

CASINO LEGISLATION AMENDMENT (BURSWOOD CASINO) BILL 2022

EXPLANATORY MEMORANDUM

Overview

The purpose of this Bill is to implement priority legislative amendments arising from the final report of the Perth Casino Royal Commission tabled in Parliament on 24 March 2022. The priority legislative amendments would:

- provide for the Minister for Racing and Gaming (the Minister) to appoint an independent chair for the Gaming and Wagering Commission (the Commission)
- provide for members of the Commission to elect a deputy chair from among their number
- enhance the power of the Minister to direct the Commission with respect to mitigating risks associated with the management and operation of the Burswood Casino as outlined in the final report of the Royal Commission
- enhance the power of the Commission to direct the Burswood Casino licensee
- provide for the Minister to appoint an Independent Monitor to monitor the casino licensees' remediation of Burswood Casino management and operations and
- increase the maximum penalty available under the *Casino Control Act 1984* from \$100,000 to \$100 million and the maximum penalty for non-compliance with a direction issued under the *Casino Control Act 1984* from \$2,000 for an individual and \$5,000 for a body corporate to \$100,000 and \$250,000 respectively.

Part 1 — Preliminary

Clause 1. Short title

Once enacted, the short title of this Bill would be *Casino Legislation Amendment (Burswood Casino) Act 2022*.

Clause 2. Commencement

This clause provides that Part 1 of the Act commences on the day on which the Bill receives Royal Assent and the rest of the Act commences on the day after that day.

Part 2 — *Casino Control Act 1984* amended

Division 1 Preliminary

Clause 3. Act amended

This clause would define the act being amended by this Part as the *Casino Control Act 1984*

Clause 4. Section 10 amended

This clause would broaden the protection from liability to a person for anything that the person has, in good faith, done in the performance of a function under this Act or any other law relating to gaming. This recognises that persons other than officers of the Commission perform functions under this and related Acts.

Clause 5. Section 21B amended

This clause would increase the maximum penalty available under section 21B from \$100,000 to \$100 million. This is in response to the Perth Casino Royal Commission's finding that the maximum penalties available under the *Casino Control Act 1984* are manifestly inadequate to support the proper regulation of Burswood Casino. In Victoria, the maximum penalty available under the *Casino Control Act 1991* (Vic) was also increased to \$100 million following the Victorian Royal Commission into the Casino Operator and Licence.

Clause 6. Part IVA inserted

This clause would insert Part IVA – Remediation of management and operation of Burswood Casino

21G. Purpose of Part

This clause would establish the purpose of this Part, which is to provide a legislative framework for the remediation of the management and operation of the Burswood Casino. The remediation is outlined in the final report of the Perth Casino Royal Commission.

21H. Terms used

This clause defines terms relevant to this Part.

21I. Remediation period

This clause would establish a two-year remediation period commencing on the day after the day the Bill receives Royal Assent. The Minister would be able to extend the remediation period.

Division 2 – Independent Monitor

21J. Appointment

This clause would establish an office called the Independent Monitor and provide for the Minister to appoint an individual to the office.

The Independent Monitor would hold office on the terms and conditions of appointment determined by the Minister. The Independent Monitor would be entitled to remuneration determined by the Minister on the recommendation of the Public Sector Commissioner.

The Independent Monitor would hold office for the term specified by the Minister, but may resign from the office by notice in writing.

21K. Functions

This clause would establish that the functions of the Independent Monitor are:

- a) to consult on and advise in relation to the content and preparation of a plan for the remediation of the management and operation of the Burswood Casino
- b) to assess and approve a proposed remediation plan and amendments to it
- c) to monitor and report on progress in the preparation and approval of the remediation plan and amendments to it
- d) to monitor and report on the suitability and efficacy of the remediation plan
- e) to monitor and report on the implementation of the remediation plan
- f) to monitor and report on the efficacy of the remediation of the management and operation of the Burswood Casino
- g) the other functions of the Independent Monitor under this Part and
- h) any other function of the Independent Monitor specified in the Independent Monitor's instrument of appointment, but these other functions cannot be inconsistent with this Part.

21L. Powers

This clause would confirm that the Independent Monitor has all of the powers necessary to perform their functions.

21M. Delegation

This clause would provide for the Independent Monitor to delegate any of their powers or duties to a member of their staff. The delegation would have to be in writing and the person to whom a power or duty is delegated cannot delegate that power or duty.

