1) The Commissioner must refuse to grant an application for a licence if the Commissioner is not satisfied that the applicant:

(a) is a fit and proper person to hold the class of licence sought by the applicant, or

(b) is of or above the age of 18, or

(c) has the competencies and experience approved by the Commissioner, or

(d) has undertaken and completed the requisite training, assessment and instruction for the class of licence sought by the applicant, or

(e) is competent to carry on the security activity to which the proposed licence relates, or

(f) is an Australian citizen or a permanent Australian resident, or holds a visa that entitles the applicant to work in Australia (other than a student visa or a working holiday visa).

(2) For the purposes of subsection (1) (d), the requisite training, assessment and instruction for a class of licence is training, assessment and instruction in relation to the carrying on of security activities under a licence of that class:

(a) that is of a kind approved, and to a standard required, by the Commissioner, and

(b) is provided by such persons or organisations as are approved by the Commissioner for the purposes of this section.

(2A) The Commissioner may impose conditions with respect to the provision of training, assessment and instruction by any person or organisation approved by the Commissioner for the purposes of this section.

(2B) A person or organisation approved by the Commissioner for the purposes of this section must comply with any conditions imposed by the Commissioner under subsection (2A).

Maximum penalty:
(a) in the case of a corporation—100 penalty units, or
(b) in the case of an individual—50 penalty units.

(2C) The Commissioner must also refuse to grant an application for a licence if the applicant has supplied information that is (to the applicant's knowledge) false or misleading in a material particular in, or in connection with, the application.

(3) The Commissioner may refuse to grant an application for a licence if the Commissioner considers that the grant of the licence would be contrary to the public interest.

(4) The regulations may provide additional mandatory or discretionary grounds for refusing the granting of an application for a licence.

(5) Except as provided by the regulations, a reference in this section to an applicant includes, in the case of an application for a master licence, a reference to each close associate of the applicant.

(6) For the purpose of determining whether an applicant is a fit and proper person to hold the class of licence sought by the applicant, the Commissioner may have regard to any criminal intelligence report or other criminal information held in relation to the applicant that:

(a) is relevant to the activities carried out under the class of licence sought by the applicant, or

(b) causes the Commissioner to conclude that improper conduct is likely to occur if the applicant were granted the licence, or

(c) causes the Commissioner not to have confidence that improper conduct will not occur if the applicant were granted the licence.

(7) The Commissioner is not, under this or any other Act or law, required to give any reasons for not granting a licence if the giving of those reasons would disclose the existence or content of any criminal intelligence report or other criminal information as referred to in subsection (6).

(8) In this section:

student visa means a student visa issued under the *Migration Act 1958* of the Commonwealth.

working holiday visa means a working holiday visa or a work and holiday visa issued under the *Migration Act 1958* of the Commonwealth.

16 Restrictions on granting licence—criminal and other related history

1B The Commissioner must refuse to grant an application for a licence if the Commissioner is satisfied that the applicant:

(a) has, within the period of 10 years before the application for the licence was made, been convicted in New South Wales or elsewhere of an offence prescribed by the regulations in relation to the class of licence sought, whether or not the offence is an offence under New South Wales law, or

(b) has, within the period of 5 years before the application for the licence was made, been found guilty (but with no conviction being recorded) by a court in New South Wales or elsewhere of an offence prescribed by the regulations in relation to the class of licence sought, whether or not the offence is an offence under New South Wales law, or

(c) has, within the period of 5 years before the application for the licence was made, had a civil penalty imposed on the applicant by a court or tribunal in New South Wales or elsewhere, being a civil penalty prescribed by the regulations in relation to the class of licence sought, or

(d) has, within the period of 10 years before the application for the licence was made, been removed or dismissed from the NSW Police Force or from the police force of any other jurisdiction (whether in Australia or overseas) on the ground of the applicant's integrity as a police officer.

2B Without limiting subsection (1), the Commissioner may refuse to grant an application for a licence if the Commissioner is satisfied that the applicant has a conviction that is not capable of becoming spent.

Note. Under section 7 of the *Criminal Records Act 1991*, certain convictions are not capable of becoming spent. For example, convictions for which a prison sentence of more than 6 months has been imposed, convictions for certain sexual offences and convictions prescribed by the *Criminal Records Regulation 2004*.

3B The Commissioner must refuse to grant an application for a licence if the Commissioner is of the opinion that the applicant is not suitable to hold a licence because the applicant has been involved in corrupt conduct.

4B (Repealed)

5B The Commissioner may refuse to grant an application for a licence if, within the period of 10 years before the application for the licence was made, the applicant has been removed from the NSW Police Force under section 181D of the Police Act 1990on grounds other than the applicant's integrity as a police officer.

Appendix 7 Certificates of competency

Section 64 of the *Casino Control Act 1992*

64 Training courses and certificates of competency for employees

(1) Certificates of competency for the functions of special employees are issued by a casino operator.

(2) A casino operator may issue a certificate of competency to a person for any functions of a special employee only if satisfied that:

(a) the person has completed training in those functions and in responsible practices for the conduct of gaming, being training provided by the casino operator, or

(b) the person has completed other training, or has qualifications, that the casino operator considers appropriate for the exercise of those functions and that include training or qualifications in responsible practices for the conduct of gaming.

(3) A casino operator must not issue a certificate of competency unless the training or qualifications on the basis of which the certificate is to be issued complies with any standards or other requirements set by the Authority from time to time.

(4) A certificate of competency must specify the functions of a special employee for which it is issued and the date of its issue.

(5) A casino operator must maintain records of all training provided and certificates issued by the operator under this section and must at the request of the Authority provide the Authority with access to those records (including records maintained in an electronic format).

(6) It is a condition of a casino licence that the casino operator must comply with the requirements of this section.

Appendix 8 Ministerial direction

The following is a reproduction of the complete Ministerial direction edited only for formatting purposes and to remove the Minister's signature block.

Ministerial Directions Under Section 7 and 8 Current as at 26 June 2008

The following Ministerial directions to the Casino Control Authority (the "Authority") under the *Casino Control Act 1992* (the "Act") apply from 26 June 2008.

