

**CASINO (BURSWOOD ISLAND) AGREEMENT AMENDMENT BILL 2023**

*Second Reading*

Resumed from 27 February.

**HON DR STEVE THOMAS (South West)** [1.14 pm]: President, it is not my intention to spend an inordinate amount of time on this bill as it is a fairly simple bill. I thought the Minister for Emergency Services was managing it.

**Hon Sue Ellery:** He was, but he's out of the chamber on urgent parliamentary business, so you're stuck with me!

**Hon Dr STEVE THOMAS:** I am sure that is fine, Leader of the House.

As an early indication, the opposition supports the bill. I suspect that the debate will not be particularly long. It is a fairly simple piece of legislation, and we have a very limited number of questions.

This bill is an extension of the Royal Commission to inquire into and report on the affairs of the Crown Casino Perth and related matters that was held a couple of years ago. The legislation that governs the casino was updated. If my memory serves me correctly, I think we passed it a couple of years ago—in 2022.

This bill is quite simple; in effect, it deals with an amount of money to be paid for licence fees and will make a few other small subsidiary changes around that.

I note that a bit of background to the bill was provided by the minister in his second reading speech. It goes back to the original state agreement act of 1985. I know that the Greens are not overly enamoured by state agreement acts, but the reality is that for long-term security, the major parties on both sides of the house recognise the need for them. In the early stages, an annual specified amount was set, particularly in the supplementary agreement act that was introduced in 1990. That amount was increased from \$400 000 to \$1.4 million. Given that it was increased a decade afterwards, that is probably a reasonable increase. The only part of the debate we need to work through relates to the reasonableness of the increase and its general acceptance.

I note that the original legislation also allowed for a consumer price index increase. The second reading speech noted that the increase of \$1.4 million over the period from 1990 to 2023–24 takes the entire fee up to \$3 494 834, presumably exactly calculated. I would be interested to know from the minister the detail of how that calculation was worked out. I presume it was somewhat averaged out and it is not worked out every day. There is an increase of just over \$2 million. The increase from \$1.4 million to roughly \$3.5 million is reasonable. The legislation before the house today proposes to increase that amount to \$12 million. The increase from \$3.5 million to \$12 million that would have been put in place is reasonably large. I calculate that if we were to raise it by CPI, it would have to be a CPI of about 6.4 per cent year in, year out, compounding, to get to \$12 million from that 1990 cut-off point. That is not necessarily exactly how the government proposes to justify this increase. Obviously, coming out of the royal commission, there was a demonstrated need for greater oversight, which has to be funded in some way, shape or form.

Ideally, we should not need to take the bill to the committee stage, but I seek a couple of answers. I assume that the proponent at Burswood Casino has been consulted over this figure, has accepted it and is unlikely to go to a dispute process; otherwise, we would immediately go to a dispute process, as set out in one of the annexes to the bill before the house today. I imagine that this has been accepted, because my memory is that the casino operators have suggested that this is a reasonable outcome and there is a general acceptance that we need to put more resources into oversight and management. That was dealt with by the 2022 bill, but the bill today will effectively provide the resourcing for that; it is almost the equivalent of an appropriations bill for a service that is being provided. I do not think there is any opposition or any great concern at the increase in that bill. Can the minister break down how that might be divided and how it was calculated? We received a briefing on this bill a fair while ago towards the end of last year and additional information may now be available.

The intent of the bill before the house today is to set a new \$12 million licence fee that will be retrospective to 24 December last year, again, I suspect, with the agreement of the casino operator. A couple of other changes will occur. If members want to read the bill—despite the fact that it is a six-clause bill and the sixth clause is proposed schedule 18—that is where all the interesting components are. If we want to break it down to where the interest is, there are a couple of very minor changes. I am not sure I have ever seen this before. Under clause 6, clause 3(a) of proposed schedule 18, which is the supplementary agreement, will add only commas. There will be no change to the wording, but it will add commas. I do not know whether it will change the meaning. I would be interested to know whether amending clause 23(8) of the state agreement will change any meaning apart from, I suspect, legal counsel's preferred format. I do not think there is any significant change in that particular component, but could the minister give us a quick reassurance about the addition of commas? Like I said, it is the first time I have seen a clause that simply adds punctuation. That is under clause 6, which will insert proposed schedule 18, which is the updated seventeenth supplementary agreement. That is a new amendment; clause 3(a) of proposed schedule 18 will insert commas, clause 3(b) will define the annual specified amount and clause 3(c) will give it a value and states —

“(c) on and from 24 December 2023, \$12,000,000.00 or an alternative amount pursuant to a notice issued under clause 23(13), subject to clauses 23(15) and 25 (16).”; and

In this next subclause under clause 3, a variation will be allowed for which the \$12 million is set, but the minister may set a variation to that. If the minister could give us an indication of under what circumstances the minister might vary the licence fee and the intent of this provision of the bill, that would be useful because we will be looking at why it will be varied. I do not imagine it would ever go down. I suspect there are circumstances in which it would legitimately rise. We may not necessarily object to that, but it would be useful if the minister could give us a bit of detail about precisely what circumstances might invoke a variation of that.

