IN THE MATTER OF A ROYAL COMMISSION INTO THE CASINO OPERATOR AND LICENCE

CLOSING SUBMISSIONS

CROWN MELBOURNE LIMITED

CROWN RESORTS LIMITED

2 August 2021

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A. OVERVIEW

A.1. Crown Melbourne Limited (**Crown Melbourne**) and Crown Resorts Limited (**Crown Resorts**)[1] acknowledge that this Royal Commission has exposed numerous failings, including contraventions of law,[2] in the operation of the Melbourne casino. Crown recognises that, as a result of its own failings, there has been a substantial and warranted decrease in the public's confidence and trust in its operations. Crown apologises for those failings and is committed to doing everything in its power to redress those failings and earn back confidence and trust.

A.2. On any view, it will be appropriate for an independent monitor or supervisor to be appointed to oversee and scrutinise Crown in the implementation of its program of reforms and further initiatives arising out of the recommendations of this Commission. Crown accepts that the independent monitor or supervisor should have extensive powers to examine Crown's operations and affairs, obtain access to documents and staff, and appoint experts to assist in the supervisory task, with all of those costs to be borne by Crown.[3]

A.3. Crown respectfully submits that, on the basis of the reforms undertaken and committed to be undertaken, safeguarded by the appointment of an independent monitor or supervisor with the functions and powers referred to above, Crown Melbourne is a suitable person to continue to hold the casino licence under the *Casino Control Act 1991* (Vic) (**CCA**).[4]

A.4. However, appreciating the significance of its failings, Crown accepts that it is open for this Commission to conclude on the evidence before it that Crown Melbourne is not a presently suitable person to hold the casino licence. Crown accepts that to be the position, having confirmed at the outset of this Commission (by letter dated 17 March 2021) that it was open for the Bergin Inquiry to conclude that Crown Resorts was not a suitable person based on the evidence and material before that Inquiry.[5]

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1 These submissions use the term Crown to refer to both Crown Resorts and Crown Melbourne.

2 For the purposes of Terms of Reference paragraphs B and C, Crown sets out a summary of its response to each allegation of a breach of law or relevant agreement in **Annexure J.1**. (including cross-referencing the submissions of Counsel Assisting and where the responsive section appear in these submissions).

3 Further details of the role of an independent monitor or supervisor are set out in **Annexure A.1**.

4 Crown accepts that the suitability of Crown Resorts to be an associate of Crown Melbourne is dependent on Crown Melbourne's suitability. If Crown Melbourne is suitable, then it follows that Crown Resorts is a suitable associate of Crown Melbourne given, as Counsel Assisting submit, Crown Melbourne is dependent on Crown Resorts operationally and their affairs are intimately connected" (1.5, section 2, p. 23).

5 Given that much of the conduct examined by Commissioner Bergin related to the operations of Crown Melbourne, implicit in that acceptance was an acceptance that an unsuitability conclusion was open on that same evidence and material in relation to Crown Melbourne.

A.5. If this Commission concludes that Crown Melbourne is not presently suitable, or that it is not presently in the public interest for Crown Melbourne to hold the casino licence, the Terms of Reference direct the Commission to report on what action would be required for Crown Melbourne to become suitable or for it to be in the public interest for Crown Melbourne to continue to hold the licence. In Crown's respectful submission, the action required would be implementation of Crown's reform program, supplemented by further initiatives arising out of the recommendations of this Commission, safeguarded by the appointment of an independent monitor or supervisor with the functions and powers referred to above.

A.6. The answer to the question of suitability depends on a careful balancing of Crown's work to reform itself (including its progress to date and ongoing program) against the conduct revealed by this Royal Commission and in the Bergin Inquiry. Crown in no way seeks to minimise the gravity of that conduct. But, for reasons explained below, Crown submits that it is, by and large, conduct reflective of a former organisational culture in which profit prevailed over compliance with legal and ethical norms and community expectations. The organisation is in the process of undergoing wholesale reform that corrects that imbalance. That includes sweeping personnel changes at Board and executive level, the removal of the deleterious influence of its major shareholder, and changes to the way it goes about almost all aspects of its business.

A.7. Crown is under no illusion as to the scale of the task it faces on reform. But reform is possible; real and meaningful progress has been made. This Commission has heard evidence of a workforce eager to embrace a new way of doings things, and from capable leaders eager to lead that charge.

A.8. As to whether it is in the public interest for Crown Melbourne's licence to remain in force, Crown accepts that it will take time to earn back public confidence and trust. It will be necessary for Crown, not only to implement its reform program and further measures that this Commission may recommend, but to have a sustained track record of the highest standard of behaviour. However, given the extent of reforms Crown has undertaken to date, the new leadership it has in place and the proposed appointment of an independent monitor to oversee and scrutinise its ongoing reforms, the public may have confidence that that will occur. And given the extent of public benefits that Crown has provided and will continue to provide to the Victorian community, summarised in Annexure A.2 to these submissions, the public would be better off if Crown were given the opportunity to ensure that it occurs.[6]

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[6] Counsel Assisting has suggested that the only matter to which the Commissioner may have regard in assessing whether it is in the public interest for Crown to maintain the casino licence is the public's confidence in Crown's operations. As we submit in Part B, that approach is, with respect, too narrow; although even on that approach, Crown would submit that it is in the public interest for Crown to maintain its licence.

A.9. While Crown Melbourne accepts it is open for the Commission to find that it is presently unsuitable, this Commission should not accept the suggestion by Counsel Assisting that Crown may be incapable of reform, or that reform is insufficiently certain, such that Crown is irredeemable from a suitability and public interest perspective. That submission ascribes too much weight to past failings without assessing those failings in their proper context.

A.10. Crown accepts that past conduct is relevant to the assessment of suitability. The evaluation of suitability necessarily involves an element of prediction, and a relevant element of any predictive judgment is past conduct. However, the weight to be given to such conduct will vary according to the circumstances of the case and nature of the conduct in question.[7] Past conduct cannot be assessed in isolation, particularly where the conduct is being examined for its predictive power. Crown's past conduct has not occurred in a seamless continuum which leads to the present. Rather, Crown has undergone seismic shifts in its approach, its risk tolerance, its purpose and how it should be achieved, and almost unprecedented levels of change in the composition of its boards and senior management.

A.11. While it may be accepted that the weight to be given to the "genuine intentions" of Crown's current leadership to reform "must be balanced against the gravity of the misconduct"[8] it is necessary to undertake that balancing exercise with care. In order properly to balance the assessment of Crown's present state, including its leadership, culture, systems and processes, with past misconduct, it is first necessary to undertake, by reference to the evidence, a detailed analysis of that misconduct and its causes, ascertain when it occurred, and, importantly, identify its connection (or lack thereof) to those presently in control of the company.

A.12. It is then necessary to analyse closely Crown's reform program and ascertain where Crown currently stands from a suitability perspective, as opposed to how far away from suitability it stood at some earlier point in time.

A.13. This second step is essential because the character and integrity, and therefore suitability, of a company is informed by the character and integrity of those who control its affairs. This means that, as Commissioner Bergin observed, a company's suitability may ebb and flow with changes to the composition of the company's board of management and others who influence its affairs over time.[9] Commissioner Bergin's observation may also properly be supplemented

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7 *R v Knightsbridge Crown Court, Ex parte International Sporting Club (London) Ltd* [1981] 3 WLR 640 at 651 (Griffiths LJ and May J).

8 Counsel Assisting Oral Closing Submissions T4034.

9 Exhibit RC0970 COM.0005.0001.0334 Report: Inquiry under section 143 of the CCA 1992 (NSW) (**Bergin Inquiry Report**) Volume 2, Chapter 4.2 at [16].

by the evidence of organisational culture experts in this Commission to the effect that corporate culture is not fixed or static but is capable of change.[10]

A.14. Crown's submissions seek to undertake this analysis and balancing exercise. The result, Crown respectfully submits, is that it is open for the Commission to find that Crown Melbourne is a suitable licensee. Alternatively, if the Commission finds Crown Melbourne to be presently unsuitable, the Commission can have confidence that Crown Melbourne can restore itself to suitability with appropriate supervision and conditions imposed. If presently unsuitable, Crown Melbourne's road to suitability is not as long or as uncertain as Counsel Assisting submits.[11]

Analysing Crown's failings and present un/suitability

A.15. Crown acknowledges that this Royal Commission has raised matters of significant concern which were not raised in the hearings of the Bergin Inquiry. It is necessary for each of those matters to be analysed by reference to when the underlying conduct occurred and what, if anything, it says about Crown's current culture and organisation as distinct from what it says about a previous culture and organisation, which Crown's current leadership has acknowledged was deficient and in need of substantial reform.

A.16. Given the importance of the question of whether matters identified by this Royal Commission reflect ongoing failings and/or are indicative of current cultural problems at Crown, the Commission should treat submissions by Counsel Assisting to the effect that "aspects of the behaviour that led to the many and varied significant failings *remain on display in quite recent times*" with some caution.[12]

A.17. Properly analysed, the failings bearing upon Crown's suitability which emerged in this Royal Commission largely relate to historic conduct driven by what was at that time a deficient culture, unduly prioritising profit at the expense of other important considerations, under the influence of Consolidated Press Holdings Ltd (**CPH**).[13] Crown accepts that CPH had an inappropriate degree of influence over its operations under Crown's former leadership. That said, as the analysis

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10 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne (June 2021) at .0180; Arzadon T3974.30-32; Whitaker T.1912.47–1913.19. Ms Arzadon's evidence was that even people who have been in positions of responsibility, and who have made mistakes under an old and poor culture, may reform themselves and powerfully contribute to a new reformed culture. Arzadon T3977.26-3978.1. Ms Whitaker's evidence was that Crown has already taken a number of steps to implement effective cultural change (Whitaker T.1945.17ff).

11 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [1.5(b)], [1.21(b)], Section 19, pp 336, 337.

12 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [1.56(b)], Section 19, p 341. Emphasis added.

13 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, eg, Ch 4.3.5 [11]; Ch 4.5 [137].

in the following paragraphs demonstrates, Crown recognises that not all of its failings may fairly be described as historic. Some are plainly more recent, and Crown is addressing them.

A.18. *China UnionPay* (**CUP**). Crown acknowledges the seriousness of its failings in engaging in the CUP practice and does not seek to minimise them in any way. It is nevertheless relevant to observe that the offending conduct ceased five years ago. The associated failings are properly regarded as historic, as Counsel Assisting acknowledges.[14] In Crown's submission, they do not bear upon its current culture or suitability. In contrast, Crown's response to the CUP matter after it recently came to light – which included immediately commencing an investigation and disclosing the matter voluntarily and fulsomely to this Commission, and to its regulators – is a recent and significant demonstration of Crown's new and improved culture which includes a steadfast requirement of openness and transparency with regulators.

A.19. *Underpayment of tax*. A number of significant issues have arisen in this Commission concerning the underpayment of casino tax. The most troubling concerns Crown's decision to start treating certain costs as deductions without notifying the regulator that it was doing so, and with an expectation (or at least a hope) that the regulator would not notice. Crown acknowledges that that conduct was completely unacceptable. In Crown's submission *that* failing was a failing of culture which is properly to be regarded as historic. The relevant decisions were made in 2012 and 2013 by individuals who left Crown's employ long ago. The assessment of Crown's conduct in relation to this matter since 2018 needs to be considered separately from the conduct leading to the introduction of the process in 2012 and Crown's failure to pro-actively raise its changed approach with the regulator before the regulator initiated enquiries in late 2017. While Crown's conduct in that earlier interval is rightly the subject of criticism, in mid-2018 Crown did provide detailed information to the regulator concerning the nature and extent of the relevant deductions. From mid-2018, Crown personnel considered that the regulator did not regard the deductions as inappropriate. The continued unease that certain Crown personnel held concerning the circumstances in which the program of deductions originally arose, and their conduct since mid-2018, is to be assessed in that context.

A.20. A further issue is that Crown impermissibly treated the costs of the bonus jackpot promotions as deductions while understanding, based on advice that it had received, that the deductions may not be permissible. That conduct is also completely unacceptable and, Crown hastens to note, not historic. The conduct ceased very recently, only after the issue arose in this Commission.[15] But it has

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14 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [7.5.1].

15 Crown ceased claiming the "Category 8" Bonus Jackpots promotions as deductions with effect from 1 June 2021: Exhibit RC0888 VCG.0001.0004.9207.

been dealt with appropriately, and swiftly, since coming to the attention of the Chief Executive Officer (**CEO**) and Board of Crown Resorts.[16]

A.21. *Money laundering*. Crown recognises and accepts that the Bergin Inquiry exposed significant deficiencies in its response to the risk of money laundering in the casino. While they are, in Crown's submission, properly characterised as past deficiencies, the program of reform required to address them is necessarily ongoing. Counsel Assisting, and the Commission's appointed expert, recognise that Crown's program of Anti-Money Laundering (**AML**) reforms is "impressive in its scope and ambition and appears properly targeted and prioritised".[17] Crown is under no illusion as to the scale of the required reform. However, as is submitted in Part D below, the significant investment Crown has made in strengthening its Anti-Money Laundering and Counter-Terrorism Financing (**AML/CTF**) framework means that, while still at an early stage of maturity, the program is presently appropriate, adequately resourced and compliant. Also set out below are the immediate and effective steps that have been taken to shore up the vulnerabilities revealed in the Bergin Inquiry. Crown has already undertaken significant steps to render its operations inhospitable to would-be money launderers. On any view of the evidence, the most significant vulnerabilities arising from third party and cash deposits into Crown's bank accounts, have already been addressed.