All directions under sections 7(1) and 8(2) of the Act current prior to the making of these directions are revoked. The direction of 19 July 1994 under section 5(1)(b) of the Act is not affected by this direction.

Section 7(1) directions (size and style of casino)

(1) The casino is to have at least 200 dealer controlled gaming tables installed

(2) Subject to compliance with (1) there should be no predetermined limit on the number of other gaming tables (including electronic gaming tables and tables not controlled by a dealer) installed by the casino operator, and the Authority is to redefine the boundaries of the casino, taking account of the physical limitations of the Casino precinct, to accommodate additional games or gaming equipment approved by the Authority for use in the casino.

(3) There should be no limits on prizes or jackpots for any game that may be played at the casino.

(4) There should be no seat limits on electronic gaming tables, remote games should be permitted and there should be no requirement for a line of sight between a player and the primary gaming equipment for that game.

(5) There should be a presumption in favour of approving gaming equipment where that gaming equipment has been approved for use in a casino in another jurisdiction with a similar level of regulatory controls to those applying under the Act.

Section 8(2) directions (gaming machines)

(1) The maximum number operational gaming machines in the casino is 1,500 machines

(2) Subject to (3) the bet limit for gaming machines in the casino is the same as gaming machines available to clubs and hotels under the Gaming Machines Act 2001

(3) Up to a maximum of 250 of the gaming machines installed in the private gaming areas of the casino may have any bet limits requested by the casino operator.

(4) Up to a maximum of 100 of the gaming machines installed in the private gaming areas of the casino may be made available to players not normally resident in New South Wales participating in programs for gaming machine "commission based" or "rebate" play in accordance with the system of internal controls and administrative and accounting procedures applicable to such programs as approved

by the Authority under section 124 of the Act

(5) There should be no limits on prizes or jackpots for any game played on a gaming machine at the casino.

In this Direction "gaming machine" has the same meaning as an "approved gaming machines" in the Gaming Machines Act 2001 except that an electronic gaming device or a group of electronic gaming devices which facilitate a factual representation of a casino table game do not constitute a gaming machine for the purpose of the directions under section 8(2), irrespective of:-

(a) the game being controlled by a dealer or not; and

(b) the result of any game being determined by a[91] electronic random number generator or by a non electronic method such as cards, dice, wheel etc.

[91] Sic

Appendix 9 Conduct of gaming

Section 70 of the *Casino Control Act 1992*

70 Conduct of gaming

(7) It is a condition of a casino licence that the following provisions are complied with in the casino and the casino operator is to be considered to have contravened that condition if they are not complied with:

(a) gaming equipment (except secondary gaming equipment) is not to be used for gaming in the casino unless there is an approval in force under section 68 for the use in the casino of that equipment or of the class or description of equipment concerned, and it is used in accordance with any conditions to which the approval is subject,

(b) all playing cards dealt in the course of gaming in the casino are to be dealt from a card shoe or by using any other device or method that may be required or allowed under the rules of the relevant game (as approved under section 66 (1)),

(c) chips for gaming in the casino are not to be issued unless the chips are paid for in money to the value of the chips or by chip purchase voucher that, on payment of the amount shown on the voucher, was issued by or on behalf of the operator unless the game rules require or provide for another method,

(d) gaming wagers are not to be placed in the casino otherwise than by means of chips unless the game rules require or provide for the placing of wagers by any other means,

(e) all wagers won in the course of gaming in the casino are to be paid in full without deduction of any commission or levy other than a commission or levy provided for in the game rules,

(f) all wagers won in the course of gaming in the casino are to be paid in chips unless the regulations or the game rules specifically permit payment by cash, cheque, non-monetary prize or other means,

(g) a person who is at or in the vicinity of the casino and is an agent of the casino operator or a casino employee must not induce persons outside the casino to enter the casino or take part in gaming in the casino,

(h) a person must not be required to pay any deposit, charge, commission or levy (whether directly or indirectly and whether or not it is claimed to be refundable) to enter the casino or, except as may be provided by the game rules or as may be approved by the Authority, to take part in gaming in the casino,

(i) during the times the casino is open to the public for gaming the requirements of subsection (2) are complied with in relation to the exchange and redemption of chips and chip purchase vouchers issued by the casino operator.

(8) The requirements for the exchange and redemption of chips and chip purchase vouchers are as follows:

(a) chip purchase vouchers are to be exchanged for chips at the request of the patron,

(b) chips are to be exchanged for other chips at the request of the patron,

(c) chips or chip purchase vouchers are to be redeemed for a cheque at the request of the patron (if the patron requests a cheque), or wholly or partly for money (with a cheque for any balance) if the patron so requests and the casino operator concurs,

(d) a cheque in payment for redeemed chips or chip purchase vouchers must be made payable to the patron and drawn on a bank, building society or credit union approved by the Authority,

(e) any exchange or redemption of chips or chip purchase vouchers is to be for their full value without any deduction.

Note. The requirements in subsection (2) are subject to the operation of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* of the Commonwealth.

(9) In this section, secondary gaming equipment means gaming equipment that is not an intrinsic element of gaming and is of a class that the Authority has identified as secondary gaming equipment by notice in writing to the casino operator.

Appendix 10 Controlled contracts

Section 36 of the *Casino Control Act 1992* and Regulation 9 of the *Casino Control Regulation 2009* combine to define what is considered to be a controlled contract.

Excerpt from the *Casino Control Act 1992*

36 Definitions

In this Division:

contract includes any kind of agreement or arrangement.

controlled contract means:

(a) a contract that relates to the supply or servicing of gaming equipment that has been approved by the Authority under section 68 (1), or

(b) a contract, or class of contracts, that, in the opinion of the Authority, is materially significant to the integrity of the operation of a casino and that the Authority declares, by notice in writing to the casino operator, to be a controlled contract.

Excerpt from the *Casino Control Regulation 2009*

9 Certain contracts not controlled contracts

(1) The object of this clause is to prescribe the classes of contracts that are, for the purposes of paragraph (b) of the definition of ***controlled contract*** in section 36 of the Act, exempt from that definition.