Division 3 – Remediation plans

21N. Approval of remediation plan

This clause would provide for the Independent Monitor to approve a remediation plan or amendments to the remediation plan submitted by the Burswood Casino licensee. The Independent Monitor would be able to approve the remediation plan in stages, which may assist with the sequencing of remediation.

Before approving the remediation plan, a remediation plan stage or amendments to the remediation plan, the Independent Monitor would need to be satisfied that implementation of the plan is likely to achieve or may assist in achieving the remediation of Burswood Casino outlined in the final report of the Perth Casino Royal Commission.

Once approved, the Independent Monitor would provide the remediation plan and any amendments to the plan to the Minister and the Commission.

21O. Independent Monitor may give directions about remediation plan

This clause would provide for the Independent Monitor to give directions to the Burswood Casino licensee, including that the licensee will cover particular matters in the remediation plan and the date by which the remediation plan must be submitted.

21P. Reports by the Independent Monitor

This clause would require the Independent Monitor to provide interim reports to the Minister and the Commission, at least every three months. The Minister would be able to request additional interim reports in the event that they are required.

The interim reports would, where relevant, cover:

- a) progress in the preparation and approval of the remediation plan
- b) the suitability and efficacy of the remediation plan
- c) implementation of the remediation plan
- d) the efficacy of the remediation of the management and operation of the Burswood Casino
- e) the number and nature of directions issued by the Independent Monitor
- f) the extent of cooperation with the Independent Monitor, in the performance of the Independent Monitor's functions, by the Burswood Casino licensee and any other relevant person
- g) any other related matter the Minister requests be covered by the report and
- h) any other matter that the Independent Monitor considers relevant.

This clause would also require the Independent Monitor to provide a final report to the Minister and the Commission at the conclusion of the remediation period.

The final report would cover:

- a) the suitability and efficacy of the remediation plan over the course of the remediation period
- b) implementation of the remediation plan
- c) the efficacy of the remediation of the management and operation of the Burswood Casino
- d) the number and nature of directions issued by the Independent Monitor
- e) the extent of cooperation with the Independent Monitor, in the performance of the Independent Monitor's functions, by the Burswood Casino licensee and any other relevant person
- f) any other related matter the Minister requests be covered by the report and
- g) any other matter that the Independent Monitor considers relevant.

21Q. Use of Independent Monitor's reports

This clause would establish what the Commission is to do upon receiving the reports from the Independent Monitor. For interim reports the Commission may, and for the final report the Commission must, report to the Minister and make recommendations as to any action that should be taken under section 21B of the *Casino Control Act 1984*. In making its report, the Commission would not be limited to the matters covered by the Independent Monitor's report or bound by any opinion in it.

This clause would also establish that a report and recommendations provided to the Minister by the Commission would be taken to be a report and recommendations made under section 21A(4) of the *Casino Control Act 1984*, which would provide for the Minister to make decisions under 21B without requiring an additional duplicative report and recommendations.

This clause would also ensure that the Commission can use information in the reports from the Independent Monitor for the performance of its functions under the *Casino Control Act 1984* or any other written law relating to gaming.

21R. Publishing Independent Monitor's reports

This clause would allow the Minister to direct that reports of the Independent Monitor be published. However, where there is a claim, in good faith, of confidence or privilege then the information the subject of that claim must be redacted.

Division 4 – Monitoring Powers

21S. Powers to obtain information

This clause would define relevant information to mean information that, in the Independent Monitor's opinion, is or is likely to be relevant to the performance of the Independent Monitor's functions.

This clause would also define relevant record to mean a record that, in the Independent Monitor's opinion, is or is likely to be relevant information, however compiled, recorded or stored.

In addition, this clause would ensure that the Independent Monitor, for the purposes of performing their functions, has the power to issue a notice to the Burswood Casino licensee or any other relevant person that requires the licensee or person:

- a) to give the Independent Monitor a signed statement containing relevant information specified in the notice
- b) to give the Independent Monitor relevant records specified in the notice and
- c) to procure, and give to the Independent Monitor, a report prepared by an independent person on a matter specified in the notice relating to the operation and management of the Burswood Casino.

The Independent Monitor's notice would have to be in writing and specify the time and manner for giving the information, records or report.

The clause would establish that a person given a notice by the Independent Monitor must comply with it.