A.22. Crown is not two years away from suitability from an AML/CTF perspective, as Counsel Assisting has suggested.[18] The December 2022 date identified in Mr Blackburn's change program is the date by which Crown expects to have reached an advanced state of AML maturity. That, it is submitted, is beyond what is required for Crown Melbourne to be a suitable licensee. The significant reforms already implemented mean that Crown has the systems and capability to be suitable, and is suitable, from an AML/CTF perspective now. This is not to downplay the seriousness of Crown's past failings on AML. Crown's previous AML framework was inadequate in managing the risk that money laundering presents in a casino. That was unacceptable. However, it is this recognition of past failings on AML which has driven the very substantial investment and commitment towards turning Crown's AML response around, and has made the significant progress achieved in a relatively short period of time possible. The Commission can and should have confidence that this

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16 On 27 July 2021, Crown paid the State the unpaid tax that it owed, according to the higher of the two assessments derived from the advices Crown obtained (and disclosed to the Commission and the State), with penalty interest: CRW.512.242.0002. Crown has since obtained advice from two of Her Majesty's Counsel, each of whom has separately advised that no further gaming tax is outstanding or unpaid, including in relation to Matchplay (CRW.512.252.0012; CRW.512.252.0031).

17 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0154 [8.1.3] and .0182 [8.4.26].

18 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0154 [8.1.3] and .0182 [8.4.31].

progress will continue under the stewardship of Mr Blackburn and his expanded financial crime team.

A.23. *Responsible service of gaming*. Crown accepts that its responsible gambling services that have been scrutinised closely in this Commission are not historic. Most of the relevant evidence has concerned Crown's current or recent practices and processes. Crown also accepts that that evidence has shown serious deficiencies in some aspects of its Responsible Gambling services. However, for the reasons developed below, those deficiencies do not mean that Crown does not take its Responsible Gambling obligations seriously, or that it is unsuitable (or irredeemably unsuitable) to hold a casino licence. Since well before this Commission started, Crown has been seeking to improve its Responsible Gambling services so that they become "best practice". That has included implementation of all of the numerous recommendations by the Victorian Commission for Gambling & Liquor Regulation (**VCGLR**) in its Sixth Review that related to Responsible Gambling, to the satisfaction of the VCGLR, and then the voluntary engagement of distinguished experts to review Crown's Responsible Gambling services further, to identify all weaknesses in them and to recommend additional improvements. However, community standards and expectations are (rightly) evolving to require more harm minimisation responsibility to be exercised by the providers of gaming services. Crown recognises, and indeed embraces, that responsibility and that more work and reform is plainly required in this important area. The Commission can have confidence that Crown will make the necessary changes to improve its Responsible Gambling services. While Mr Blackburn proposed a number of "common sense" enhancements to Crown's Responsible Gambling program shortly after taking on responsibility for this area, Mr Blackburn is also developing a more detailed 'transformation program'. This program (similarly to his Financial Crime and Compliance Change Program (**FCCCP**)) will involve a comprehensive review of Crown's Responsible Gambling services, informed by expert advice (as well as the findings and recommendations of this Commission), and will ensure that current deficiencies will be addressed in a meaningful and sustainable way.

A.24. *Crown's relationship with the VCGLR*. Crown also recognises and accepts that some of its past dealings with the VCGLR were inappropriate and reflect poorly on the company. However, those incidents are not representative of the dealings between Crown and the VCGLR over the last five years.[19] The evidence of Crown and VCGLR representatives demonstrates that those dealings have generally been cooperative and constructive; and the exceptions that have been explored in this Commission are not so widespread as to make Crown generally unsuitable to hold a casino licence.[20] Further, with Crown's new leadership

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19 See I.52 to I.57 and I.66 below.

20 A recent example of the "old Crown" conducting itself inappropriately is to be found in the engagement of Crown with the VCGLR in relation to junkets. The strategy guiding that set of

team (including Mr McCann, Mr Weeks, Mr Blackburn and Ms Ivanoff) and their focus on strengthening Crown's relationship with the VCGLR, and all of Crown's other regulators, the Commission can be assured of Crown's ongoing openness and transparency with its regulator and that Crown's relationship with the VCGLR will only improve. Crown acknowledges that the appointment of a monitor or supervisor would supplement the oversight that the VCGLR already exercises over Crown Melbourne's operations. Crown is committed to continuing to work closely and constructively with the VCGLR in addition to any monitor or supervisor appointed to oversee the implementation of Crown's reform program.

A.25. *Lessons from Bergin.* Insofar as the misconduct which led Commissioner Bergin to find Crown Resorts unsuitable in NSW is concerned, in each instance Crown has from the outset of this Commission acknowledged and accepted responsibility for the failing. Crown accepted the essence of each of the principal findings from the Bergin Inquiry (in relation to money laundering, the China arrests, and junkets).[21] Crown has also taken significant steps to remedy the underlying conduct and to ensure such conduct cannot recur:

(a) In terms of money laundering in the Riverbank and Southbank accounts, Crown has prohibited cash deposits by patrons into its bank accounts and reviews its accounts daily to ensure no aggregation occurs or cash deposits have been received. Crown has also implemented a number of controls to address the risk of money laundering through its patron bank accounts. Those controls are presently effective and steps are being taken to automate controls so that they remain effective at higher transaction volumes, in accordance with Deloitte's recommendations.[22] Crown has also enhanced its transaction monitoring program rules, including by the introduction of automated transaction monitoring through the Sentinel system, and Deloitte is undertaking a comprehensive forensic review of all Crown's patron accounts, which will delve into a wide array of Crown's related gaming and DAB records. While Crown acknowledges, of course, that the deficiencies in its past approach to money laundering were not confined to the Riverbank and Southbank accounts, which were the focus of attention in the Bergin inquiry, and Mr Blackburn has embarked on a program to lift Crown's processes well beyond the merely adequate, Crown's present AML systems and processes are much more developed than has

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interactions was driven by the last vestiges of a leadership which has now gone, and Mr Xavier Walsh has taken full responsibility for his part in falling into line with that strategy. Accordingly, Crown submits that this Commission would be justified in criticising that approach, but ought not conclude that it is indicative of the future of Crown's relationship with the VCGLR, or any other regulator.

21 Exhibit RC1268 CRW.0000.0002.0174 Letter from Antonia Korsanos and Helen Coonan to the Hon Ray Finkelstein AO QC 17 March 2021.

22 Exhibit RC0309e CRW.512.023.0100 at .0106-.0107.

been recognised in Counsel Assisting's submissions. Crown's uplift program will see continued development and improvement in its AML systems and processes. While foundational, Crown's systems and processes are presently compliant and it is, therefore, suitable to operate a casino from an AML perspective.

(b) In relation to junkets, Crown announced it would permanently cease dealings with junket operators in November 2020. Crown has no intention of recommencing junket operations.[23] Crown has also embraced the recommendations made by Deloitte in relation to its Persons of Interest process and has withdrawn the licences of a large number of patrons as part of that enhanced process.

(c) Crown now recognises that the China arrests were a cultural and risk management failure. As addressed later in these submissions, the culture at Crown (and specifically the VIP International business) in the period prior to the arrests in October 2016 is very different to the culture that exists today. Crown has also overhauled its approach to risk management in the period since the arrests. Crown's risk management framework was recently assessed by the expert engaged by the Commission, Mr Deans, as containing the core fundamentals of an effective framework. In addition, Crown has closed all offshore offices and the VIP International team has been integrated into the broader business so as not to be permitted to operate any longer with its own culture and risk appetite.

A.26. A great number of those who presided over, participated in and perpetuated that culture – particularly in relation to the problematic VIP International business – are no longer at Crown.

A.27. Of central relevance to the assessment of Crown's past conduct in this Commission on the questions of suitability and public interest (including whether suitability is attainable in the future and, if so, when) is the fact that the past conduct is in the main reflective of a deficient culture which Crown's current leaders have recognised, acknowledged, and set about reforming.

A.28. The new CEO of Crown Resorts, Stephen McCann, has the experience, capacity and integrity to lead Crown through its reformation and to ensure that it does not again hazard its legal or social licence to operate. Mr McCann is supported by a refreshed and capable executive team. Mr McCann is undertaking a review of the senior management team. Upon completion of that review, and following any recommendations by this Commission, there is likely to be restructuring and further recruitment.

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23 Exhibit RC0310 Blackburn II at [57]; Exhibit RC0354 X Walsh III at [134].

A.29. The only existing associates of Crown against whom Counsel Assisting submit it would be open for the Commission to make unsuitability findings are Ms Coonan and Mr Walsh. Properly construed, the matters to be determined in assessing suitability of an associate primarily concern whether the person is of good repute, having regard to character, honesty and integrity.[24] Even if Counsel Assisting's characterisation of the evidence in relation to Ms Coonan is accepted (which, for the reasons set out in Part C of these submissions, it should not be), no conduct by Ms Coonan is identified that reflects adversely on her character, honesty or integrity. In other words, the criticisms of Ms Coonan do not rise high enough to warrant a finding that she is unsuitable to be an associate of a casino licensee. Insofar as Counsel Assisting advance the different submission that Ms Coonan may not be "the right person to shepherd in the extent of change required" at Crown,[25] Ms Coonan has previously stated she intends to retire from the Board.[26] She intends to announce her retirement as soon as Crown has finalised its plans in relation to the appointment of a new leader. Crown expects to appoint that new leader by 31 August 2021.

A.30. As Mr Walsh will be leaving Crown on 20 August 2021 on terms that he is presently discussing with Crown, the Commission need and ought not, in Crown's respectful submission, make any finding that Mr Walsh is not suitable to be an associate of Crown as licensee to operate the casino.[27] Any suggestion that he sought intentionally to conceal the bonus jackpots issue from this Commission, or even to prevent it from being disclosed, would be untenable. More generally, the areas in which Mr Walsh has been criticised reflect errors of judgment rather than any lack of integrity. A holistic assessment of Mr Walsh's suitability, having regard to all of the evidence would pay regard to relevant matters in Mr Walsh's favour (for example, that his tenure as CEO was a "breath of fresh air" in terms of transparency[28] and his acceptance that the handling of the VCGLR show-cause hearing was inappropriate).[29]

No cancellation or suspension

A.31. If the Commission concludes that Crown Melbourne is presently unsuitable, or that it is not in the public interest for Crown Melbourne to hold the casino licence, Crown would respectfully submit that the Commission should not recommend that Crown Melbourne's licence be cancelled or suspended. In that scenario, the Terms of Reference direct the Commission to report on what action

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24 CCA s 9.

25 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [18.5.94].

26 Coonan T3731.10 –30, T3862.18 – 38; Exhibit RC0437 CRW.998.001.0526 Coonan I at [30(o)-(q)].

27 The Terms of Reference (at [10(H)]) direct the Commission to inquire into and report on whether any "existing associates of Crown Melbourne" are not suitable to be associates.

28 Williamson T3163.8-14.

29 X Walsh T3320.9-16, T3349.41-3350.3.

would be required for Crown Melbourne to become suitable or for it to be in the public interest for Crown Melbourne to continue to hold the licence.

A.32. The Commission's Terms of Reference expressly require the Commission, in formulating its recommendations, to have regard to the most practical, effective and efficient way to address the matters arising out of the inquiry, and the financial impact of its recommendations on the State. Crown agrees with the following propositions noted by Counsel Assisting:

(a) cancelling the casino licence would be highly disruptive;[30]

(b) immediate cancellation has the potential to cause significant harm to many third parties who have had no involvement whatsoever in the misconduct of Crown Melbourne over the years; [31]

(c) the impact of immediate cancellation would likely have inestimable negative consequences for many people, at least in the short term.[32]

A.33. The potential financial, economic and community impacts of cancelling or suspending Crown's licence on the State of Victoria would, having regard to the matters addressed in Annexure A.2, be enormous:

(a) more than 20,000 people work across the Crown Resorts businesses, over 11,500 of whom work in Melbourne. Crown Melbourne is Victoria's largest single site employer;

(b) in addition to direct employment, Crown spends over $900 million annually on general procurement, indirectly supporting approximately 4,000 local businesses in Victoria and Western Australia;[33]

(c) Crown provides approximately 10% of all of Melbourne's hotel rooms, and works with government and industry to support bids for major events and conventions in Melbourne, which (before COVID) contributed more than $1.2 billion to the Victorian economy each year;[34]

(d) since 2014, Crown has paid to the State of Victoria at least $1.4 billion in revenue through general player casino taxes, commission based player taxes and the community benefit levy;[35] and

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30 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [1.65].

31 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [1.67].

32 Crown also submits that (b) and (c) are not limited to the situation where the cancellation is immediate, but apply to cancellation on any basis, including any deferral in the timing of cancellation.

33 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Ch 2.2 at [7]. In the first half of 2021, Crown Melbourne alone spent $47 million directly supporting 900 small businesses.

34 CRW.531.005.3217 Presentation titled "Crown Melbourne's contribution to Victoria" at .3237.

35 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Ch 2.2 at [4].

(e) Crown has also paid,[36] and will continue to pay, substantial additional amounts to the State under the Casino Management Agreement, including $250 million in July 2033.[37]

(f) Further economic contribution comes from Crown's expenditure on capital works, including new resorts and upgrades to existing properties. Between 2006 and the end of FY20, Crown has spent over $5.5 billion in capital expenditure across its resorts. Of this, $2.2 billion has been spent in Melbourne, $1.7 billion has been spent in Perth and $1.6 billion in Sydney.

A.34. Cancellation, or even suspension, of Crown's licence would have the very real potential to trigger events of default under Crown's debt facilities that would put the continued provision of these significant public benefits in jeopardy.

A.35. Further, deferral is not a solution to the problem of cancellation. It is common ground that the successful execution of Crown's reformation involves attracting and retaining the right people to lead the significant program and to keep Crown's staff motivated and focused on that critical work. As a matter of commercial reality, that will be made far more difficult in a scenario of deferred cancellation with only a right to re-apply. The preferable course, as set out above, is for Crown to have the opportunity to execute on its reform program, with the supervision of a monitor and to then, as a final check, satisfy the VCGLR that the program has been executed successfully. This would also have the benefit of obviating the risks which are associated with a change of operator.

A.36. In circumstances where:

(a) It is not in contest that unless any cancellation were deferred and structured so as to permit Crown to reapply to continue to hold the licences, significant and inestimable harm would potentially be caused to many people including those who had no involvement whatsoever in the past misconduct of Crown Melbourne; and

(b) Crown's reformation is substantially progressed such that it is either presently suitable or approaching suitability,

the most practical, effective and efficient course is for Crown to continue to operate under licence (upon conditions as may be considered appropriate for this Commission to recommend, including that Crown be under supervision of an independent monitor while it works to complete its reform program).[38]

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36 Exhibit RC0502 COM.0005.0001.1056 Consolidated Casino Management Agreement at 1090 at clauses 20.3 and 21.1.