(2) The following classes of contracts are prescribed:

(a) contracts of employment,

(b) contracts relating wholly or partly to the supply of goods or services to a casino, but only if the amount payable under such a contract is less than $625,000,

(c) contracts relating wholly or partly to the conduct of games of Keno by a licensee under the Public Lotteries Act 1996 in the casino,

(d) contracts relating to the supply to a casino of gas, water or electricity, or postal or telecommunications services,

(e) contracts relating to the supply of legal, accounting, financial, corporate or property advisory services to a casino,

(f) contracts relating to the supply of share registry services to a casino,

(g) contracts relating to the supply of airline services to a casino,

(h) contracts of insurance and contracts relating to the supply of insurance to, or the procurement of insurance for, a casino,

(i) contracts relating to the supply of off-site parking to a casino,

(j) contracts relating to the supply of ticketing agency services to a casino,

(k) contracts relating to the supply of superannuation services for the benefit of casino employees,

(l) contracts relating to the supply of banking or financial services to a casino,

(m) contracts relating to the provision of training courses approved under section 64 of the Act or training courses conducted with the approval of the Authority under Part 4A of this Regulation (as in force before 1 July 2008) or under Division 1 of Part 5 of the *Liquor Regulation 2008*,

(n) contracts relating to the provision of membership services by an industry representative body to a casino,

(o) contracts relating to the provision of services to a casino by one or more of the following:

(i) Australian Communications and Media Authority,

(ii) City of Sydney,

(iii) NSW Office of Liquor, Gaming and Racing,

(iv) Department of Transport and Infrastructure,

(v) Roads and Traffic Authority,

(p) contracts relating to the provision of marketing and promotional services by sporting clubs and associations or other sporting bodies to a casino.

(3) However, a contract of the class specified in subclause (2) (b) is not exempt if the contract is:

(a) one of 2 or more contracts entered into by the same supplier during any 12 month period, if the aggregate amount payable under the contracts is $625,000 or more, or

(b) a contract relating to the supply of gaming equipment, if the amount payable under the contract is $13,500 or more, or

(c) a contract relating to the maintenance of gaming equipment, if the amount payable under the contract is $13,500 or more, or

(d) a contract relating to the supply or maintenance of security or surveillance equipment, if the amount payable under the contract is $125,000 or more.

(4) The class of contracts comprising such of the financial contracts relating to the establishment and operation of the casino as require the consent of the Authority is also prescribed.

Appendix 11 Provision of credit

Section 74 of the Casino Control Act 1992

74 Credit prohibited

(1) A casino operator must not, and an agent of the operator or a casino employee must not, in connection with any gaming in the casino:

(a) accept a wager made otherwise than by means of money or chips, or

(b) lend money, chips or any other valuable thing, or

(c) provide money or chips as part of a transaction involving a credit card or a debit card, or

(d) extend any other form of credit, or

(e) except with the approval of the Authority, wholly or partly release or discharge a debt.

(2) It is a condition of a casino licence that the casino operator must not contravene subsection (1) and must not cause, permit, suffer or allow an agent of the operator or a casino employee to contravene that subsection.

(3) It is a condition of a casino licence that an automatic teller machine or any like device is not to be installed within the boundaries of the casino.

(4) This section does not limit the operation of section 75 (Cheques and deposit accounts).

(5) Despite any other provision of this section, the holder of a restricted gaming licence may, in the case of a person who is not ordinarily resident in Australia, extend any form of credit to the person to enable the person to participate in:

(a) a premium player arrangement, or

(b) a junket within the meaning of section 76 that is approved by the Authority.

Appendix 12 Inducements

Regulation 20 of the Casino Control Regulation 2009

20 Gambling inducements

(1) A casino operator must not:

(a) offer or supply any free or discounted liquor as an inducement to participate, or to participate frequently, in any gambling activity in the casino, or

(b) offer free credits to players, or as an inducement to persons to become players, of gaming machines in the casino, by means of letter box flyers, shopper dockets, or any other similar means, or

(c) offer or provide, as an inducement to play gaming machines in the casino, any prize or free give-away that is indecent or offensive in nature.

Maximum penalty: 50 penalty units.

(2) In this clause, ***gaming machine*** includes a multi-terminal gaming machine as defined in section 61 (1) of the *Gaming Machines Act 2001*.

Appendix 13 Junkets

The following sections of the *Casino Control Act 1992* and *Casino Control Regulation 2009* provide the framework for the regulation of junkets.

Excerpt from the *Casino Control Act 1992*

76 Junkets and inducements

(1) The regulations may make provision for or with respect to regulating or prohibiting:

(a) the promotion and conduct of junkets involving a casino, or

(b) the offering to persons of inducements to take part in gambling at a casino, or

(c) the offering to persons of inducements to apply for review of exclusion orders.

(2) In particular, the regulations may:

(a) impose restrictions on who may organise or promote a junket or offer inducements, and

(b) require the organiser or promoter of a junket, or a casino operator, to give the Authority advance notice of the junket and to furnish to the Authority detailed information concerning the conduct of and the arrangements for the conduct of any junket, and

(c) require any contract or other agreement that relates to the conduct of a junket or the offer of an inducement to be in a form and contain provisions approved of by the Authority, and

(d) require the organiser or promoter of a junket, or a casino operator, to give specified information concerning the conduct of the junket to participants in the junket.

(3) In this section:

junket means:

(a) an arrangement involving a person (or a group of people) who is introduced to a casino operator by a promoter who receives a commission based on the turnover of play in the casino attributable to the person or persons introduced by the promoter (or otherwise calculated by reference to such play), or

(b) an arrangement for the promotion of gaming in a casino by groups of people (usually involving arrangements for the provision of transportation, accommodation, food, drink and entertainment for participants in the arrangements, some or all of which are paid for by the casino operator or are otherwise provided on a complimentary basis).

Excerpt from the *Casino Control Regulation 2009*

14 Casino operator's involvement with junkets

(1) A casino operator must not act as a representative of a promoter of a junket involving the casino.

Maximum penalty: 100 penalty units.

(2) However, a casino operator may organise, promote and conduct such a junket on his or her own behalf.

(3) The junket may be organised, promoted and conducted by the casino operator personally or by a casino employee at the direction of, and on behalf of, the operator.