21T. Independent Monitor may give directions about obtaining information

In the event that the Burswood Casino licensee or any other relevant person does not comply with a notice given by the Independent Monitor, this clause would provide the Independent Monitor with the power to direct the licensee or person requiring them to comply with the notice within a specified time.

The direction may modify the notice, including to allow for information the subject of legal professional privilege to be redacted from a record or report provided to the Independent Monitor. However, the Independent Monitor would be able to require the person making the claim of legal professional privilege to procure and submit independent legal advice as to the basis of the claim.

Section 33(1) of the *Casino Control Act 1984* provides for enforcement of compliance with a direction.

21U. Powers of and on entry

This clause would establish that, for the purposes of the performance of the Independent Monitor's functions, the Independent Monitor may at any time enter a place that is part of the Burswood Casino. Entry may be made with or without the consent of the person in charge or control of the place.

Upon entry, the Independent Monitor may:

- a) inspect the place
- b) generally make any investigation or inquiry
- c) require a person at the place to give information or answer a question
- d) require a person at the place to produce a record or other thing in the possession or under the control of the person
- e) examine any record or thing, including a record containing confidential information
- f) make, take away and retain copies of records or any part of them for any time that may be reasonably necessary and
- g) require the person apparently in charge or control of the place to provide the Independent Monitor with assistance or facilities reasonably necessary for the Independent Monitor to exercise their powers.

The Independent Monitor would only be able to require a person to give information, answer a question or produce a record if the Independent Monitor considers the information, answer or record is or is likely to be relevant to the Independent Monitor's functions. Similarly, the Independent Monitor would only be able to examine a record or thing if the Independent Monitor considers the record or thing is or is likely to be relevant to the Independent Monitor's functions.

The powers under this clause would be able to be exercised by the Independent Monitor or a member of the Independent Monitor's staff. In addition, one or more persons to assist the monitor, if they consider the assistance necessary, would be allowed to accompany the Independent Monitor or a member of the Independent Monitor's staff.

21V. Attendance at board meetings

This clause would allow the Independent Monitor to attend a meeting of the board or governing body of the Burswood Casino licensee or any other relevant entity and would be entitled to all information made available to the board or governing body. The Independent Monitor would be able to attend a meeting of the board or governing body in person, remotely or by a nominated person attending on the Independent Monitor's behalf.

The Independent Monitor or nominated person would not be able to vote in matters of the board or governing body or be a member of the board or governing body.

21W. Compliance with requirements under s. 21S, 21T or 21U

This clause would establish that sections 21S, 21T and 21U do not prevent a person from refusing to give information or answer a question, or refusing to give or produce a thing on the basis that it contains information the subject of legal professional privilege.

21X. Offences

This clause would establish a small number of offences and penalties that are standard for matters relating to the provision of information. These would include that a person must not hinder or obstruct the Independent Monitor; fail to comply with a requirement to give information, answer a question or produce a thing; fail to provide assistance at facilities; give false or misleading information; or give or produce a thing that is false or misleading. The penalty for each of these offences would be \$50,000.

Division 5 – Miscellaneous

21Y. Protection of information

This clause would ensure that information provided to the Independent Monitor is appropriately protected. Such information would not be allowed to be recorded, used or disclosed except:

- a) for the purpose of performing a function under this Part
- b) to the Minister or the Commission
- c) as required under the Casino Control Act 1984 or another written law
- d) to a court or person or body acting judicially in the course of proceedings before the court, person or body
- e) under an order of a court or person or body acting judicially or
- f) for the purposes of investigating a suspected offence or the conduct of proceedings against a person for an offence.

21Z. Information sharing

This clause would establish arrangements for information sharing between the Independent Monitor and Commission for the purpose of the *Casino Control Act 1984* or any other gaming law.

This would include that the Commission and its officers may record, use and disclose information that the Independent Monitor discloses to the Commission under section 21Y for the purpose of performing a function under the *Casino Control Act 1984* or any other written law relating to gaming.

Similarly, the Commission may disclose to the Independent Monitor information obtained because of a function a person has or had under the *Casino Control Act 1984* or any other written law relating to gaming.

This clause would also establish that once the Independent Monitor has completed their functions, the records of the Independent Monitor would become the records of the Commission.