The other important component of the proposed amendment of clause 23 of the state agreement under clause 6 of the bill is the dispute resolution process—that is, whether a dispute will arise if the minister alters the amount of money of that assessment, or the annual specified amount. There will be a process to go through that deals with that dispute. Can the minister give us an indication of whether that has changed? It is because one of the issues might be the introduction of the variation that also introduced the capacity for dispute. Could the minister in her second reading reply give us some information around the protocols on that, in particular how that will be changed and whether there is an existing protocol for disputes or whether there has been no need for a dispute resolution process but, by introducing the capacity for the minister to put in a variation, there will be upon the passing of this bill? Those are found generally under clause 6 of the bill, in clause 3 of proposed schedule 18 and clause 23 of the state agreement amended with additional clause 15, which states —

*If a dispute shall arise between the Minister and the Trustee as to whether the amount specified in an ASA —*

An annual specified amount —

*Notice under clause 23(13) is reasonable having regard to the costs and expenses of the Commission in exercising its functions in relation to the Casino, such dispute shall be referred to arbitration in accordance with clause 33 provided that, pending the determination upon such reference, the amount specified in the ASA Notice shall be the Annual Specified Amount for the purposes of clause 23(1)(b) ...*

If the minister varies the annual specified amount, will that vary the way that the dispute will be resolved? I would suspect that if it is not varied, it would be very difficult to compete. An annual consumer price index increase will still be available, so the new baseline will be \$12 million, and because the CPI increase still exists, as I understand it, that will go up from that. This comes back to how the CPI is calculated. Could the minister let us know which reference point of CPIs will be used to apply that? Would a dispute for a CPI-determined increase in the annual specified amount also be subject to dispute resolution under clause 3 of proposed schedule 18, which seeks to insert new clauses 15 and 16 of the state agreement?

I think those are probably the critical components. Once we get past that, we are simply into the administrative components of the bill. It is not a very long bill. I am interested in how the \$12 million was arrived at, what the measure is of the CPI component as it contributes to that, how the dispute resolution process previously worked—if it worked and if it existed—and how the minister sees it going forward. Under what circumstances will there be a potential variation and how does the government see the minister coming to the point that they need to issue a new annual specified amount? With those points, and hopefully with some comprehensive answers to that, unless other members are particularly interested in the setting of this bill, we will hopefully get to the point at which we do not need to go into committee stage and can proceed with the bill. With that, at this point, assuming we get some significant answers, we remain supportive of the bill.

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [1.29 pm] — in reply: I thank Hon Dr Steve Thomas for his contribution and confirmation that the opposition will support the Casino (Burswood Island) Agreement Amendment Bill 2023. I will go through and answer some of his questions on the basis of the information that is available to me now. For the information of my advisers, there are two that I need to know about—the CPI question and confirmation that the operator was consulted, but as a party to the agreement, it makes sense that it was. I will get that confirmed and give the honourable member the information that I have.

I go to the annual specified amount and how we reached a number of around \$12 million. The Casino Control Act makes provision for funding to be available to the Gaming and Waging Commission to administer that act, which consists of moneys from time to time appropriated by Parliament, casino gaming licence fees and all other moneys lawfully received by, made available to or payable to the commission. The Casino Control Act does not specify the manner in which casino gaming licence fees should be calculated or the factors that should be taken into consideration when they are reviewed. The Perth Casino Royal Commission found that the Gaming and Wagering Commission is not a party to the state agreement, so it is not able to directly influence the casino gaming licence fee. The Perth Casino Royal Commission concluded that this was an appropriate arrangement, as the regulator should not be able to determine, unilaterally, the casino licence fee that funds the regulator; nor should the regulator be involved in negotiating with the Perth casino about that fee. However, once set under the state agreement, the

casino licence fee is paid directly to the Gaming and Wagering Commission for its use to appropriately administer the Casino Control Act and regulate the casino.