15 Casino employee's involvement with junkets

A casino employee must not take part in the organisation, promotion or conduct of a junket involving the casino unless:

(a) the junket concerned is being organised, promoted or conducted by the casino operator, and

(b) the employee takes part only in his or her capacity as a casino employee.

Maximum penalty: 100 penalty units.

16 Representative to be authorised

(1) A person must not act as a representative of a promoter unless the person is duly authorised by the promoter.

(2) A promoter who authorises a person as the promoter's representative, or changes such an authority:

(a) must, when giving (or changing) the authorisation, provide the person with a signed statement specifying the authority (or the authority as changed) given to the person, and

(b) must provide a copy of the statement to the Authority within 24 hours after providing it to the person.

(3) A casino operator must not allow a person to act as a representative of a promoter unless the casino operator has received a document, or a copy of a document, that:

(a) is signed by the promoter, and

(b) confirms that the person is duly authorised.

Maximum penalty: 100 penalty units.

17 Casino operator to notify Authority of conviction of promoter or representative

(1) A casino operator who becomes aware that a promoter or a representative has been convicted of an offence (whether in New South Wales or elsewhere), or is the subject of a finding or order that, because of section 5 of the Criminal Records Act 1991 or an equivalent provision of a law of another jurisdiction, is treated as a conviction for the purposes of that Act or law, must notify the Authority in accordance with this clause.

Maximum penalty: 50 penalty units.

(2) The notification:

(a) must be given within 7 days after the casino operator becomes aware of the conviction, and

(b) must be in writing, and

(c) must specify the particulars of the offence in so far as those particulars are known to the casino operator.

(3) This clause does not apply in respect of a conviction in relation to which a pardon has been granted, a conviction that is a spent conviction (within the meaning of Part 2 of the Criminal Records Act 1991 or an equivalent provision

of a law of another jurisdiction) or a conviction that has been quashed (within the meaning of Part 4 of the Criminal Records Act 1991 or an equivalent provision of a law of another jurisdiction).

18 Advance notice of junkets

(1) A casino operator must provide the Authority with such written details of any proposed junket as the Authority, by notice in writing to the casino operator from time to time, requests.

Maximum penalty: 100 penalty units.

(2) The details are to be provided no later than 24 hours before any participant in a proposed junket the subject of such a notice takes part in gaming at the casino (or by such later time as the Authority may allow in a particular case).

(3) However, if the Authority (by notice under subclause (1) or by a subsequent notice) requests the casino operator to provide a list of participants in a proposed junket, the casino operator must provide the list to the Authority as soon as practicable after receiving the notice.

Maximum penalty: 100 penalty units.

(4) A request under this clause may relate to junkets generally, to a particular junket or to junkets of a particular class.

19 Report on completion of junket

(1) A casino operator must provide the Authority with a written report on each junket within 7 days after the completion of the junket.

Maximum penalty: 100 penalty units.

(2) The report is to specify and give reasons for any variation, in the conduct of the junket, from the details of the proposed junket provided to the Authority under clause 18 (1).

(3) A casino operator must also provide the Authority, no later than the 10th day of each month, with a written report on all junkets concluded during the previous month.

Maximum penalty: 100 penalty units.

(4) A report under this clause is to be in a form approved by the Authority.

(5) However, the Authority may notify the casino operator in writing that a report is not required in respect of a particular junket (or in respect of junkets of a particular class). The requirements of this clause do not apply to a junket the subject of such a notification.

Appendix 14 System of internal controls

Section 124 of the Casino Control Act 1992.

124 Approved system of controls and procedures to be implemented

(1) A casino operator is not to conduct operations in the casino unless the Authority has approved in writing of a system of internal controls and administrative and accounting procedures for the casino.

(2) Any such approval may be amended from time to time, as the Authority thinks fit, on the Authority's own initiative or on the application of the casino operator concerned.

(3) An approval or amendment of an approval under this section takes effect when notice of it is given in writing to the casino operator concerned or on a later date specified in the notice.

(4) It is a condition of a casino licence that the casino operator must ensure that the system approved for the time being under this section for the casino is implemented.

(5) A system approved for a casino under this section may contain different internal controls, or different administrative or accounting procedures, for different parts of the casino.

Appendix 15 Close associates

"Close associates", for the purposes of the Casino Control Act and Liquor Act are defined in section 5 of the *Gaming and Liquor Administration Act 2007*. The test for approval of "close associates" in the Casino Control Act is found in sections 12 and 13A while the test for suitability of a liquor licence in the Liquor Act is described in section 45. The relevant legislation is below.

Gaming and Liquor Administration Act 2007

5 Meaning of "close associate"

(1) For the purposes of the gaming and liquor legislation, a person is a close associate of an applicant for, or the holder of, a gaming or liquor licence if the person:

(a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in his or her own right or on behalf of any other person), in the business of the applicant or licensee that is or will be carried on under the authority of the licence, and by virtue of that interest or power is or will be able (in the opinion of the Authority) to exercise a significant influence over or with respect to the management or operation of that business, or

(b) holds or will hold any relevant position, whether in his or her own right or on behalf of any other person, in the business of the applicant or licensee that is or will be carried on under the authority of the licence.

(2) In this section:

relevant financial interest, in relation to a business, means:

(a) any share in the capital of the business, or

(b) any entitlement to receive any income derived from the business, or to receive any other financial benefit or financial advantage from the carrying on of the business, whether the entitlement arises at law or in equity or otherwise, or

(c) any entitlement to receive any rent, profit or other income in connection with the use or occupation of premises on which the business of the club is or is to be carried on (such as, for example, an entitlement of the owner of the premises of a registered club to receive rent as lessor of the premises).

relevant position *means:*

(a) the position of director, manager or secretary, or

(b) any other position, however designated, if it is an executive position.

relevant power *means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:*

(a) to participate in any directorial, managerial or executive decision, or

(b) to elect or appoint any person to any relevant position.

(3) For the purposes of this section, a financial institution is not a close associate by reason only of having a relevant financial interest in relation to a business.

(4) For the purposes of this section, a Presiding Officer (within the meaning of the *Parliamentary Precincts Act 1997*) is not, in the case of a licence under the *Liquor Act 2007*, a close associate of an applicant for a licence or the holder of a licence that relates to premises within the Parliamentary precincts.