21ZA. Cost recovery

This provision would provide for the reasonable costs and expenses relating to the appointment of the Independent Monitor and the performance of the Independent Monitor's functions to be recovered from the Burswood Casino licensee.

Without limiting the above, the reasonable costs and expenses include:

- a) remuneration of the Independent Monitor
- b) costs and expenses of the Department under section 21ZG
- c) costs and expenses of the Department in acquiring services, including consultancy and advice, for the purposes of the performance of the Independent Monitor's functions and
- d) costs and expenses of the Department in relation to the appointment of the Independent Monitor, including any incurred before the day on which the *Casino Legislation Amendment (Burswood Casino) Act 2022* section 6 comes into operation.

21ZB. Interest on unpaid amounts

This clause would provide for interest to be paid on any outstanding amount should the Burswood Casino licensee not pay the reasonable costs of the Independent Monitor under 21ZA. The interest rate would be three percent higher than the cash rate as determined by the Reserve Bank of Australia on the day on which the amount becomes outstanding. Interest would not accrue on interest.

21ZC. Recovery of unpaid amounts

This clause would provide for the recovery of unpaid reasonable costs under 21ZA and interest under 21ZB.

21ZD. Minister may direct Commission in relation to Burswood Casino and Royal Commission

This clause would provide for the Minister to direct the Commission about the performance of its functions in relation to the Burswood Casino, either generally or in relation to a particular matter, and with respect to the final report of the Perth Casino Royal Commission. The direction would be

required to be tabled in each House of Parliament and included in the Commission's annual report.

This clause would not limit the Minister's existing power to direct the Commission under the *Gaming and Wagering Commission Act 1987*.

21ZE. Notices and directions under this Part

This clause would require that a notice or direction given by the Independent Monitor or their staff be in writing and signed by the person giving it. This Clause would also provide for the notice or direction to be given by electronic means and the circumstances under which it will be taken to be given.

21ZF. Prohibition on Independent Monitor, staff and agents gaming at Burswood Casino

To ensure integrity of the monitoring process, this clause would prohibit the Independent Monitor, a member of their staff or their agent from participating in any game at Burswood Casino, by establishing offences and penalties for doing so.

21ZG. Use of Department's staff and facilities

This clause will provide for the Independent Monitor, by arrangement, to make use of services of any officer or employee and the facilities of the Department.

21ZH. ID cards for Independent Monitor and staff

This clause would establish arrangements for identification of the Independent Monitor and their staff when entering a place of the Burswood Casino.

Clause 7. Section 24 Amended

This clause would provide for an expanded power for the Commission to direct the Burswood Casino licensee with respect to all operations of the Perth Casino, not just the gaming operations, consistent with the relevant recommendation of the Perth Casino Royal Commission Final Report.

Clause 8. Section 33 replaced

This clause would increase the maximum penalties for failing to comply with a direction issued under the *Casino Control Act 1984* to \$100,000 for an individual and \$250,000 for a body corporate. This is in response to the Perth Casino Royal Commission's finding that the maximum penalties available under the *Casino Control Act 1984* are manifestly inadequate to support the proper regulation of Burswood Casino.

Part 3 — *Gaming and Wagering Commission Act 1987* amended

Clause 9. Act amended

This clause would define the act being amended by this Part as the *Gaming and Wagering Commission Act 1987*

Clause 10. Section 6(3) amended

This clause would clarify that the Commission can provide advice (including recommendations) to the Minister without the requirement for the Minister to first refer a question or matter to the Commission for advice. This would provide for the Commission to provide advice to the Minister upon receipt of the Independent Monitor's final report, supporting the amendment to the *Casino Control Act 1987* that would be made under clause 6 section 21Q of this Bill.

Clause 11. Section 12 amended

This clause would establish a power for the Minister to appoint the chairperson of the Commission, replacing the existing arrangement under which the chief executive officer of the Department is the ex officio chairperson of the Commission. The chairperson, who is a member of the Commission, would hold office for the period determined by the Minister, not exceeding five years, and would be eligible for reappointment.

This clause would provide for a transition period under which the chief executive officer of the Department would continue as the ex officio chairperson of the Commission until a person is appointed to the office of the chairperson.

This clause would require the members of the Commission to select one of their number to be the deputy chairperson of the Commission. The deputy chairperson would be required to act in the chairperson's place if the chairperson is unable to act because of absence or incapacity, or the office of chairperson is vacant.