37 Exhibit RC0502 COM.0005.0001.1056 Consolidated Casino Management Agreement at 1090 at cl 21A .

38 If the Commission concludes that Crown is presently unsuitable, it is important to note that the CCA contemplates that the licensee may stray from the standards set by the Act in terms of

Crown agrees with Counsel Assisting's suggestion[39] that the suitability review due to be undertaken by the VCGLR in 2023 is an appropriate time for Crown's reform and suitability to be assessed.

A.37. It is not in the public interest to visit on Crown's workforce, creditors and shareholders, the State and other stakeholders,[40] the consequences of a recommendation which would see Crown Melbourne stripped of its licence when the path to suitability is clear, has already been embarked upon, and where there can be assurance that there will be no deviation from the path from the safeguards of an independent monitor or supervisor.

A.38. Assuming completion of the reform program, incorporating further recommendations of this Commission, under the scrutiny and to the satisfaction of the independent monitor, the public interest would be best served by allowing Crown to continue to operate the casino under its licence.[41] No other applicant for the licence in that scenario could be as confidently expected to meet the high standards rightly required of a licensee.

A.39. Nor would it be a practical or efficient solution to separate the operation of the licenced casino from the balance of the integrated resort. The evidence adduced in the Commission has not explored the economics of the operation of Crown Melbourne as an integrated resort,[42] and the role of integrated resorts in the international gaming market.[43] The Commission has also not received evidence that would enable it to assess the impact on the mix and breadth of gaming patrons (and consequentially gaming revenues and taxation to the State) likely in a non-integrated model. In short, it should not be assumed that gaming and non-gaming operations can be readily separated; rather, the separation of those operations would result in significant inefficiencies, an inferior customer experience, reduced State casino tax and a diminished offering to the tourism industry and the Victorian public.

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suitability and public interest and continue to operate the casino under its licence. See, COM.0500.0001.0001 Counsel Assisting Closing Submissions at [1.13], Section 19, p 337.

39 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [1.22].

40 As at 31 August 2020, Crown had over 47,957 shareholders, including over 46,000 small shareholders (shareholders with holdings of 5,000 shares or fewer): Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at .1608.

41 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [19.1.68]-[19.1.70] (which contemplate a cancellation followed by a competitive tender).

42 For example, operation as an integrated resort enables various outlets such as restaurants and bars to be operated by Crown, with staff employed under Crown's Enterprise Agreement, rather than on a model whereby premises are leased to commercial operators. Some operations (such as restaurants) can also be run in a premium manner that could not be justified on a standalone basis, but can be justified as part of the provision of the kind of high-end experience required by premium patrons to attract them to visit, and patronise, the casino in Victoria.

43 For example, leading resorts in Singapore, Macau and Las Vegas are also integrated resorts.

A.40. Crown's detailed submissions on the matters addressed in this Royal Commission follow. They are structured as follows:

(a) Part B – The framework for assessing suitability and the public interest

(b) Part C – Governance, risk and culture

(c) Part D – Anti-money laundering

(d) Part E – Other measures to combat criminal influence and conduct at Crown Melbourne

(e) Part F – Responsible gambling

(f) Part G – Bonus jackpots

(g) Part H – Processes for making funds available to patrons

(h) Part I – Crown's dealings with the VCGLR

B. FRAMEWORK FOR ASSESSING SUITABILITY AND THE PUBLIC INTEREST

B.1. Suitability

B.1. The Terms of Reference require the Commission to report on "[w]hether Crown Melbourne is a suitable person to continue to hold the casino licence under the Casino Control Act", as well as whether Crown Resorts or other associates are suitable persons "to be associated with the management of a casino under the Casino Control Act".[44]

B.2. As to the suitability of Crown's "associates", s 4 of the CCA provides that a person is an "associate" of an applicant for a casino licence if it:

(a) is able, or will be able, to exercise a significant influence over the management or operation of the casino business by virtue of any financial interest, or entitlement to exercise any relevant power in the casino business of the operator; or

(b) holds or will hold any relevant position in the casino business.

B.3. Crown accepts that Crown Resorts is an associate of Crown Melbourne in that it has a relevant financial interest in Crown Melbourne and that, by virtue of that interest, it is able to exercise a significant influence over or with respect to the management or operation of Crown Melbourne's casino business.[45] Crown also agrees that, in light of the close connection between Crown Melbourne and Crown Resorts, it is appropriate to approach the question of their suitability together.[46]

B.4. Analysis of the framework within which suitability is to be assessed under the Terms of Reference must begin with the text of the CCA.

B.5. The CCA does not define the term "suitable". However, the concept of suitability of a casino operator and its associates arises in the following contexts:

(a) determination of an application for casino licence under Part 2;

(b) consideration of disciplinary action under s 20;

(c) regular investigation into a casino operator's suitability under s 25;

(d) approval of a change in situation of a casino operator under s 28; and

(e) ongoing monitoring of a casino operator's associates under s 28A.

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44 Terms of Reference 9 & 10.

45 CCA s 4.

46 See COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0023 [2.1.5].

B.6. Crown submits that the concept of suitability in the Terms of Reference is directed towards Crown Melbourne's *current* suitability to hold the casino licence (and the current suitability of others to be its associates). That is because the Terms of Reference express each question of suitability in the present tense: for example, "[w]hether Crown Melbourne is a suitable person to continue to hold the casino licence".[47]

B.7. That the focus is on current suitability is supported by the CCA. For example, although not directly applicable in this Commission, s 20(1)(d) provides that a ground for disciplinary action is that "the casino operator is, for specified reasons, considered to be no longer a suitable person to hold the licence". That is, it contains an express temporal element, referring (in contradistinction) to the finding of suitability made when the licence was granted. That language makes clear that the relevant question is the casino operator's suitability as at the time of the VCGLR's consideration. Similarly, as part of the regular investigation of the casino operator's suitability under s 25, the VCGLR must investigate and form an opinion as to "whether or not the casino operator is a suitable person to continue to hold the casino licence": s 25(1)(a).[48]

B.8. As a result, Crown submits that the relevant issue is Crown Melbourne's current suitability to hold a casino licence, and the current suitability of its associates. It is not a retrospective enquiry, focused on whether Crown Melbourne and its associates *were* or *were not* suitable at some time in the past.

B.9. As discussed further below, that is of course not to suggest that past conduct is irrelevant. But it is to recognise that the questions regarding suitability posed by the Terms of Reference — and the CCA — cannot be answered solely by reference to historical conduct. Past conduct must be assessed in light of the culture and circumstances prevailing at the time, and in light of the ways in which Crown has set about reforming its culture, as well as the systems, processes and incentives that now support a clear focus on compliance.

B.10. Having identified the temporal aspect of suitability, what matters inform assessment of suitability? Crown accepts that the factors that must be taken into account when assessing suitability upon application for a casino licence are relevant to the consideration of the suitability of an incumbent licensee. In that regard, s 9(2) provides that the VCGLR must consider whether, in respect of the applicant and its associates:

> (a) each such person is of good repute, having regard to character, honesty and integrity;

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47 Terms of Reference 10A.

48 Further, s 9(1) of the CCA provides that a licence may not be granted unless the VCGLR is satisfied that the applicant "*is* a suitable person"; under s 28A, the commission may require an associate to terminate its association with the casino operator if it "*is* unsuitable to be concerned in or associated with the business of the casino operator".

(b) each such person is of sound and stable financial background;

(c) in the case of an applicant who is not a natural person, the applicant has, or has arranged, a satisfactory ownership, trust or corporate structure;

(d) the applicant has or is able to obtain financial resources that are adequate to ensure the financial viability of the proposed casino and the services of persons who have sufficient experience in the management and operation of a casino;

(e) the applicant has sufficient business ability to establish and maintain a successful casino;

(f) any of those persons has any business association with any person, body or association who or which, in the opinion of the [VCGLR], is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial resources; and

(g) each director, partner, trustee, executive officer and secretary and any other officer or person determined by the [VCGLR] to be associated or connected with the ownership, administration or management of the operations or business of the applicant is a suitable person to act in that capacity.

B.11. Under s 28A(4), the matters that the VCGLR must consider when determining whether an associate is unsuitable to be concerned in or associated with the business of the casino operator are substantially identical to s 9(2)(a), (b) and (f) of the CCA.

B.12. As a result, it is clear that the matters listed in ss 9(2) and 28A(4) describe attributes expected of "a suitable person to be concerned in or associated with the management and operation of a casino".

B.13. Several observations about the relevant principles may be made.

B.14. *First*, consideration of the suitability of an incumbent licensee invites a holistic assessment of all the relevant circumstances. In this regard, it is relevant to note the objects of the CCA, which are set out in s 1:

> The purposes of this Act are—
>
> (a) to establish a system for the licensing, supervision and control of casinos with the aims of—
>
> (i) ensuring that the management and operation of casinos remains free from criminal influence or exploitation;
>
> (ii) ensuring that gaming in casinos is conducted honestly; and
>
> (iii) promoting tourism, employment, and economic development generally in the State;
>
> (b) to provide for actions that may be taken by the Chief Commissioner of Police with the aim of ensuring that the casino complex remains free from criminal influence or exploitation.

B.15. Clearly enough, the first two objects will not be achieved unless a casino operator has, among other things, appropriate systems in place to prevent criminal influence and ensure that gaming is conducted honestly. It follows that when considering suitability of an incumbent licensee, matters going to good repute remain very significant, but it will also be important to assess the licensee's current and future systems, structures and processes.[49] Such an approach is consistent with that taken by the VCGLR, which considers a range of matters, including Crown's systems and governance and risk structures, in its regular suitability reviews.[50]

B.16. The assessment of an incumbent licensee's suitability can only take place in its full context. As a result, determining whether Crown is suitable to hold the Melbourne casino licence requires a comprehensive, holistic assessment of all relevant circumstances, including the steps that Crown has taken to address past shortcomings. Crown does not understand Counsel Assisting to submit otherwise.[51] Although it may be accepted that the assessment requires examination of "the integrity of corporate governance and risk management structures and the adherence to adopted policies and procedures",[52] that holistic assessment is not limited to the past. Because the Commission is engaged in a predictive exercise,[53] it is primarily necessary to consider the *current* and *future* integrity of those structures, and likely *current* and *future* adherence to adopted policies and procedures. That requires consideration of the effect of the fundamental changes Crown has made, and is making. That is, the question of Crown's suitability should be approached by asking whether, at the present time and having regard to the plans and actions that Crown is implementing and is committed to implementing, Crown Melbourne and Crown Resorts are suitable persons to fulfil the responsibility of operating the Melbourne casino.

B.17. *Second*, suitability is not to be considered in the abstract. The question is whether Crown Melbourne is a suitable person to hold the Melbourne casino licence. Having regard to the objects of the CCA, it is relevant for this Commission to consider whether Crown Melbourne is a suitable person by reference to a range of matters that includes its capacity and commitment to contributing to the overarching purposes of ensuring that the management and

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49 Regardless of whether or not such matters are properly included in the concept of "sufficient business ability to establish and maintain a successful casino" under s 9(2)(f), as Counsel Assisting suggest: see, eg, COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0141 [7.1.1], .0154 [8.1.5], .0189 [9.1.1].

50 Exhibit RC0002 COM.0005.0001.0776 at .0829 VCGLR Sixth Review of the Casino Operator and Licence.

51 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0263 [14.2.1]-[14.2.4].

52 Exhibit RC0970 COM.0005.0001.0334 at .0355 Bergin Inquiry Report Volume 2 at 338.

53 As Counsel Assisting submit: COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0020 [1.5.14].

operation of the Melbourne casino remains free from criminal influence or exploitation, and ensuring that gaming in the casino is conducted honestly.

B.18. *Third*, and self-evidently, Crown accepts that its past conduct is relevant to that assessment. That is because the evaluation of suitability necessarily involves an element of prediction, and a significant element in any predictive judgment is past conduct.[54]

B.19. However, as Counsel Assisting accept,[55] the weight to be given to such conduct will vary according to the circumstances of the case and the nature of the conduct in question.[56] Past conduct cannot be assessed in isolation. A holistic assessment of suitability requires past conduct to be contextualised and viewed in light of the concerted actions Crown has taken, and is taking, to strengthen its corporate governance practices and processes, and to improve its operational systems and controls. As explained further in these submissions, Crown is committed to taking those actions in the context of its substantially greater focus on compliance and substantially lower risk tolerance than previously pertained. Past conduct must also be assessed in light of the significant changes to Crown's Board and management personnel.

B.20. *Fourth*, when considering a person's "good repute, having regard to character, honesty and integrity", the notions of reputation, character, honesty, and integrity are not at large.[57] They take their meaning from the particular statutory context in which they appear, having regard to the characteristics of the industry or profession in question. The concept of "good repute" in s 9(2) is not concerned with reputation in the sense of fame or public perception, which might be based on things such as rumour or unverified allegations. Nor are isolated instances of what might be characterised as poor judgement sufficient to impugn "good repute" in the relevant sense, being the person's *actual* honesty, integrity and character.[58] The fact that poor conduct has occurred in the past does not inexorably lead to a finding that a reformed entity is not presently of "good repute".[59]

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54 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0020 [1.5.14], and at .0263 [14.2.3].

55 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0019 [1.5.10].

56 *R v Knightsbridge Crown Court, Ex parte International Sporting Club (London) Ltd* [1981] 3 WLR 640 at 651 (Griffiths LJ and May J).

57 *Prothonotary of the Supreme Court of NSW v Alcorn* [2007] NSWCA 288 at [57]-[59] (Hoeben JA, Beazley and McColl JJA agreeing), quoting *McBride v Walton* [1994] NSWCA 199 at [15] (Kirby J); *Wang v Australian Securities and Investments Commission* [2019] FCA 1178 at [73] (Bromwich J).