Casino Control Act 1992

12 Suitability of applicant and close associates of applicant

(1) The Authority must not grant an application for a casino licence unless satisfied that the applicant, and each close associate of the applicant, is a suitable person to be concerned in or associated with the management and operation of a casino.

(2) For that purpose the Authority is to consider whether:

(a) each of those persons is of good repute, having regard to character, honesty and integrity, and

(b) each of those persons is of sound and stable financial background, and

(c) in the case of an applicant that is not a natural person, it has or has arranged a satisfactory ownership, trust or corporate structure, and

(d) the applicant has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the proposed casino, and

(e) the applicant has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino, and

(f) the applicant has sufficient business ability to establish and maintain a successful casino, and

(g) any of those persons has any business association with any person, body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources, and

(h) each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or management of the operations or business of the applicant or a close associate of the applicant is a suitable person to act in that capacity.

13A Restricted gaming licence—suitability of applicant and close associates of applicant

(1) The Authority must not grant an application for a restricted gaming licence unless it is satisfied that the approved applicant, and each close associate of the approved applicant, is a suitable person to be concerned in or associated with the management and operation of the Barangaroo restricted gaming facility.

(2) For that purpose, the Authority is to consider whether:

(a) each of those persons is of good repute, having regard to character, honesty and integrity, and

(b) each of those persons is of sound and stable financial background, and

(c) if the approved applicant is not a natural person, it has or has arranged a satisfactory ownership, trust or corporate structure, and

(d) the approved applicant has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the Barangaroo restricted gaming facility, and

(e) the approved applicant has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino or similar gaming facility, and

(f) the approved applicant has sufficient business ability to maintain a successful gaming facility, and

(g) any of those persons has any business association with any person, body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources, and

(h) each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or management of the operations or business of the approved applicant or a close associate of the approved applicant is a suitable person to act in that capacity.

(3) The following is to be taken into account by the Authority for the purposes of this section:

(a) any information relevant to the application that has been provided to or received by the Authority in the course of any investigation or inquiry in relation to the suitability of the approved applicant or close associate of the approved applicant and any findings made in relation to any such investigation or inquiry,

(b) the fact that gaming is not authorised in the Barangaroo restricted gaming facility before 15 November 2019.

Liquor Act 2007

45 Decision of Authority in relation to licence applications

(1) The Authority may, after considering an application for a licence and any submissions received by the Authority in relation to the application, grant the licence or refuse to grant the licence. The Authority may determine the application whether or not the Secretary has provided a report in relation to the application.

(2) The Authority may, in such circumstances as the Authority considers appropriate, treat an application for a licence as having been withdrawn.

(3) The Authority must not grant a licence unless the Authority is satisfied that:

(a) the applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, and

(b) practices will be in place at the licensed premises as soon as the licence is granted that ensure, as far as reasonably practicable, that liquor is sold, supplied or served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place, and

(c) if development consent is required under the *Environmental Planning and Assessment Act 1979* (or approval under Part 3A or Part 5.1 of that Act is required) to use the premises for the purposes of the business or activity to which the proposed licence relates—that development consent or approval is in force.

Note. Section 48 also requires the Authority to be satisfied of certain other matters before granting a hotel, club or packaged liquor licence.

(4) The regulations may also provide mandatory or discretionary grounds for refusing the granting of a licence.

(5) Without limiting subsection (3) (a), a person is not a fit and proper person to carry on the business or activity to which a proposed licence relates if the

Authority has reasonable grounds to believe from information provided by the Commissioner of Police in relation to the person:

(a) that the person:

(i) is a member of, or

(ii) is a close associate of, or

(iii) regularly associates with one or more members of,

a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*, and

(b) that the nature and circumstances of the person's relationship with the organisation or its members are such that it could reasonably be inferred that improper conduct that would further the criminal activities of the declared organisation is likely to occur if the person is granted a licence.

(5A) Without limiting subsection (3) (a), in determining whether an applicant is a fit and proper person to carry on the business or activity to which the proposed licence relates, the Authority is to consider whether the applicant:

(a) is of good repute, having regard to character, honesty and integrity, and

(b) is competent to carry on that business or activity.

(6) The Authority is not, under this or any other Act or law, required to give any reasons for not granting a licence because of subsection (5) to the extent that the giving of those reasons would disclose any criminal intelligence.

Appendix 16 Police Commissioner exclusions

This appendix includes excerpts from the New South Wales, Victorian and Queensland Acts which prescribe Police Commissioner exclusions.

Excerpt from the New South Wales Casino Control Act 1992:

81 Commissioner of Police may direct that person be excluded from casino and casino precinct

(1) The Commissioner of Police may direct a casino operator in writing to exclude a person from a casino by giving the person or causing the person to be given an exclusion order, and it is a condition of the casino licence that the operator must comply with the direction.

(2) The Commissioner may give such a direction in anticipation of the person entering a casino.

(3) Where practicable, the Commissioner of Police is to make available to the casino operator a photograph of the person who is the subject of the direction and is to give the person notice of the direction.

(4) The regulations may declare that the whole or a specified part of specified premises is to be considered to form part of a casino for the purposes of this section and this section then has effect accordingly in respect of the premises. The premises are referred to in this section as the "casino precinct".

(5) Such a declaration is to apply only to premises that both:

(a) form part of or are in the immediate vicinity of the building or complex of which the casino forms part, and

(b) are under the control or management of the casino operator.

(6) A direction may be given under this section in relation to all or any of the premises comprised in the casino.

(7) If a direction is given under this section in relation to the whole or any part of the casino precinct, a reference in sections 79, 82, 83, 84 and 85 (and in any ancillary provisions) to a casino includes a reference to so much of the casino precinct as is the subject of the direction, but only in connection with an exclusion order made or to be made in conformity with the direction.

(7A) A direction given under this section may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court or tribunal in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.

(8) The Commissioner of Police is to:

(a) notify the appropriate authority in each State or Territory of the making of an exclusion order following a direction given under subsection (1) and the revocation of any such order, and

(b) provide the appropriate authorities with the name of the person subject to the exclusion order and, where practicable, a photograph of that person.