The increased fee in this case was calculated based on the estimated cost to meet the reasonable costs and expenses of the commission in appropriately regulating the operations of the casino, including the necessary regulatory uplift program arising from the findings and recommendations of the Perth Casino Royal Commission. A fairly high-level breakdown of that amount is about \$7.5 million for salaries and superannuation; \$1.1 million for supplies and services, such as inspector vehicles, IT, communication assets and equipment; about \$720 000 for office accommodation; about \$806 000 for corporate costs and overheads, including, for example, the provision of financial resources, human resources, information technology, record-keeping support and resources, and software licences; about \$257 000 for Gaming and Wagering Commission remuneration; and about \$1.5 million for other expenses, including, for example, external expertise such as forensic accountants, responsible gaming consultancy, harm-minimisation research, other research and training, and data analysis. That gets us to about \$11 998 000. Without revealing the finer details of the regulatory program, that effectively pays, at a high level, for the uplifted program, which includes around-the-clock inspectorate presence at the casino; harm-minimisation research; policy and advice resources; specialised expertise for the investigation of suspected breaches under the regulatory framework and the taking or pursuing of appropriate enforcement action; keeping under review the conduct, extent and character of gaming at the casino and formulating policies for its scrutiny, control and regulation; ensuring the integrity of gaming operations; the identification of risk; advising the minister on any matter related to gaming; close supervision of all facets of casino gaming and casino operations to maintain public confidence and trust in the credibility, integrity and stability of gaming; and preventing the infiltration of organised crime, including money laundering. I think I have already referred to the other elements. The fee also includes the increased remuneration of commission members, which is a result of recommendation 38 of the *Perth Casino Royal Commission: Final report*.

The other matter the honourable member raised was around the power the minister will now have to increase the annual specified amount without negotiation with the other parties to the agreement. As noted in the second reading speech, the Perth Casino Royal Commission made the following observation in chapter 3, “Overview of regulatory framework for casino gaming” —

While it appears that Parliament sought to fund the casino regulator fully through the increased casino gaming licence fee, there is no clause enabling any unilateral increase to the casino gaming licence fee by the Minister where increased resourcing of the regulator may be required. This inflexibility in the State Agreement, means that any increase in the casino gaming licence fee must be the subject of further negotiation.

In chapter 15, “Enhancements to the regulatory framework”, it states —

The funding of the regulator in a set amount that is adjusted by CPI may not ensure adequate funding for the regulator where the nature of the operations at Perth Casino is changing and increasing in complexity over time. The PCRC concludes that there is a need for the periodic review of the casino gaming licence fee in order to ensure that it is sufficient for the purpose of casino regulation. The regulator should advise the Minister about its conclusion as to the sufficiency of the casino gaming licence fee.

Proposed clause 23(13), which will be inserted into the state agreement, provides that the minister may vary the annual specified amount, having regard to the reasonable costs and expenses of the Gaming and Wagering Commission in exercising its functions. That will address the inflexibility that previously existed in the state agreement and did not facilitate appropriate cost recovery for administering the Casino Control Act and regulating the casino. As the honourable member pointed out, proposed clause 23(15), to be inserted in the state agreement, will provide a dispute resolution mechanism in relation to a variation issued. In respect of arbitration and dispute settlement, there were arbitration provisions in the previous supplementary agreements. What is different with this amendment is the language that will be used. On my reading, these amendments will not change anything substantially. I will read the following example from the Casino (Burswood Island) Agreement. Clause 33(1) of schedule 1 states —

Any dispute or difference between the Parties arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights duties or liabilities of any Party under this Agreement or as to any matter to be agreed upon between the Parties under this Agreement shall in default of agreement between the Trustee and or the Manager on the one hand and the State of the other and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by the Trustee and or the Manager and the other by the State the arbitrators to appoint ...

Previously, the words were “their umpire”, but that will now be amended to read “a third and presiding arbitrator”. It then continues —

before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of ...

It will not read “the Arbitration Act 1895” but will be amended to read “the Commercial Arbitration Act 2012”. The only other change will be to subclause (3) of that provision, which will now read —

The arbitrators of any submission to arbitration ...

The current provision reads —

The arbitrators or umpire (as the case may be) of any submission to arbitration ...

It is a change in the language; there will be no change to the substance of the process that I can see.

With respect to the other matters, I have the information from the advisers, and I thank them for that. The increase from \$1.4 million to \$3.5 million is based purely on CPI increases, and the \$12 million is based on the reasonable costs that I outlined earlier. There will be no dispute resolution process for CPI increases; that will be available only with the annual specified amount, which is what I just referred to.

**Hon Dr Steve Thomas:** Will the Australian Bureau of Statistics’ CPI figure be used or will it be a different measure of CPI?

**Hon SUE ELLERY:** Yes—the Australian Bureau of Statistics is what I am being told. If someone wants to tell me something different, they need to quickly write me a note. They cannot talk to me across the bar, so maybe the Whip could help.

**Hon Tjorn Sibma:** That’s a prompt, isn’t it?

**Hon SUE ELLERY:** Yes.

The other question that the honourable member raised was about consultation. Yes, I can confirm that Crown was consulted and signed the supplementary agreement in November 2023.

I am just about to confirm the CPI figure. It is the ABS, honourable member. With that information, again, I thank the opposition for its support and commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

*Third Reading*

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)** on behalf of the Minister for Emergency Services, and passed.