58 See *In Re Bally's Casino Application* (1981) 10 NJAR 356 at 362 (***Re Bally's***): "Although literally this language refers to 'reputation', the Commission has previously held the basic standard to be the actual character and trustworthiness of the individual".

59 Cf COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0019 [1.5.11], referring to *R v Knightsbridge Crown Court, Ex parte International Sporting Club (London) Ltd* [1981] 3 WLR 640 at 651 (Griffiths LJ and May J).

B.21. *Fifth*, the suitability of a corporate licence holder (or its close associates) is evaluated by reference to the actions taken by its directors and senior management. As the Massachusetts Gaming Commission has observed, when considering suitability a corporate entity "has no independent character or morality standing alone". Rather, it is necessary to "look to the conduct of senior management — that is, the officers primarily responsible for managing the corporation, the directors, and the controlling shareholders, if any".[60]

B.22. However, "the character of a person is neither uniform nor immutable".[61] As Commissioner Bergin observed, "a company's suitability may ebb and flow with changes to the composition of the company's Board and Management, and others who influence its affairs, over time".[62] Counsel Assisting accept that changes in composition of the Boards, and Crown's association with others who have influenced its affairs and conduct, are relevant to the assessment of suitability.[63] Further, the culture expert appointed by the Commission, Elizabeth Arzadon, gave evidence that when an existing executive, who was previously part of the 'old' culture, is able to reform themselves and embrace the 'new' culture, this can be "a very powerful way to drive change [within the organisation]" and can "demonstrate to others that the change is possible".[64]

B.23. *Sixth*, the statutory requirement of suitability is not a requirement of perfection. Undoubtedly, to be "suitable" in the statutory context described above requires a casino operator to have high standards. Indeed, that must follow from the very nature of the privilege and the responsibility of operating the Melbourne casino. But that is not to say that a casino operator may not have any flaws, or may not have made mistakes.[65] Rather, where flaws exist, or mistakes have been made, the operator takes responsibility and puts in place the necessary steps to fix them — with honesty, integrity, and a genuine intention to operate at the highest standards.

B.24. Crown's past conduct in a number of respects fell short of the standards required by the CCA, and rightly expected by the State, the regulator, and the community. But Crown is no longer the same organisation. As the balance of these submissions endeavour to demonstrate, a holistic assessment, having regard to the whole of Crown's current systems and processes, in the context of

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60 *In the matter of Wynn MA, LLC* (Massachusetts Gaming Commission, 30 April 2019) at 15, c*iting Merrimack College v KPMG LLP* 480 Mass 614, 628 (2018). See also *Trap Rock Industries Inc v Kohl* 59 NJ 471, 284 A. 2d 161 (1971) at 167.

61 *Re Bally's* at 393. In that case, the Casino Control Commission observed that "the membership of the board of directors has undergone almost a complete change since 1974 and the company now appears earnest in its commitment to regulatory compliance": at 405.

62 Exhibit RC0970 COM.0005.0001.0334 at .0355 Bergin Inquiry Report Volume 2 at 338 (citations omitted).

63 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0018 [1.5.5].

64 Arzadon T3977.26-3978.1.

65 Exhibit RC0970 COM.0005.0001.0334 at .0355 Bergin Inquiry Report Volume 2 at 338.

its culture and reform agenda, shows that Crown Melbourne is — today — a suitable person to continue to hold its licence.

B.2. The public interest

B.25. Terms of Reference 10(D) and 10(E) require consideration of the "public interest". Again, analysis of that term must begin with consideration of the CCA.

B.26. Section 3 of the CCA provides that:

> **public interest** or **interest of the public** means public interest or interest of the public (except in section 74) having regard to the creation and maintenance of public confidence and trust in the credibility, integrity and stability of casino operations

B.27. Whether the formulation "have regard to" is exhaustive or merely indicative depends on the context in which it appears.[66] In decision-making contexts it has been frequently held to require the identified matters to be given weight as a "fundamental element" in the decision,[67] or the "focal points by reference to which" the decision is to be made.[68] But use of the expression does not necessarily mean that consideration of any other matters is excluded.[69] Indeed, in some contexts the expression may mean no more than a direction to consider whether "any, and, if so, what weight" should be given to the identified matter.[70]

B.28. A construction that would promote the purpose or object underlying the Act is of course to be preferred to a construction that would not.[71] Further, "a statutory definition … should be read down only if that is clearly required"[72] — for example, by its terms or context, or to give effect to the evident purpose of the Act.[73]

B.29. In the context of the CCA, there is nothing to suggest that the concept of "public interest" is "limited to public trust and confidence in the operation of casinos",

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66 *South Sydney Council v Royal Botanic Gardens* [1999] NSWCA 478 at [18] (Spigelman CJ, Beazley JA agreeing).

67 See, eg, *R v Hunt; ex parte Sean Investments Pty Ltd* (1979) 180 CLR 322 at 329 (Mason J, Gibbs J agreeing); *Pioneer Concrete Services Ltd v Yelnah Pty Ltd* (1986) 5 NSWLR 254 at 260 (Young J); *Australian Capital Television Pty Ltd v Minister for Transport and Communications* (1989) 86 ALR 119 at 145 (Gummow J).

68 *Evans v Marmont* (1997) 42 NSWLR 70 at 75, 80 (Gleeson CJ and McClelland CJ in Eq).

69 *Owen v Woolworths Properties* (1956) 96 CLR 154 at 160 (Dixon CJ, Williams, Fullagar, Kitto and Taylor JJ); *Maritime Services Board NSW v Liquor Administration Board* (1990) 21 NSWLR 180 at 193 (Campbell J); *Wallace v Stanford* (1995) 37 NSWLR 1 at 19-20 (Handley JA).

70 *Rathborne v Abel* (1964) 38 ALJR 293 at 295 (Barwick CJ); see also at 301 (Kitto J).

71 *Interpretation of Legislation Act 1984* (Vic) s 35(a).

72 *Owners of 'Shin Kobe Maru' v Empire Shipping Co Inc* (1994) 181 CLR 404 at 420 (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ).

73 *PMT Partners Pty Limited (in liq) v Australian National Parks and Wildlife Service* (1995) 184 CLR 301 at 310 (Brennan CJ, Gaudron and McHugh JJ).

as Counsel Assisting submit.[74] The text and context of the Act suggest that the term is not so limited.

B.30. As noted above, one of the purposes of the Act is to promote "tourism, employment, and economic development generally in the State".[75] It would be an odd result if the statutory definition of "public interest" *excluded* consideration of matters relevant to that purpose, among other matters. Such a construction would not promote the objects of the Act. A construction of "public interest" that included reference to matters going to public confidence in casino operations, but also included consideration of other matters as relevant in the circumstances, is accordingly to be preferred.

B.31. Such a construction is consistent with all the provisions of the CCA in which the term is used. By contrast, the more restrictive interpretation advanced by Counsel Assisting sits awkwardly with some of those provisions. For example:

(a) In exercising the power to approve a betting competition, the Minister must not approve a betting competition that "is offensive or contrary to the public interest".[76]

(b) In determining how to treat "protected information" on review of a Chief Commissioner's decision to exclude a person from a casino, the Court is directed to take into account matters including "the public interest in protecting the confidentiality of police investigative techniques and protected information in the possession of the police" and the extent to which a proposed method "is otherwise not in the public interest".[77] It is difficult to see how (or why) a restricted definition of "public interest" should apply in that context.

B.32. Further, Crown notes that the Letters Patent expressly require the Commission to consider the financial impact of its recommendations on the State. There is no good reason to suppose that the Commission is required to *include* consideration of such matters when formulating its recommendations, but to *exclude* those matters from consideration when inquiring and reporting on the "public interest" in accordance with its Terms of Reference.

B.33. As a result, Crown submits that the proper inquiry is whether or not there is a net public benefit in Crown holding the Melbourne casino licence. Uncontroversially, one of the matters that must be considered is public confidence and trust in Crown's casino operations. But that does not in Crown's submission preclude consideration of other relevant matters, including the

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74 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0020 [1.5.17].

75 CCA s 1(a)(iii).

76 CCA s 81A(3)(b).

77 CCA s 74A(4). Note that, unlike s 74 (which supplies the power for the Chief Commissioner to exclude a person), the statutory definition applies to s 74A.

financial impact of any recommendations the Commission might be minded to make.

B.34. Finally, Crown submits that even if Counsel Assisting's narrow construction of "public interest" were to be adopted, it could be in the public interest for Crown to hold the Melbourne casino licence notwithstanding a decrease in public confidence in its operations. What would be required is that the Commission or the VCGLR (in exercising its powers under the CCA) be satisfied that public confidence in Crown's operations can be restored. Such a conclusion would, on any view, be a conclusion as to the public interest "having regard to" public confidence and trust.

C. GOVERNANCE, RISK AND CULTURE

C.1. Introduction

C.1. The question of Crown Melbourne and Crown Resorts' corporate character is at the heart of the analysis required to be undertaken on suitability.[78] As Commissioner Bergin observed, it is necessary in assessing character to take a "holistic view" of both the casino licensee and Crown Resorts, including the assessment of the integrity of the entity's corporate governance and risk management structures and the adherence to adopted policies and procedures.[79]

C.2. Crown accepts that deficiencies in its culture and its governance and risk management processes and frameworks contributed to, and underpinned, several of the adverse findings made in the Bergin Inquiry Report. Those deficiencies included:

(a) the pursuit of profit to the point of obscuring proper consideration of the welfare of staff and risks associated with money laundering;

(b) confused and blurred reporting lines;

(c) deficiencies in Crown's risk management framework;

(d) lack of capability and insufficient resourcing in the risk management function; and

(e) insufficient resourcing in the compliance function.

C.3. Those deficiencies and failings have been recognised and accepted at the highest level within Crown.[80] As this section of Crown's submissions demonstrates, Crown has taken substantive and meaningful steps to address them. Viewed holistically, the people, systems and procedures being assessed by this Royal Commission are fundamentally different to those in place at the time at which the cultural, governance and risk failings exposed by the Bergin Inquiry occurred. As a result, Crown Resorts and Crown Melbourne have a different, and improved, corporate character and culture today.

C.4. That is not to say that the evolution of Crown's culture, or its governance and risk management practices, is complete. Crown accepts that much work remains to be done. Crown also acknowledges that this Commission has identified

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78 See section B of these submissions, specifically the notion that suitability under the CCA is to be assessed by reference to a person's "good repute, having regard to character, honesty and integrity".

79 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.2 at [18], citing *Matter of Wynn MA LLC*.

80 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [108]-[117]; Exhibit RC0427 CRW.998.001.0152 Halton I at [186]-[190]; Exhibit RC0354 CRW.998.001.0232 X Walsh III at [163]-[172]; see also Exhibit RC0419 CRW.998.001.0459 McCann I at [28]-[37].

further failings which Crown must, and will, work to address (for example, the underpayment of tax and the responsible service of gaming). Crown is doing the work to address legacy issues, as well as to address any and all new issues as they surface. The Commission can be satisfied, on the evidence, that there is the commitment and resources required to drive Crown's cultural and governance reforms to their conclusion.

C.2. Crown's reform of its senior leadership and organisational structure

C.5. Directors and senior officers of companies are instrumental in setting the corporate culture, which finds expression in the refrain "setting the tone from the top".[81] They are also ultimately responsible for setting, monitoring and maintaining a company's corporate governance standards, practices and processes.[82]

C.6. Commissioner Bergin made the following observation in her report about the direct relationship between the suitability of a casino licensee and the composition of its board and management:[83]

> It is accepted that a company's suitability may ebb and flow with changes to the composition of the company's Board and Management, and others who influence its affairs, over time. If a company's character and integrity has been compromised by the actions of its existing controllers, then it may be possible for a company to "remove a stain from the corporate image by removing the persons responsible for the misdeeds."[84] However, this would only be possible if the company could "isolate the wrong done and the wrongdoers from the remaining corporate personnel".[85] It would be necessary to ensure that "the corporation has purged itself of the offending individuals and they are no longer in a position to dominate, manage or meaningfully influence the business operations of the corporation."[86]

C.2.1 Board renewal

C.7. There have been extensive changes to the composition of Crown's Board in recent months.

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81 Commissioner Bergin observed that the requirement for tone to be set from the top is a theme that frequently emerges with respect to concepts of corporate governance best practice: see Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.1 at [25].

82 The concepts of corporate governance and corporate culture are inextricably linked (See, eg, Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.1 at [15]; Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Financial Services Royal Commission**), Final Report, p 334 – 335; See also Whitaker T1909.26-43. See also Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne (June 2021) at .0181.

83 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2 , Chapter 4.2 at [16].

84 *Re Bally's,* 403

85 *Re Bally's*, 403.

86 *Trap Rock Industries Inc v Sagner* 133 NJ Super 99 (1975), 108.

C.8. Since October 2020, eight directors of Crown Resorts have resigned, including all directors appointed by the majority shareholder, CPH.[87] Of the 11 directors of Crown Resorts as at the 2020 Annual Report, only three remain.[88] These changes signal a clear departure from Crown's previous Board and senior management. Changes to senior management, which are ongoing, are dealt with at paragraph C.31 and following below. The evidence of Victoria Whitaker of Deloitte, who is recognised as an industry expert in the field of organisational culture,[89] was that this "changing of the guard, both at the Board level and Executive level, will have a profound impact on the culture of the organisation."[90]

C.9. The current composition of the Crown Resorts board is as follows.

(a) *Helen Coonan*

Ms Coonan is the Executive Chair of Crown Resorts on an interim basis. She was an independent director of Crown Resorts from 2011 until being appointed Chairman in January 2020. Ms Coonan was appointed interim Executive Chairman of Crown Resorts in February 2021 to provide stability and leadership following the Bergin Inquiry. This followed Commissioner Bergin finding that, based on Ms Coonan's character, honesty and integrity, ILGA could accept commitments given by Ms Coonan in respect of the future operations of Crown.[91]

Ms Coonan informed the Commission in her evidence that she does not intend to remain a board member of Crown.[92] The timing of Ms Coonan's departure has firmed since she gave evidence. She intends to announce her retirement as soon as Crown has finalised its plans in relation to the appointment of a new leader. Crown expects to appoint that new leader by 31 August 2021. The evidence in relation to Ms Coonan is dealt with below and in further detail in Annexure C.1 to these submissions.