(9) In this section:

appropriate authority means:

(a) in relation to the Australian Capital Territory—the Commissioner of the Australian Federal Police, or

(b) in relation to a State or Territory (other than the Australian Capital Territory)—an authority exercising, in relation to the police force of that State or Territory, functions corresponding to those of the Commissioner of Police in relation to the NSW Police Force.

Excerpt from the Victorian Casino Control Act 1991:

74 Exclusion orders by Chief Commissioner of Police

(1) The Chief Commissioner of Police may, if he or she considers it necessary in the public interest, by written order given to a person, prohibit the person from entering or remaining in a casino or the casino complex.

(1A) An order under subsection (1) made in respect of the casino complex must include a copy of the plan lodged in the Central Plan Office of the Department of Sustainability and Environment and numbered LEGL./05–141.

(2) As soon as practicable after making an exclusion order, the Chief Commissioner of Police must—

(a) give a copy of the order to the casino operator and the Commission and, if practicable, make available to the casino operator a photograph of the person who is the subject of the order; and

(b) notify each interstate Chief Commissioner of the making of the order.

(3) For the avoidance of doubt, an exclusion order given under this section is not subject to appeal under section 73.

(4) The Chief Commissioner of Police must advise the Professional Boxing and Combat Sports Board (within the meaning of section 14 of the *Professional Boxing and Combat Sports Act 1985*) that an exclusion order has been made under this section if the person who is the subject of the order has a licence, or has applied for a licence or its renewal under Division 1 of Part II of the *Professional Boxing and Combat Sports Act 1985*.

Excerpt from the Queensland Casino Control Act 1982:

94 Commissioner of the police service may exclude entry

(1) The commissioner of the police service may, in writing, direct a casino operator to exclude a specified person from the casino, and the casino operator shall comply.

(2) Where the commissioner of the police service gives a direction, the commissioner shall, where practicable—

(a) make available to the casino operator a photograph of the person to be excluded; and

(b) give notice of the direction to the person to be excluded.

(3) The commissioner of the police service may notify an authority responsible for administering gaming legislation of another State or Territory of a direction under this section.

Appendix 17 Major changes and minor changes

The definitions of *"major change"* and *"minor change"* are found in section 35 of the Casino Control Act and the *Casino Control Regulation 2009*.

Section 35 of the *Casino Control Act 1991*

35 Change in state of affairs of operator

(1) In this section:

major change in the state of affairs existing in relation to a casino operator means:

(a) any change in that state of affairs which results in a person becoming a close associate of the casino operator, or

(b) any other change in that state of affairs which is of a class or description prescribed as major for the purposes of this section.

minor change in the state of affairs existing in relation to a casino operator means any change in that state of affairs that is prescribed as a minor change for the purposes of this section.

(2) It is a condition of a casino licence that the casino operator must:

(a) ensure that a major change in the state of affairs existing in relation to the operator which is within the operator's power to prevent does not occur except with the prior approval in writing of the Authority, and

(b) notify the Authority in writing of the likelihood of any major change in the state of affairs existing in relation to the operator to which paragraph (a) does not apply as soon as practicable after the operator becomes aware of the likelihood of the change, and

(c) notify the Authority in writing of any major change in the state of affairs existing in relation to the operator to which paragraphs (a) and (b) do not apply within 3 days after becoming aware that the change has occurred, and

(d) notify the Authority in writing of any minor change in the state of affairs existing in relation to the operator within 14 days after becoming aware that the change has occurred.

(3) If a major change for which the approval of the Authority is sought under this section involves a person becoming a close associate of a casino operator, the Authority is not to grant its approval unless satisfied that the person is a suitable person to be associated with the management of a casino.

(4) Sections 14 and 15 apply to and in respect of an application for approval under this section in the same way that they apply to and in respect of an application for a licence.

(5) If a major change is proposed or has occurred involving a person becoming a close associate of a casino operator and the approval of the Authority to the change is not required:

(a) the Authority is to inquire into the change to determine whether it is satisfied that the person is a suitable person to be associated with the management of a casino, and

(b) if it is not so satisfied, is to take such action as it considers appropriate.

4 Major changes in state of affairs of casino operator

For the purposes of paragraph (b) of the definition of *major change* in section 35 (1) of the Act, a change in the state of affairs existing in relation to a casino operator that is described in Schedule 1 is prescribed as a major change.

5 Minor changes in state of affairs of casino operator

For the purposes of the definition of *minor change* in section 35 (1) of the Act, a change in the state of affairs existing in relation to a casino operator that is described in Schedule 2 is prescribed as a minor change.

Schedule 1 Description of major change in state of affairs of a casino operator

1 A change in:

(a) the name of the casino operator, or

(b) the principal business address of the casino operator.

2 A person's ceasing to be a close associate of the casino operator.

3 A change in:

(a) the information entered in the register of members of the casino operator, or

(b) the beneficiaries or unitholders of the trust of the casino operator.

4 A change consisting of:

(a) the sale or purchase of 5% or more of the paid-up capital of the casino operator, or

(b) the acquisition by a person of a beneficial interest in the paid-up capital of the casino operator that results in that person having a beneficial interest in 5% or more of that capital.

5 A change in the nominal or paid-up capital of the casino operator.

6 A change in the objectives or main activities of the casino operator.

7 A change in any direct or indirect financial interest held by the casino operator in any business or enterprise (including the acquisition or disposal of such an interest).

8 The casino operator commencing to carry on any other business or enterprise at any place, or the appointment of a person to carry on any other business or enterprise on the casino operator's behalf.

9 The involvement of the casino operator or a member of the board of directors, a trustee or a close associate of the casino operator as a party to:

(a) any dispute or event that, in the opinion of the casino operator, is likely to give rise to criminal proceedings, or

(b) the commencement, discontinuance or finalisation of criminal proceedings.

10 The creation of a charge in excess of $625,000 over any real or personal property of the casino operator.

11 An increase or decrease of $6,150,000 or more in the finance available to the casino operator.

12 The entry into an arrangement under Part 5.1 of the *Corporations Act 2001* of the Commonwealth by the casino operator or a close associate of the casino operator.