(b) *Antonia Korsanos*

Ms Korsanos joined the board of Crown Resorts in May 2018. Ms Korsanos was previously the Chief Financial Officer (**CFO**) of Aristocrat

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87 Exhibit RC0416 CRW.998.001.0423 Weeks I at [36].

88 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [8].

89 Arzadon T3968.30-43, 3970.27-29, 3990.36-41.

90 Whitaker T1945.24-26.

91 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.1 at [67].

92 Coonan T3731.10 –30, T3862.18 – 38; Exhibit RC0437 CRW.998.001.0526 Coonan I at [30(o)-(q)].

Leisure Limited and has since held various non-executive director roles.[93] Ms Korsanos is currently the Chair of Crown Melbourne.

(c) *Sarah Jane Halton*

Ms Halton joined the board of Crown Resorts in May 2018. Ms Halton has significant leadership experience across both the public and private sectors. She previously held senior roles in the Australian Public Service, and has since held various non-executive director and other roles.[94]

(d) *Nigel Morrison*

Mr Morrison has over 25 years' executive experience in the casino industry, including acting as CEO and Managing Director of SkyCity Entertainment Group from 2008 to 2016.[95] His skills relevantly include collaboration with regulators and government, organisational structure and design, establishing organisational values, recruitment, the use of key performance objectives to drive culture and behaviour and rebuilding an environment of trust, and aligning remuneration structures with behaviour and values.[96]

As CEO of Sky City, Mr Morrison presided over the implementation of a change program, including cultural change and change of management.[97]

C.10. Crown has also nominated Bruce Carter to join the Board of Crown Resorts. Mr Carter is presently awaiting regulatory approval in New South Wales, having received approval in Victoria and Western Australia. Mr Carter brings significant and diverse skills to the Board. His experience includes director roles with ASX listed companies, gaming companies and financial services companies.[98] Mr Carter is familiar with AML obligations and dealing with government and community expectations.[99] Mr Carter is aware that Crown "has many challenges in front of it and requires a total change to its corporate culture, philosophy and operation".[100] Those are challenges which Mr Carter is qualified to address, given his experience in effecting operational turnaround, cultural change and the repositioning of large companies.[101]

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93 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [2]; Exhibit RC0970 Bergin Inquiry Report Volume 2, Ch 4.3.5 at [82].

94 Exhibit RC0427 CRW.998.001.0152 Halton I at [4]. Halton, T-3643.24-32.

95 Exhibit RC0223 CRW.998.001.0447 Morrison I at .0447-.0448; Exhibit RC0223b CRW.512.129.0070 Curriculum Vitae, Nigel Morrison.

96 Exhibit RC0223 CRW.998.001.0447 Morrison I at .0450.

97 Exhibit RC0223 CRW.998.001.0447 Morrison I at .0450.

98 CRW.510.085.0001 Curriculum Vitae, Bruce James Carter.

99 Exhibit RC0931 CRW.998.001.0438 Carter I at [23]-[27].

100 Exhibit RC0931 CRW.998.001.0438 Carter I at [38]-[43].

101 Exhibit RC0931 CRW.998.001.0438 Carter I at [12], [24].

C.11. In addition to Ms Korsanos, who is Chair of Crown Melbourne, Ms Coonan and Mr Morrison are also directors of Crown Melbourne. They are currently joined on the Crown Melbourne board by Xavier Walsh and Rowena Danziger.[102] Mr Walsh's position is addressed below in the context of his role as CEO of Crown Melbourne but it suffices to note for present purposes that Mr Walsh will be leaving Crown on 20 August 2021 on terms that he is presently discussing with Crown. Ms Danziger, a former non-executive director of Crown Resorts, has been a non-executive director of Crown Melbourne since 2003 and was former Chair of the Crown Melbourne Audit Committee. Ms Danziger's role will also be reviewed as part of the ongoing process of Board renewal.

C.12. For the following reasons, the Commission can be confident that the directors of Crown Resorts can be relied upon to ensure that Crown Resorts meets the exacting standard rightly required of a casino licensee's ultimate holding company and that the directors of Crown Melbourne can be relied upon to ensure that Crown Melbourne meets the exacting standards required of a Victorian casino licensee.

C.13. *First,* the three directors of Crown Resorts who remained on the Board following the publication of the Bergin Inquiry Report are persons of integrity, honesty and good character. Counsel Assisting this Commission advances no contention to the contrary.

C.14. No director the subject of an adverse finding by Commissioner Bergin remains on the Board. Specifically, Commissioner Bergin found that:

(a) "the review of [Ms Coonan's] evidence demonstrates that her character, honesty and integrity has not been and could not be called into question. The Authority would be justified in accepting any commitment or undertaking given personally and/or on behalf of Crown that may be proffered by the Chairman in respect of the future operations of Crown and/or the Licensee taking into account the other matters of significance to which reference is made elsewhere in the Report";[103]

(b) "the more recently appointed independent directors, Ms Halton and Ms Korsanos, together form a core of the changing character of the company upon which the Authority would be justified in relying for honest, open and fair dealing in the future";[104]

(c) "Ms Korsanos has industry experience, common sense and capacity. Her evidence was honest, clear, direct and helpful. She is an asset to the Crown Board and it may well be that given the time for appropriate reflection,

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102 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [11].

103 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.1 at [67].

104 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.5 at [10].

> and of course availability, she would also be an asset on the Board of the Licensee".[105]

C.15. Similar findings should be made in connection with the evidence that each gave to this Commission. Each of Ms Coonan, Ms Halton and Ms Korsanos gave frank and credible evidence and were prepared to acknowledge past mistakes and make appropriate concessions. The fact that each decided to remain as a director of Crown and steer the company through this difficult period of transition, after Crown had lost most of its directors, CEO and a host of other senior executives in a matter of weeks, reflects positively on their integrity and character. As Ms Coonan observed:[106]

> I could have gone too, but I had to make a judgment on balance, as I had been Chair of the company through 2020, and had an opportunity to get on the way through to the Bergin Inquiry, and certainly after it, and through it, a new appreciation of the problems. And, on balance, I thought that I had a duty to do what I could to fix it, in the interests not only of Crown, but its 18,000 employees, shareholders and stakeholders. I did feel a responsibility, and I was very fearful that the company would just implode if the three of us, the three directors who were able to step up and take responsibility, didn't do so. So the easiest thing in the world for me… would have been to pack up and go. Far harder to stay and try to put in place --- work diligently to fix the issues.

C.16. Similarly, Ms Korsanos gave the following evidence:[107]

> I wouldn't be here if I didn't believe that we could change Crown. I think me, like everybody in the business, has had a choice that we could make. I think the way I think means I didn't see this as a choice, it was a duty I had. I signed up as a director, fell into --- well, I got a great understanding out of the Bergin Inquiry and unfortunately more surprises out of this one, but I like to look --- I am a glass half-full person and I like to look at every problem from the perspective of how do you solve it. And back in February I could have made a choice to move on, but I didn't, because I had signed up. I held myself accountable for what I now understood and I could see that I could be part of the solution.
>
> …
>
> I will finish with where I started; I wouldn't be here if I didn't believe it could be achieved. I don't believe in failure. I do believe I can support this change. I've seen it before. I think we have a group of people who are, despite the fatigue, are completely committed and motivated to do this.

C.17. Each has had to assume a greater burden following the departure of the majority of the Board. Ms Coonan took over the role of interim Executive Chair and has been responsible for managing the company while the search for a new CEO took place, and while Mr McCann awaits regulatory approval. Ms Korsanos has assumed the role of Chair of Crown Melbourne.

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105 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.5 at [93].

106 Coonan T-3861.09-22.

107 Korsanos T3708.32-3709.42.

C.18. Ms Halton and Ms Korsanos have been required to be far more 'hands on' than is usually expected of a non-executive director. Ms Halton stated:[108]

> [I]t is not normal for the directors themselves to run the recruitment processes to bring in some of these new executives, but that is essentially what we've had to do. This has been really, without any ambiguity, one of the most intense periods to try and get the company on to a very solid footing with the assistance of senior, experienced, credible executives. And that's what we've been focused on. So you are right, this is not what I have had to do anywhere else, but I mean, essentially that is what a board does. If there is a crisis of this kind, you have to step up. It goes with the territory.

C.19. The substantial reform program which Ms Coonan, Ms Halton and Ms Korsanos have overseen since February 2021 reflects the significant work they have done to address the matters identified by Commissioner Bergin as requiring remediation in order for Crown Sydney (and Crown Resorts) to be considered suitable for the purposes of the NSW legislation.

C.20. *Second,* Ms Coonan is set to depart Crown by the end of August 2021, having laid the foundation of Crown's reform and carried out the transitionary role for which she was appointed interim Executive Chair. As Ms Coonan will not be an existing associate of Crown Melbourne at the time the Commission reports to government, it is not necessary for the Commission to make, and the Commission ought not make, any finding about Ms Coonan's suitability. If the Commission does decide to make a finding, it should reject Counsel Assisting's submission that it is open to the Commission to find that Ms Coonan is not a suitable associate of Crown Melbourne.[109]

C.21. The matters to be determined in assessing suitability of an associate primarily concern whether the person is of good repute, having regard to character, honesty and integrity.[110] The factors referred to in s 9(2) of the CCA make it apparent that the legislature was concerned with ensuring that associates of the casino licensee were persons of good repute (having regard to their character, honesty and integrity) and did not have "undesirable or unsatisfactory financial resources".[111] This construction is consonant with the objects of the CCA, which are concerned (relevantly for the proper construction of the phrase "suitable person") with ensuring the management and operation of casinos remain free from criminal influence or exploitation and that gaming in the casino is conducted honestly.[112]

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108 Halton T3644.21-30.

109 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [4.30]-[4.31], [4.39]-[4.41], [5.1]-[5.96].

110 CCA s 9.

111 CCA s 9(2)(a), (b), (f).

112 CCA s 1.

C.22. Despite in their submissions acknowledging that this is the correct approach,[113] Counsel Assisting have not applied it in relation to Ms Coonan. Nowhere in their submissions do Counsel Assisting submit that Ms Coonan is not a person of good repute, or that any of her conduct to which they refer impugns her character, honesty or integrity. The highest the submission rises is that Ms Coonan on occasion exercised "poor judgment"[114] (sic) or displayed a "lack of curiosity"[115] and "lack of rigour".[116] While, for reasons set out in Annexure C.1 to these submissions, those characterisations of Ms Coonan's conduct are contested, even if accepted, they would not provide a proper foundation for an unsuitability conclusion.

C.23. *Third*, the incoming directors – Mr Morrison and Mr Carter – each have deep and varied experience, including in driving cultural change within organisations. Both have casino industry experience, which is particularly important in circumstances where Crown is bringing in a number of senior executives from other fields of expertise, such as Mr McCann and Mr Blackburn. The fact that Mr Morrison and Mr Carter have substantial experience with Crown's competitors in other jurisdictions will provide important balance and perspective to the views being brought by executives with no prior experience in the gaming sector.[117] The appointments of Mr Morrison and Mr Carter have been made with the assistance of recruitment consultants, Korn Ferry. In conducting their search, Korn Ferry have been instructed that compliance, corporate governance and collaboration with regulators and government are priorities for the organisation.[118]

C.24. Mr Morrison was examined at the Commission's public hearings. He was an impressive and credible witness. He is aware of the challenges facing Crown.[119]

C.25. *Fourth,* the Boards of Crown's subsidiaries have also been refreshed, with the resignation of Ken Barton, John Horvath, Barry Felstead and John Poynton as directors.[120] The former Chair of Crown Melbourne, Andrew Demetriou, who was the subject of an adverse credit finding by Commissioner Bergin, has also resigned from that role (and from all other Crown Boards) and has been replaced by Ms Korsanos.

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113 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 1 at [5.3], [5.4] and [5.9].

114 Eg, COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [5.67] and [5.84].

115 Eg, COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [5.83]-[5.84].

116 Eg, COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [5.26].

117 Arzadon T3960.27-37.

118 Exhibit RC0437m CRW.516.009.7264 Korn Ferry, Board Search and Succession (11 November 2020) at .7267 and .7274.

119 Exhibit RC0223 CRW.998.001.0447 Morrison I at .0454.

120 Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0008; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0074.

C.26. *Fifth*, each of Mr Johnston, Mr Jalland and Mr Poynton, the directors of Crown Resorts appointed by CPH, have resigned. None of the remaining or new directors of the company have any current affiliation with CPH.[121] This is of some significance in light of the findings made by Commissioner Bergin as to the influence CPH directors exercised over the former Crown Board. Commissioner Bergin found that a "serious imbalance" had been caused by the influence of CPH over Crown's operations with some of its directors, also serving as Crown's directors, descending into the lower tiers of Crown's management.[122]

C.27. That influence was particularly acute in relation to Crown's VIP International business, which was the division of Crown's business responsible for marketing operations in China and junkets. The "blurred reporting lines" to which Commissioner Bergin made repeated reference[123] (and which Crown's directors have identified as a cause of past failings in evidence before this Commission [124]) was the result of Mr Johnston being involved in the management of the VIP International group.[125] Commissioner Bergin found that Mr Johnston involving himself in the VIP International operations in this way:[126]

> resulted in the VIP International unit operating as a separate business having its own culture, or lack thereof, and driving profit to the detriment of its staff. The development of the structure with the blurred reporting lines and the development of its own culture resulted in it getting away from Crown Board control and indeed getting out of control.

C.28. It is also to be recalled that between February 2017 and January 2020, the most powerful position at Crown was held by John Alexander, who was Chairman of the Board and CEO through that period. Mr Alexander had a lengthy and close relationship with the Packer family[127] stemming from his previous employment with (and subsequently directorship of) Publishing and Broadcasting Limited.[128] This loyalty to the Packer family led Commissioner Bergin to conclude that Mr Alexander had managed Crown's business on the basis of

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121 Exhibit RC0419 CRW.998.001.0459 McCann I at [8]-[13]; Exhibit RC0223 CRW.998.001.0447 Morrison I at [4]; Exhibit RC0931 CRW.998.001.0438 Carter I at [19]-[21]. As Ms Korsanos explained in her answer to a question from the Commissioner, her directorship of Ellerston Capital carries with it no association with the Packer family or CPH: Korsanos T3710.37-3711.1.