13 The entering into possession of, or assumption of control of, property of the casino operator, or a close associate of the casino operator, by a receiver or other controller within the meaning of the *Corporations Act 2001* of the Commonwealth.

14 The commencement of the administration of the casino operator, or a close associate of the casino operator, under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

15 The ending of the administration of the casino operator, or a close associate of the casino operator, under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

16 The commencement of the winding up of the casino operator or a close associate of the casino operator.

17 The casino operator's breach of obligations under any contract or arrangement for the provision of a loan or other financial accommodation.

18 A change in constituent documents relating to the casino (such as Articles of Association, trust deed or unitholders agreement).

Schedule 2 Description of minor change in state of affairs of a casino operator

1 A change in:

(a) the postal address of the casino operator, or

(b) the telephone number of the casino operator, or

(c) the facsimile number of the casino operator.

2 The involvement of the casino operator or a member of the board of directors, a trustee or a close associate of the casino operator as a party to:

(a) any dispute or event that, in the opinion of the casino operator, is likely to give rise to civil proceedings or to alternative dispute resolution procedures, or

(b) the commencement, settlement, discontinuance or finalisation of civil proceedings, or

(c) the commencement or finalisation of alternative dispute resolution procedures.

3 The commencement, discontinuance or finalisation of criminal proceedings to which a casino employee of the casino operator is a party.

4 The repossession of any property of the casino operator.

5 An amendment of an assessment relating to the casino operator under the income tax laws of the Commonwealth.

6 The casino operator commencing to remunerate a casino employee at a remuneration level of $185,000 a year or more (whether as salary or remuneration package), and any increase or decrease in the remuneration paid to such an employee.

7 The sale of any of the casino operator's assets, if the consideration for the sale exceeds $310,000 or the asset is valued in the casino operator's books of account at more than $310,000.

Appendix 18 Information gathering for law enforcement purposes

Section 149 of the *Casino Control Act 1992*

149 Information gathering for law enforcement purposes

(1) For the purpose of obtaining information that may be of assistance to a law enforcement agency, the Authority may in writing direct a casino operator to provide the Authority with information obtained by the operator concerning:

(a) operations in the casino and in any other premises (whether or not within the State) in the nature of a casino, and

(b) any other activity that takes place in the casino or in those other premises.

(2) Such a direction may relate to particular information or to information generally and may relate to particular or general information concerning a specified person.

(3) The direction must specify:

(a) the kind of information that the casino operator is required to provide, and

(b) the manner in which the information is to be provided.

(4) It is a condition of a casino licence that the casino operator must comply with such a direction.

(5) The Authority may make information obtained by the Authority under this section available to any law enforcement agency and may do so despite section 17 of the *Gaming and Liquor Administration Act 2007*.

(6) The Authority must not disclose to a casino operator that a request for information has been made to the Authority by a law enforcement agency or that information obtained under this section has been or will be furnished to a law enforcement agency.

(7) In this section:

law enforcement agency means:

(a) the NSW Police Force or the police force of another State or a Territory, or

(b) the New South Wales Crime Commission, or

(c) the Australian Federal Police, or

(d) the Australian Crime Commission, or

(e) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the State, another State or a Territory.

playing field which is also conducive to investment and growth."

The ISC reported that the majority, including the Chair, Mr David Murray, supported a flat rate of 29% *"which will provide an environment conducive to investment and growth, without material risk to taxation revenue."* The ISC noted The Star would be transitioned to the same flat rate when its exclusivity period ended. [1]

[1] Report from Steering Committee – Assessment of Crown and Echo Proposals, July 2013, p.9

Appendix 19 Response from The Star Entertainment Group

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THE STAR ENTERTAINMENT GROUP LTD
ABN 85 120 213 723

The Star Entertainment Group was invited to comment on the final draft report. Its reply in full follows:

THE STAR

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PYRMONT NSW 2009
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BRISBANE OFFICE
LEVEL 3, 159 WILLIAM STREET
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Jupiters HOTEL & CASINO GOLD COAST

THE STAR SYDNEY

The Treasury

23/02/2016

Peter Cohen
Director Regulatory Affairs
The Agenda Group
15 Queen Street
Melbourne VIC 3000

By email: peter@theagendagroup.com.au

Dear Peter,

Thank you for the opportunity to review the Final Draft of the Casino Modernisation Review report.

The Star has welcomed the review and appreciates the consultative approach that has been adopted in its conduct. The recommendations proposed within the report go a long way towards contemporizing the New South Wales casino regulatory regime, and would bring it into line with other Australian and overseas 'best practice' jurisdictions. A strongly regulated, efficient and more competitive environment, from both an Australian and overseas context, will result. Accordingly, The Star supports the vast majority of the recommendations and on a small number maintains a neutral position.

However, The Star does make the following comments with regard to Recommendation 194 which states:

"Should The Star wish to negotiate changes to its rate of duty it should make representations to NSW Treasury.."

Given that the Review's purpose was to establish "regulatory neutrality between the casino licence holder (The Star) and the restricted gaming licence holder (Crown)" it seems inconceivable that the report does not support the recommendation of the Independent Steering Committee (ISC) which, when assessing the Crown and Echo proposals in the Unsolicited Proposal process in 2013, noted the requirement to ensure a level playing field, when it made the point *"...the transition to competition requires adjustments to the taxation and regulatory settings to establish a level playing field which is also conducive to investment and growth."*

The ISC reported that the majority, including the Chair, Mr David Murray, supported a flat rate of 29% *"which will provide an environment conducive to investment and growth, without material risk to taxation revenue."* The ISC noted The Star would be transitioned to the same flat rate when its exclusivity period ended. [1]

[1] Report from Steering Committee – Assessment of Crown and Echo Proposals, July 2013, p.9

The Star Entertainment Group requires certainty regarding any tax regime. It is important that The Star operates under the same gaming tax regime as Crown Sydney in order to be able to compete. Neither operator should have a clear commercial gaming taxation advantage over the other. Currently The Star is subject to marginal gaming taxation rates that rise to 50 cents in the dollar where Crown Sydney has a flat gaming taxation rate of 29 cents in the dollar. These differing taxation rates between The Star and Crown Sydney would apply to an identical customer base, playing the same table game product and at the same bet level. This is the taxation regime that would be in place unless changes are made to the current taxation regime under which The Star operates.