122 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.5 at [11].

123 See, eg, Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.7 at [24]; Ch 4.5 at [72].

124 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [108(a)]; Exhibit RC0427 CRW.998.001.0152 Halton I at [189].

125 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [90]-[92].

126 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [91].

127 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.6 at [2].

128 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.6 at [3]-[8].

"whatever … Mr James Packer wanted was what was done".[129] This included permitting Crown's affairs to be "managed remotely" by Mr Packer.[130] Mr Alexander ceased to be a director of Crown Resorts in October 2020.[131]

C.29. The contrast between the former Board of Crown, and the current Board, is stark. The evidence before this Commission was to the effect that it was only following the departure of directors and senior executives, and the effective removal of the CPH influence from the Board and Crown's affairs generally, that Ms Coonan, Ms Halton and Ms Korsanos "got control" over the affairs of the company and could chart a different course.[132] Ms Halton's evidence was that following these changes, there has been an unambiguous message that Crown must comply with the law and its regulatory obligations.[133] Ms Korsanos gave evidence that she has observed traction in reforming Crown's culture since the changes to the Board and senior management.[134] That is a powerful reason to accept the submission, developed further below, that the Commission can have confidence that Crown will not return to its 'old ways' once the spotlight of this Royal Commission, and other inquiries and regulatory processes, has receded.

C.30. *Finally*, Crown cannot be fairly criticised for the fact that its Board has been understaffed in the period following the publication of the Bergin Inquiry Report.[135] The removal of the majority of Crown's former directors is pivotal to its reformation; the Bergin Inquiry provided a 'burning platform' of a kind that seldom presents. It enabled an overhaul of directors and enabled Crown to start with a clean slate, with the only directors remaining being those endorsed by Commissioner Bergin as being persons within whom the NSW regulator could repose confidence. It has taken time to supplement those directors with additional directors, but that has been in part due to the process of finding the right candidates taking time and in part due to the comprehensive probity process that must be followed before a new director can be appointed.

Senior management

C.31. In addition to the changes to the Crown Resorts Board, a number of senior executives left the organisation before or shortly after the Bergin Inquiry Report was published. These include Crown's CEO & Managing Director (Ken Barton),

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129 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.6 at [56].

130 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.3.6 at [56].

131 Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0008; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0074.

132 See, eg, Coonan T3766.30-39: "*The way boards operate and the way in which old management operates are not something you can turn around quickly. A change, a real change of approach wasn't possible with old management and old Crown*".

133 Halton T3571.45-3572.2.

134 Korsanos T3661.31-47.

135 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 19 at [1.27].

the CEO of Australian Resorts (Barry Felstead), the Crown General Counsel (Mary Manos), and the Chief Legal Officer of Australian Resorts (Joshua Preston).[136] Crown has replaced those executives with highly qualified persons from outside Crown,[137] who are referred to at paragraph C.37 below.

C.32. The renewal of Crown's senior management is an ongoing process. The new Managing Director and CEO of Crown Resorts, Steve McCann, commenced in the role (subject to regulatory approval) on 1 June 2021. Mr McCann is thoroughly reviewing all senior management positions at Crown. As Mr McCann said in his evidence to the Commission:[138]

> [A]nyone who has got experience in a senior management role forms a view on people and judges people fairly early. I'm no different. I've already formed a preliminary view on who I think the best quality people might be that I've met, but I'm not certain, and I need to work through that. There will be people who simply are not up for the journey and there will be people that definitely are, and I need to make sure that I spend the time to make the right decisions. As I said, it has to be a combination of retribution and reformation. It's not a case of fire everyone who has made a mistake.

C.33. As noted, Mr Walsh will be leaving Crown on 20 August 2021 on terms that he is presently discussing with Crown. As a result, Mr Walsh will not form part of the leadership of Crown Melbourne, or be an associate of Crown Melbourne, at the time this Commission reports to government. The question of Mr Walsh's suitability is addressed in Annexure C.2 to these submissions.[139]

C.34. A number of changes to senior management have already been made and it is expected that there will be a number of further changes in the short term.

C.35. As is touched on below in relation to Crown's organisational restructure, Crown has disbanded its VIP international business. All overseas offices have been closed and Crown is in the process of obtaining advice to inform its consideration of how the VIP international business might be structured and how it might operate going forward (noting that it is currently not operational).[140]

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136 Exhibit RC0416 CRW.998.001.0423 Weeks I at [36(a)].

137 Exhibit RC0416 CRW.998.001.0423 Weeks I at [36(a)].

138 T3499.06-15. This was also reflected in Jane Halton's evidence: "*I would also make the point that Mr McCann has arrived, Mr McCann is going to make an assessment about all of our senior management team going forward. I'm conscious that whilst the directors have had to step in in ways that are not normally what we do, to do recruitments to actually change all these things over a very short period of time, I would also like to give Mr McCann the opportunity to be part of this journey*" (T.3612.41 – 47).

139 Counsel Assisting have submitted that it is open for the Commission to find that Mr Walsh is not a suitable person to be an associate of Crown Melbourne. As with the position in relation to Ms Coonan, because Mr Walsh has agreed that he will leave Crown on 20 August 2021, the Commission need and ought not, in Crown's respectful submission, make any finding in relation to his suitability to be an associate of Crown Melbourne.

140 Williamson T3168.35-41.

C.36. The three senior executives formerly responsible for the VIP international business – Ishan Ratnam, Jacinta Maguire and Roland Theiler – are no longer with Crown. This is of particular significance in light of Commissioner Bergin's finding, as noted above, that the VIP International business operated as a separate business, with its own problematic culture that drove profit to the detriment of its staff.[141] It was the VIP international business which had direct responsibility for Crown's operations in China in the period before October 2016 as well as for Crown's dealings with junket operators and their agents. It was also the VIP international business that first proposed the CUP process.[142]

C.37. Crown's reform is supported by the following new senior executives (amongst others).

(a) *Steve McCann (CEO, Crown Resorts)*

Mr McCann was appointed as Managing Director and CEO of Crown Resorts on 1 June 2021, subject to regulatory approvals. He was recruited specifically to ensure the sustainability of Crown's reform program, to build transparent relationships with key regulators (including the VCGLR, the Department of Local Government, Sport and Cultural Industries (**DLGSC**), the Independent Liquor & Gaming Authority (**ILGA**), the Australian Securities and Investments Commission (**ASIC**) and the Australian Transaction Reports and Analysis Centre (**AUSTRAC**)), and to deliver Crown's cultural reforms, remediation action plan and AML program.[143]

Mr McCann's experience includes 12 years as the CEO and Managing Director of ASX-listed Lendlease.[144] Mr McCann described the culture of Lendlease at the commencement of his tenure as "one of a lack of accountability and a siloed mentality across the business and a lack of purpose".[145] Mr McCann oversaw significant changes to that company's culture, purpose and systems, including safety improvements, a cultural refresh and integrated business model, an increased focus on social sustainability, a strong culture of compliance and governance and transparent relationships with regulators.[146] The reforms headed by Mr

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141 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [91].

142 Exhibit RC0268xx CWN.514.061.8246 email chain between members of the VIP team in relation to the proposal; Exhibit RC0263 CWN.514.063.0229 email chain between members of the VIP team and Ms Fielding and Ms Tegoni in relation to the proposal.

143 Exhibit RC0419 CRW.998.001.0459 McCann I at [18], Annexure 2 .0477.

144 Exhibit RC0419 CRW.998.001.0459 McCann I at Annexure 1 .0472.

145 McCann T3488.7-9.

146 Exhibit RC0419 CRW.998.001.0459 McCann I at [17]. Counsel Assisting suggest that Mr McCann may not have experience in developing a candid, transparent and strong working relationship with the regulator, and suggest that he may not possess the temperament to maintain an open relationship with the regulator (COM.0500.0001.0001 Counsel Assisting Closing

McCann included development of an integrated business model and identification of purpose and values.[147]

Mr McCann presented as an impressive[148] senior executive who is committed to the cause of reforming Crown and has the right temperament to engage with all Crown's staff and stakeholders, including its regulators.[149]

(b) *Steven Blackburn (Chief Compliance and Financial Crime Officer)*

Mr Blackburn has extensive experience in senior AML/CTF roles, including roles as Chief Financial Crime Risk Officer and Group Money Laundering Reporting Officer at National Australia Bank and Chief AML Officer at Canadian Imperial Bank of Commerce. In those roles, Mr Blackburn has been responsible for designing, implementing, monitoring and testing financial crime programs.[150]

Counsel Assisting's submissions, while acknowledging Mr Blackburn's evident competence and "strong credentials",[151] appear to take issue with the fact that Mr Blackburn's experience is "from the banking sector".[152] Given Mr Blackburn's significant experience and credentials, it is submitted that this in no way detracts from Mr Blackburn's ability to lead Crown's compliance and financial crime functions. Ms Arzadon, noting the parallels between the financial services and gaming sectors, accepted

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Submissions, Ch 16 at [10.7]-[10.10]). Mr McCann gave evidence that upon his commencement at Crown, he asked for meetings to be set up with Crown's regulators (McCann T3455.26). He has stated that Crown intends to achieve an ongoing, transparent, open relationship with its regulators, and recognised the need to align with the purpose of Crown's regulators (McCann T3457.3-9, T3486.7-13). There is no reason to suppose that Mr McCann might not be able to achieve an open relationship with regulators, nor was any such concern fairly put to him by Counsel Assisting.

147 McCann T3496.27-3498.30.

148 As the Commissioner, with respect, observed in the course of the hearing: "The way I heard him speak, he is a very impressive gentleman" (T3678.30-31).

149 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [10.10]. Counsel Assisting also sought to raise doubt as to Mr McCann's level of insight and ability to effect practical change, suggesting that he was not able to "clearly articulate his specific role and actions in bringing about cultural change" (COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [10.15]). With respect, that is not a fair criticism. Mr McCann gave specific evidence about the significant cultural reforms that he implemented, including changes to Lendlease's values, purpose and business model and gave specific examples of actions taken to drive a culture of safety and reporting (McCann T3496.27-3499.41). Mr McCann acknowledged, quite appropriately, that it was not possible for any one person to achieve cultural transformation and that it was necessary to recruit qualified professionals and invest in resources (McCann T3489.38-3490.3). He further demonstrated an understanding of the drivers of cultural change which was consistent with the evidence given by Ms Whitaker and Ms Arzadon (McCann T3488.20-3489.31).

150 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [5]-[12].

151 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [2.3].

152 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 15 at [1.34].

that senior management recruited from the financial services sector brought "relevant expertise". [153] Further, McGrathNicol, in its independent assessment of Crown's AML/CTF processes and procedures, has endorsed Mr Blackburn as having the *"capability, track record and standing to lead"* Crown's FCCCP.[154]

Mr Blackburn is also responsible for overseeing Crown's compliance function and the responsible service of gaming. Mr Blackburn has already made some initial, common-sense improvements to Crown's responsible gambling response[155] and is in the process of developing a program of reform (similar to his FCCCP) that will include a comprehensive review of Crown's responsible gambling services (informed by expert advice[156]) and the implementation of any necessary reforms.[157]

(c) *Tony Weston (Chief People and Culture Officer)*

Mr Weston has over 30 years' experience in human resources across a range of industries, including gaming and hospitality. He has significant experience in leading the design and implementation of cultural change programs and achieving organisational transformation, including at National Australia Bank (in the context of the Financial Services Royal Commission), Kmart Australia Limited, Aristocrat Leisure Limited, 7-Eleven Australia, ALH Group, Treasury Wine Estates and Telstra Corporation Limited.[158]

Mr Weston's duties include the implementation of the Culture Change Program.[159] Mr Weston reports to the Managing Director and CEO, and will have a reporting line to the Board through the People, Remuneration and Nomination (**PRN**) Committee.[160]

(d) *Anne Siegers (Chief Risk Officer)*

Ms Siegers was previously Crown's Group General Manager – Risk and Audit, having been appointed in that role in 2017.[161] The role of Chief

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153 Arzadon T3963.9-31.

154 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0012.

155 Exhibit RC0652b CRW.510.073.4540 Memorandum regarding Responsible Gaming Enhancements (24 May 2021); Exhibit RC0652a CRW.510.073.4536 Responsible Gaming Organisational Chart, May 2021.

156 Blackburn T3058.41-46.

157 Blackburn T3034.43-44; T3050.24-28; T3058.41-46.

158 Exhibit RC0478 CRW.998.001.0521 Weston I at [8].

159 Exhibit RC0437 CRW.998.001.0526 Coonan I at [50(a)]; Exhibit RC0437g CRW.512.010.0273 Executive Contract – Tony Weston (5 March 2021) at .0286.

160 Exhibit RC0437 CRW.998.001.0526 Coonan I at [51].

161 Exhibit RC0437 CRW.998.001.0526 Coonan I at [42]-[43].

Risk Officer was created in order to ensure independence of Crown's risk and audit functions.[162] The role improves the Board's oversight of risk and compliance functions, and ensures that risk matters can be escalated to the Board.[163] Ms Siegers reports directly to the Crown Resorts CEO and is a member of the executive teams of Crown and each Crown Property.[164] Ms Siegers has direct reporting lines to the Risk Management Committee (**RMC**), the Audit Committee of Crown Melbourne, and the Boards of Crown Resorts, Crown Melbourne, Crown Sydney and Crown Perth.[165]

(e) *Jessica Ottner (Group General Manager – Internal Audit)*

Ms Ottner has an administrative reporting line to the CFO and a direct reporting line to the Crown Resorts Audit and Governance Risk Committee.[166] Ms Ottner also reports directly to the Boards of Crown Melbourne, Crown Sydney and Crown Perth.[167]

(f) *Armina Antoniou (Executive General Manager, Financial Crime Risk)*

On 23 July 2021, Mr Blackburn announced the appointment of Armina Antoniou as Executive General Manager of Financial Crime Risk. Ms Antoniou will be responsible for building and maintaining Crown's financial crime program, providing advice and training to the business, establishing and maintaining risk methodologies and assessments and developing intelligence to improve the detection and reporting of financial crime. Ms Antoniou has over 20 years' experience as a risk and legal professional with a number of Australian and international organisations. Most recently, she was responsible for overseeing Tabcorp's AML/CTF program.

(g) *Daniel Rule (Executive General Manager, Financial Crime and Compliance Operations)*

At the same time as announcing Ms Antoniou's appointment, Mr Blackburn also announced the appointment of Daniel Rule as Executive General Manager of Financial Crime and Compliance Operations. Mr Rule will be responsible for Crown's financial crime transaction monitoring and investigations function, the customer due diligence function, third party requests, and the financial crime and compliance

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162 Exhibit RC0437 CRW.998.001.0526 Coonan I at [41].

163 Exhibit RC0437 CRW.998.001.0526 Coonan I at [46].

164 Exhibit RC0427 CRW.998.001.0152 Halton I at [110].

165 Exhibit RC0427 CRW.998.001.0152 Halton I at [113].

166 Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0013; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0080.

167 Exhibit RC0427 CRW.998.001.0152 Halton I at [118] – Figure 10.

solutions function. This solutions function will, in turn, focus on supporting financial crime risk, compliance and Responsible Gambling through a shared data analytics function, technology oversight and improvement and change management. Mr Rule joins Crown from National Australia Bank, where he is currently the General Manager of Financial Crime Remediation and is responsible for driving all NAB group financial crime remediation activities.

(h) *Nick Weeks (Executive General Manager, Transformation and Regulatory Response)*

Mr Weeks is responsible for coordinating Crown's interaction with ILGA and overseeing Crown's Remediation Plan.[168] Mr Weeks was previously the Chief Operating Officer of National Rugby League Limited. He was responsible for establishing the organisation's integrity, risk and legal function, and has acted as the Head of Integrity for the National Rugby League.[169]

(i) *Betty Ivanoff (Group General Counsel)*

Ms Ivanoff commenced as General Counsel on 21 June 2021.[170] Crown has separated the roles of General Counsel and Company Secretary in order to improve its corporate governance framework, and compliance and risk management functions.[171]

Organisational restructure

C.38. To complement the leadership changes outlined above, Crown has undergone an organisational restructure. That restructure includes the following elements.[172]

(a) The creation of a new independent Financial Crime & Compliance department under the leadership of Mr Blackburn as Chief Compliance & Financial Crime Officer (with the responsible gambling function also reporting to Mr Blackburn).

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168 CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021).

169 Exhibit RC0416 CRW.998.001.0423 Weeks I at [4].

170 Fielding T2677.38-40; Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0012; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0079.

171 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [99(b)(viii)], [99(g)], [117(h)].

172 Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0011; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0077-.0079.

(b) The creation of a group Human Resources function to drive cultural consistency throughout the organisation, and the creation of a new Chief People and Culture Officer.

(c) The separation of the General Counsel and Company Secretary roles.

(d) The overseas offices of Crown's VIP business have been closed.

(e) Crown has ceased dealing with junkets and junket operators (including their representatives or agents).

(f) Crown's internal audit department has been separated from the risk function and a new Group General Manager for Internal Audit has been appointed.

(g) The Company has appointed a new independent external auditor for the 2021 financial year.

(h) Enhancements have been made to the Company's framework for managing risk, described in detail in Part C.4 below.

C.39. A key element of Crown's organisational change is the restructure of compliance and risk functions to enhance reporting to, and oversight by, the Crown Resorts Board.[173]

(a) The Chief Risk Officer reports directly to the CEO and has a reporting line to the Risk Management Committee.

(b) The Group General Manager – Internal Audit reports administratively to the CFO and has a direct reporting line to the Audit and Corporate Governance Committee.

(c) The Chief Compliance & Financial Crime Officer has direct reporting lines to the CEO and Board, including in respect of Responsible Gambling.

(d) The Chief People and Culture Officer reports to the CEO, and has reporting lines to the PNR and OHS Committees.

C.40. These improvements to the Crown Resorts Board's oversight of the Group supplement the risk and compliance oversight conducted by Crown Melbourne's own Board, Audit Committee and Compliance Committee.

C.41. The clarification of reporting lines can be contrasted with Crown's previous group structure. The failure to have clear and appropriate reporting lines to the

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[173] Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0011-.0015; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0077-.0081.

Board resulted in the Board being unable to exercise appropriate oversight,[174] the creation of 'silos', and a disjointed culture across the organisation.[175]

Termination of arrangements facilitating CPH's influence over Crown's affairs

C.42. As noted above, a significant factor underlying the failings identified in the Bergin Inquiry Report was the powerful influence exerted by CPH, including, in particular, by Mr Johnston and Mr Packer. CPH's influence over the conduct of Crown's affairs compromised the company's corporate governance and risk management structures. In short, the corporate needs of Crown were not given precedence over the needs or desires of CPH.[176]

C.43. Since the commencement of the Bergin Inquiry, the following actions have been taken which have had the effect of reducing the influence of CPH upon Crown.

(a) On 16 October 2020, Crown suspended the provision of information to CPH and Mr Packer, pending further consideration by the Board.[177]

(b) On 21 October 2020, the Services Agreement and Controlling Shareholder Protocol between Crown and CPH (which allowed for the sharing of information between Crown and CPH) was terminated.[178] As a result of these changes, CPH no longer provides services to Crown, either informally or formally, and no longer has access to Crown's confidential information.[179]

(c) Between 10 and 28 February 2021, the CPH nominated directors of Crown Resorts (Mr Johnston, Mr Jalland and Mr Poynton) resigned.[180]

C.44. The influence of CPH on "old Crown" reached beyond what was facilitated by the terms of the Controlling Shareholder Protocol and the Services Agreement. As Commissioner Bergin found, following his resignation from the Crown Board in May 2018, and the entry into the Controlling Shareholder Protocol, Mr Packer "took the view and behaved in a manner consistent with the view that he was still in control of Crown".[181] Mr Packer made demands on the officers and staff of Crown, and set policy and made decisions, in a manner that travelled beyond what the terms of the Controlling Shareholder Protocol entitled him to.[182]

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174 Exhibit RC0427 CRW.998.001.0152 Halton I at [188]-[189].

175 Whitaker T1917.20-46.

176 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [137].

177 Exhibit RC0437 CRW.998.001.0526 Coonan I at [12].

178 Exhibit RC0437 CRW.998.001.0526 Coonan I at [10]-[11]; Korsanos I at [99], [117].

179 Exhibit RC0437 CRW.998.001.0526 Coonan I at [17].

180 Exhibit RC0437 CRW.998.001.0526 Coonan I at [30(g)].

181 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Ch 2.8 at [176]-[177].

182 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Ch 2.8 at [179].

C.45. Mr Packer today has no influence or control over Crown's affairs other than in his capacity as shareholder. CPH remains the company's majority shareholder but all forms of influence, both formal and informal, have been eliminated.[183] The compromising effect that this former influence had on Crown's corporate governance and risk management processes has been removed. Further, CPH has entered into undertakings with ILGA regarding Crown and its associates, including as to information sharing and the appointment of directors to Crown Resorts' Board.[184] The extent of any residual influence may also be managed through restrictions on the percentage of shares of Crown Resorts that a person may hold (or have an interest in).[185]

C.3. Crown's cultural reform

Corporate culture and organisational change

C.46. Crown accepts that the past conduct exposed by this Commission, and by the Bergin Inquiry, reflects a deficient corporate culture. There is no universally accepted definition of a 'good' corporate culture. One characterisation of whether an organisation's culture is 'good' is the degree to which it is aligned to the purpose, goals and values of the organisation,[186] as set by the board and leadership of the organisation.[187] However, generally speaking, indicators of a 'good' corporate culture may include: adherence to norms of behaviour and obeying the law; clear expectations set by the company's leaders; consistency between the board and leadership of the organisation; identification and escalation of problems and risks; accountability; and responsiveness to feedback by leadership.[188]

C.47. Corporate culture is not fixed or static. It can be changed. Crown, with great respect, embraces the hypothetical scenario that the Commissioner put to Ms Arzadon as being a "really effective way" of bringing about cultural change in an organisation:[189]

> Let's say a new person comes in. The company is taken over on the Stock Exchange by another group, and what the new group does is it changes the leadership in the sense of putting in a new board, brings in a whole lot of reliable straight-shooting, honest people who are really skilled at their tasks, makes some changes at middle management as well and then the new team, the new directors, the new senior managers and middle managers

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183 Exhibit RC0437 CRW.998.001.0526 Coonan I at [28]; Exhibit RC0434 CRW.998.001.0104 Korsanos I at [64].

184 Exhibit RC0437i CRW.512.042.0001 ASX Media Release regarding NSW ILGA Announcement in Relation to Agreement with CPH, 16 April 2021.

185 Which Crown addresses at paragraph C.152 below in response to the Commissioner's first and second questions in the letter dated 23 July 2021.

186 Whitaker T1910.40-44.

187 Whitaker T1911.26-29.

188 Whitaker T1910.8-1912.45.

189 Arzadon T3951.38-3952.3.

> make it abundantly clear to everybody else in the organisation, the hundreds of them or thousands of them, however many of them there may be, that the old ways are gone, these are the new ways and … unacceptable conduct will be punished. If there is any deviation from the norm, there will be a consequence.

C.48. Crown submits that the 'burning platform' provided by this Commission and the Bergin Inquiry, the rebuild of Crown's leadership team, both at Board and senior executive level, and the removal of the CPH influence, is at least as significant as the leadership change which can follow a public takeover.

Tone from the top

C.49. As Counsel Assisting have fairly recognised, "a strong message about the tone from the top has … emerged from the evidence".[190] The evidence shows that Crown's new Board and executive leadership are actively working to reform Crown's culture and that this new 'tone from the top' and clear expectations are being communicated to, and received well by, operational staff.

C.50. Mr McCann's evidence was that he has told staff to speak up if they see behaviour that is inappropriate and never to do anything that they feel uncomfortable doing or that is inconsistent with their values,[191] irrespective of who gives them instructions. He also acknowledged the importance of instructing staff on the gaming floor to never walk past anything they do not condone.[192] Mr McCann also spoke of leaders having to "live and breathe" the behaviours they expect in others, "setting a direction and a purpose and a vision that people can subscribe to, buy into, be motivated and energised by",[193] and ensuring leadership from the top by means of identifying and promoting "the people who are authentic, high quality, trustworthy, honest, decent people".[194]

C.51. Mr McCann also gave evidence that:

(a) he has presented to, and held question and answer sessions with over 300 staff members to discuss with them the concerns they have about the challenges Crown faces and to impress upon them the need to speak up about any concerns;[195]

(b) he convened a senior leadership forum on 15 July 2021, involving a combination of senior management and up-and-coming performers, to discuss a draft report from Deloitte on its Phase 2 work, so that Deloitte's

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190 COM.0500.0001.0001l Counsel Assisting Closing Submissions, Ch 13 at [5.10].

191 McCann T3486.19-25.

192 McCann T3489.28-29.

193 McCann T3488.20-29.

194 McCann T3488.20-21; T3498.20-23; see also T3499.8-10.

195 McCann T3485.23-32; T3500.26-32.

Phase 2 report can be finalised with input from the senior leadership forum.[196]

C.52. Ms Coonan's evidence was to the effect that the Board and Management have reset expectations that all of Crown's people, from the Board down and throughout the organisation, will do the right thing. The Board has been clear in communicating to all staff what is expected of them and that Ms Coonan wants Crown's staff to be confident about coming forward and if they "see something, say something".[197]

C.53. Ms Halton gave evidence about how she has discussed with and "harassed" senior managers and individual staff at Crown properties about finding all examples of non-compliance and the expectation of maintaining standards higher than straight compliance.[198]

Other cultural reforms

C.54. In addition to the matters set out above, Crown has taken the following steps to improve its culture.

(a) In July 2020, Crown implemented the following core values, which are set out in Crown's Code of Conduct:[199] (a) we do the right thing (b) we act respectfully; (c) we are passionate; and (d) we work together. These values have been promoted extensively within Crown, with staff briefings, signage, and interviews with employees. The values have also been incorporated within other Crown policies, including the Risk and Compliance Culture Framework.[200]

(b) In December 2020, Crown implemented an overarching culture reform plan. The elements of that plan include setting a 'tone from the top', clarifying Crown's purpose and values, assessing Crown's current culture, and audit and information sharing.[201]

(c) As acknowledged by Counsel Assisting, Crown is endeavouring to make improvements to its relationships with the VCGLR and other

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196 McCann T3485.39-T3486.1-5; Exhibit RC0478 CRW.998.001.0521 Weston I at [14].

197 Exhibit RC0437 CRW.998.001.0526 Coonan I at [82(e)].

198 Halton T3602.39-3603.5. Mr Walsh gave evidence that he has made a commitment to attend new employee inductions to address the message of "see something, say something", and has been taking steps to promote Crown's value of "do the right thing". Exhibit RC0354 CRW.998.001.0232 X Walsh III at [186].