As announced in our FY16 first half results, The Star is proposing a $1 billion capital upgrade of the property, including the construction of a hotel and apartment complex operated by Ritz Carlton, that will ensure the property continues to be a world class integrated resort attracting high value international and domestic tourists to Sydney. This upgrade will not only provide a substantial benefit to Sydney and NSW, but will lead to the employment of an additional 2,000 employees over the next five years.

It is of the utmost importance that the regulatory environment is conducive to this investment by ensuring regulatory parity, which includes the taxation regime. The Star believes that the report should reflect the ISC's recommendation with regard to taxation.

Yours sincerely,

Greg Hawkins

Managing Director – The Star

Appendix 20 Response from Crown Resorts

Crown Resorts was invited to comment on the final draft report. Its reply in full follows.

Rowen Craigie
Chief Executive Officer

25 February 2016

Mr Peter Cohen
Agenda Group
15 Queen Street
Melbourne Victoria 3000

Dear Peter,

Response to the NSW Casino Regulatory Review

I refer to previous correspondence between The Agenda Group and Crown Resorts Limited (**Crown**) regarding the Casino Regulatory Review (**Review**) being undertaken by the New South Wales Office of Liquor, Gaming and Racing (**OLGR**). I note that Crown provided a written submission to the Review, dated 3 December 2015 and received a Final Draft of the Review for comment, on 5 February 2016.

As a general proposition, Crown is largely supportive of the recommendations raised in the Review, however, makes the following comments with regard to specific matters:

A. Single Landlord

Whilst Crown accepts the comments in Recommendation 33, that it is not appropriate for the Authority to be The Star's landlord; it does not currently seem feasible for the landlord to be the same body for both casino operators, as set out in Recommendation 32. Crown Sydney's landlord is the Barangaroo Delivery Authority, which obviously cannot be The Star's landlord, given its charter.

B. Junket Regulations

Recommendation 118 provides that the best method of regulating junkets is through internal controls. However, it then states that the relevant Regulations that regulate junkets, should be retained as a 'fall back' position. Crown asserts that this is an inefficient method of regulation. If internal controls effectively regulate casino operations, it is difficult to reconcile the case for a 'fall back' set of Regulations. To an extent, it is an over-regulation, which is inconsistent with the risk-based approach advanced by the Review. By way of example, Regulations 18 and 19 of the *Casino Control Regulations* require the provision of junket information both before and after the junket visits. Crown asserts that this is unnecessary as:

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Crown Towers
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Tel: +613 9292 8866
Fax: +613 9292 8815

I. The regulator has various general powers to request information as and when required; and

II. The reports (if considered necessary) could be dealt with as efficiently within the internal control system, without the need to replicate the requirement in the Regulations.

The above reasoning also applies to Recommendation 120, which refers to the necessity to provide the regulator with copies of all passport and flight tickets for all premium players and junket participants. It provides:

There are some regulatory obligations that appear to be unnecessary because they add to the regulatory burden of the operator and provide no discernible benefit to the regulation of junket promoters. For example, the obligation to provide copies of passport and flight tickets to the Authority for every junket is unnecessary. Rather, this information should be collected and held by the casino operator and made available to the Authority to review as required. An audit program should be established by the regulator which requires a sampling of this information. Should a random sample give any cause for concern, a wider review could be undertaken.

Crown asserts that copies of flight tickets and passports are unnecessary for this purpose altogether. The Department of Immigration and Border Protection regulates visas, passports and the entry of visitors into the country. Further, the casino operators obtain and retain copies of passports as part of their AUSTRAC Know Your Customer (**KYC**) obligations. As AUSTRAC and the Department of Immigration and Border Protection manage their respective functions effectively and efficiently, there appears little utility in the duplication of these processes.

The Review proposes a risk based approach that removes unnecessary obligations, accordingly, matters that can be removed from the Regulations and dealt with efficiently and singularly in the internal controls (if necessary at all), should be managed in that way.

C. Rebate Play

Recommendation 128 endorses the retention of current front money minimums (until economic modelling is put to the NSW Treasury, to its satisfaction).

Front money for rebate play is central to competition between casino operators. This competition will be seriously impeded between NSW, where minimum front money is controlled, as against other states where it is not (for example, Western Australia and Victoria). Casinos offer various programs at distinctive price-points, relative to the range of markets that they operate in.

Those casinos that respond to changing markets and can be flexible will likely attract a larger percentage of interstate and international business. Competition will be promoted if front money minimums are not predetermined and controlled. However, if the removal of front money minimums cannot be achieved at this time, Crown asserts that any minimum level that is set, must be as low as possible to ensure that NSW remains a competitor in these markets.

D. Withholding of Winnings

Whilst Crown agrees with the sentiment expressed in Recommendation 164 as far as it applies to an excluded person, we do not consider it appropriate for a regulatory authority to intervene in the common law rights of a commercial business, specifically the right to withdraw an implied licence to enter upon property. Again, Crown agrees with the sentiment of the Recommendation and would, as part of its normal business practice, withhold the winnings of a person who has had their licence of entry withdrawn. The funds should, however, be withheld according to common law doctrines, rather than through a regulatory function.

E. CCTV to Inspectors' Offices

Recommendation 191 provides that CCTV images could be sent off-site to the Authority's Inspectors' Offices.

Crown objects to such images, which are generally sensitive, being directed off- site, where it cannot maintain security as to who enters those premises and who is present when the images are viewed. We understand that staff at the Inspectors' Offices number into the hundreds. Crown however, has no objection to Inspectors coming on-site to view CCTV images as and when required, to maintain the security and confidentiality of those images.

Surveillance CCTV contains confidential images, including images of members of the public, that Crown has an obligation to ensure are secure at all times and anticipates that The Star would likely have similar concerns, as to its CCTV images being outside of its immediate control.

Crown appreciates the opportunity to provide its comments regarding the Review. If you have any queries or require any assistance regarding this submission, please contact Michael Neilson on (03) 9292 8824.

Yours sincerely

Rowen Craigie
Chief Executive Officer