199 Exhibit RC0427j CRW.512.012.0133 Crown Resorts Limited: Code of Conduct (July 2020) at [.0135].

200 Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0045-.0046; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0119-.0120

201 Exhibit RC0416i CRW.518.004.8953 Memorandum from Ken Barton to Board of Directors of Crown Resorts Limited (7 December 2020).

regulators.[202] Crown's new CEO, Mr McCann has already met with the VCGLR and communicated Crown's objective to build an ongoing, transparent and open relationship with the regulator.[203] According to Mr Weeks "since I commenced at Crown… I have observed a company that recognises that it needs to rebuild its key regulatory relationships."[204] Crown has shared relevant documents and reports with the VCGLR as part of a deliberate effort to rebuild its relationships with regulators.[205]

(d) Crown has taken steps to address concerns regarding psychological safety, including the perception that employees have not reported concerns. Crown has implemented psychological safety measures, including the 'Safe Haven Program'.[206] This measure addresses concerns arising out of the 2018 employee experience survey which indicated that a significant number of employees did not feel safe in speaking up.[207]

(e) Crown's cultural reform includes changes to remuneration structures.[208] This includes revising short term incentives to accommodate partial deferral and forfeiture in the event of any adverse compliance or regulatory events. Further, values based 'hurdles' and compliance and risk based key performance objectives will shortly be introduced.[209]

Cultural reform experts

C.55. Crown has engaged Deloitte, led by the recognised organisational culture expert Victoria Whitaker,[210] to assist it to develop its cultural change program. Although there is no single pathway to changing culture, Ms Whitaker observes that there are several key factors which may underlie corporate cultural change, including:[211] (a) getting the 'tone from the top' right;[212] (b) setting of clear

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202 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [8.5].

203 Exhibit RC0416 CRW.998.001.0423 McCann T3457.3-9.

204 Exhibit RC0416 CRW.998.001.0423 Weeks I at [37].

205 Exhibit RC0416 CRW.998.001.0423 Weeks I at [37].

206 Whitaker T1945.46-1946.6.

207 Exhibit RC0431 DTT.010.0003.0040, Crown Employee Research Report.

208 Exhibit RC0416 CRW.998.001.0423 Weeks I at [37].

209 Exhibit RC0416h CRW.512.110.0008 Crown Resorts Limited – Remediation Plan (as at 27 May 2021) at .0011, .0047-.0048; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0122.

210 As acknowledged by Elizabeth Arzadon in cross-examination (Arzadon T3968.36-37).

211 Whitaker T1912.47-1914.4.

212 Whitaker, T1913.21-35. "Tone from the top" is established through internal and external communications, and demonstrated through the practical actions taken by the Board in its supervisory duties. This includes the Board's treatment of, and sense of urgency surrounding, risk management issues, and the rigour applied to monitoring and demanding mitigation of key risks and closure of control weaknesses. See, eg, Prudential Inquiry into the Commonwealth Bank of Australia (CBA) Final Report at p 13.

expectations; (c) consistency between the board and senior management; and (d) the communication of changes to the operational line.

C.56. Ms Whitaker acknowledged in her evidence before the Commission that there were a number of steps which Crown had already taken which will positively influence Crown's culture, including changes to Crown's Board and senior management, weekly updates to the business, changes to organisational structure, a new performance management framework and psychological safety initiatives.[213] As acknowledged by Counsel Assisting, Ms Whitaker identified a number of positive aspects of Crown's culture that had come to the fore in the context of Deloitte's phase 2 and phase 3 work, including:

(a) the really strong commitment to the purpose of the organisation – to create memorable experiences;

(b) staff are committed to working together;

(c) a really strong commitment to compliance;

(d) the general sentiment of the survey responses that Deloitte had received at the time of Ms Whitaker's evidence "was more positive" than she expected it to be.[214]

C.57. To the extent that Ms Arzadon expressed different views in her written report provided to the Commission, including to the effect that Crown's leaders "lack understanding of the work required to achieve embedded, organisational-wide culture change" and that "there is evidence that current communication about the cultural change expected by senior leaders may also lack resonance for staff"[215], the Commission should prefer the views of Deloitte. To some extent, Ms Arzadon resiled from those views under cross-examination when she acknowledged, based on the materials that she had read and from Ms Halton's evidence, that there is a "very clear top-down communication of expectations" and agreed that the new cultural tone from the top was achieving resonance with lower levels of management.[216] She also accepted that the view expressed in her written report was formed on the basis of limited information,[217] which led her to be reluctant to draw any "definitive conclusions" without access to primary source data and getting a broad range of perspectives as Deloitte was doing.[218]

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213 Whitaker T1945.21-1946.23.

214 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [2.15].

215 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021 at .0200.

216 See, eg, T-3979.13-15; T-3979.35-37.

217 See, eg, T-3980.24 – 29.

218 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne, June 2021; Arzadon T3980.2-29.

C.58. Ms Arzadon accepted that she did not undertake a review of Crown's culture and that Deloitte had been engaged to undertake such a review, on the basis of primary source material.[219] Ms Arzadon accepted that the instructions for the preparation of her report and her opinions are limited in respect of question one to the cultural or behavioural norms that existed as between Crown and the VCGLR based on the limited materials provided, and that questions two and three of her instructions do not expressly seek an opinion as to root causes in relation to Crown's culture.[220]

C.59. Deloitte's culture review is broken into four phases of work. Crown has expedited the timeframe in which Deloitte is to conduct and report its findings from that review. As Mr Weston's statement sets out:[221]

(a) Phase 1 of the program has been completed by Deloitte. It involved a 'desktop' assessment of the existing cultural framework at Crown: that is, what has traditionally been in place in terms of assessing culture, defining the organisation's aspirational culture, what initiatives were implemented to drive and align culture change and how the impact of those initiatives were measured.

(b) Phase 2 is an assessment of the Crown Group's current state culture in more detail. As part of this phase, all Crown staff were asked to participate in an anonymous survey undertaken by Deloitte. 7,470 staff responded to that survey. A further 38 follow up interviews and 40 focus groups (where 415 staff were invited to participate) were held to dive more deeply into potential root causes of cultural issues and to test existing observations. As part of Phase 2, Crown also extended invitations for interviews to a number of the Crown Group's external stakeholders, including the state gaming regulators in Melbourne, Perth and Sydney. An interview with the CEO of the VCGLR was conducted.

(c) Phase 3 involves Deloitte analysing the insights and findings from Phase 1 and Phase 2 of the program, and then presenting those to senior management and the Board of CRL.

(d) Phase 4 will build on the findings of Phase 3 and involve the Crown leadership team, with Deloitte's assistance, defining Crown's aspirational culture, developing a roadmap for change, and establishing the governance, measurement and reporting frameworks required to manage and assess that change. This work is due to be completed by 16 August 2021. Following Board approval and any other financial and/or

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219 T-3965.13-14; T-3980.45-3981.18.

220 T-3987.40 - T-3988.36.

221 Exhibit RC0478 CRW.998.001.0521 Weston I at [19].

resourcing considerations, implementation of that plan will commence immediately.

C.60. On 30 July 2021, Deloitte provided its final report on Phases 2 and 3 to Crown.[222]

C.61. While the Deloitte report states that each of Crown's values and its risk culture received an overall positive perception from respondents to the culture survey,[223] the detailed findings confirm that significant work is required for Crown to embed the sustainable cultural change to which it aspires. There are obvious areas of concern emerging from Deloitte's review which Crown will prioritise in its roadmap for cultural change. These include:[224]

(a) that Deloitte found weak support for the value of 'we do the right thing' being lived in the organisation. Despite strong awareness of compliance, Deloitte found that barriers to compliance behaviours still exist;

(b) while there is high collaboration and team work within business units, silos exist across business units and properties, driven by poor communication and a lack of shared objectives; and

(c) while the majority of people surveyed had a positive experience at Crown, felt respected at work, and are committed to the purpose and values of Crown, Deloitte observed low perceptions among staff that the Board and executive were living Crown's values.

C.62. While not in any way minimising the significance of these conclusions and the size of the task ahead in driving sustainable, long-term cultural change, Deloitte did make some important observations regarding the context in which its review occurred. The review has been conducted during a period where Crown has been affected by several shutdowns due to COVID-19, two Royal Commissions, adverse media reporting, potential takeover bids and significant changes at senior levels within the organisation.[225] It is apparent that these events have influenced survey responses and employee morale.[226] It is also not clear the extent to which observations of the Board and executive reflect the *current* Board and executive, or the company's leaders at the time when most of the

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222 CRW.512.250.0001 Crown Culture Review – Current State Culture - Final Report (July 2021).

223 CRW.512.250.0001. Crown Culture Review – Current State Culture - Final Report (July 2021) at pp 27, 33, 40, 46 and 50.

224 CRW.512.250.0001 Crown Culture Review – Current State Culture - Final Report (July 2021), p 8.

225 CRW.512.250.0001 Crown Culture Review – Current State Culture - Final Report (July 2021) at p 7.

226 CRW.512.250.0001 Crown Culture Review – Current State Culture - Final Report (July 2021) at p 7, 17, 37, 44. Ms Whitaker and Ms Arzadon also accepted in their evidence that the perceptions of Crown's employees are likely to be skewed by the high levels of scrutiny, uncertainty and stress affecting the organisation and its employees (Arzadon T3991.16-3995.11; Whitaker T1918.33-1919.18).

misconduct examined in this Commission and the Bergin Inquiry occurred (most of whom are no longer with the company). Crown respectfully submits, noting Deloitte's observations about the context in which its review occurred,[227] that in most instances it is likely the latter.

C.63. Deloitte also made a number of positive findings regarding Crown's culture. For example:

(a) there was a strong awareness of the importance of compliance and following procedures, with high levels of participation in mandatory training;[228]

(b) the majority of respondents agreed that they understood Crown's values and how their work contributed to the purpose of creating memorable experiences, which indicated a sense of commitment to Crown's purpose and values;[229]

(c) some employees perceived the focus on profit to be changing with the increased focus on compliance;[230] and

(d) senior executives reported an increase in safety to speak up since the departure of several CPH aligned employees.[231]

C.64. It is nonetheless clear from the final report on Phases 2 and 3 that Crown's cultural reform is a long way from complete and there remain fundamental cultural issues to address and opportunities for improvement.[232] Crown is committed to taking those opportunities (under the supervision of an independent monitor). As the final report notes:[233]

> To address these issues Crown has expressed to us their commitment to revising its purpose and values, redefining its organisational behaviours and mindsets in order to create a clear aspirational culture.
>
> To close the gap between the current state culture and the aspirational culture, Crown will develop a roadmap for change outlining key activities to shift the culture. The

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227 Which included the observation that the review occurred at a time when significant changes were occurring at senior levels within the organisation.

228 CRW.512.250.0001 Crown Culture Review – Current State Culture- Final Report (July 2021) at p 24.

229 CRW.512.250.0001 Crown Culture Review – Current State Culture- Final Report (July 2021) at p 24.

230 CRW.512.250.0001 Crown Culture Review – Current State Culture- Final Report (July 2021) at p 38.

231 CRW.512.250.0001 Crown Culture Review – Current State Culture- Final Report (July 2021) at p 24.

232 CRW.512.250.0001 Crown Culture Review – Current State Culture- Final Report (July 2021) at p 7.

233 CRW.512.250.0001 Crown Culture Review – Current State Culture- Final Report (July 2021) at p 9.

> current and future enablers identified in this report provide a starting point to think about the actions that may create the change sought.
>
> These activities will be undertaken as part of Phase 4 of this Organisational Culture Review which is currently underway.

C.65. Counsel Assisting has sought to criticise Deloitte's culture review, suggesting that Crown's purpose in conducting a culture review is to be seen to be "doing something".[234] That is not a fair criticism. Indeed, the content of the Deloitte Phase 2 and 3 report, which includes a number of sobering conclusions about Crown's current culture, demonstrates the value in obtaining this external assessment. The results of this extensive survey and analysis by Deloitte will directly inform and shape Crown's articulation of its aspirational culture and roadmap for change.

C.66. According to the Commission's own expert, Ms Arzadon, the process for implementing cultural change requires three phases: diagnose (including root cause analysis in respect of the current culture); design (including identifying the actions to support change); and implement (including assessment against goals).[235] That is precisely the work that Deloitte has been engaged to conduct and Crown intends to implement, as part of its Phase 4 roll out of the cultural change program.

C.67. In her evidence to the Commission, Ms Whitaker did not accept any suggestion by Counsel Assisting that Crown's culture was irredeemable. On 9 June 2021, the Commissioner put a series of propositions to Ms Whitaker regarding a hypothetical firm. Those propositions included:

(a) systematic, long-term breaches of the law;

(b) facilitation of illegal conduct over a period of time;

(c) lack of candour and full disclosure in dealings with government;

(d) taking advantage of vulnerable people;

(e) an underlying profit motive; and

(f) behaviours which were endemic throughout the organisation (including top, middle and lower management, and floor staff).[236]

C.68. Even on those hypothetical assumptions, Ms Whitaker did not accept that such a corporation would be incapable of being reformed. Ms Whitaker said:[237]

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234 Weeks T3394-3395.

235 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon, Culture Change at Crown Melbourne (June 2021) at .0190-.0191.

236 Whitaker T1951.20-1953.1.

237 Whitaker T1953.3-5, 1953.45-1954.3.

> I agree that simply changing the top will only get you part of the way. There are other activities that would drive that change that you are looking for… You won't achieve that shift just by changing a few people at the top. What changing a few people at the top may give rise to is the shift towards the other types of changes that you also need to embed, so the permission to undertake those different changes within the organisation, and to execute against those drivers of those behaviours.

C.69. Ms Whitaker did accept that "self-reflection and ownership over problems" were important factors in driving cultural change.[238] However, there can be no doubt that Crown's current leadership accepts the magnitude of its governance and cultural failings, and that Crown is committed to reforming its governance and risk processes and culture.[239]

C.70. Ms Arzadon also accepted in her evidence that Crown's culture was capable of change.[240] Further, she accepted that even people who have been in positions of responsibility, and who have made mistakes under an old and poor culture, may reform themselves and satisfactorily contribute to a new reformed culture. Her evidence was that she had seen examples of this being a "very powerful way to drive change".[241]

C.71. The observations of Ms Whitaker and Ms Arzadon regarding the capacity of Crown to reform its organisational culture are consistent with the views of Crown's new leadership.[242] As Counsel Assisting have noted, the evidence shows that Crown's executives and senior management are conscious of the key role that culture is taking in Crown's reform.[243]

C.72. Counsel Assisting appear to criticise Crown for failing to take steps to undertake a root cause analysis, including in respect of cultural failings.[244] Counsel Assisting suggest that Crown may be displaying complacency, or a lack of "insight" and "acceptance of the need for change".[245] However, as Ms Whitaker confirmed in her evidence, Deloitte has in fact been engaged to identify the underlying causes behind Crown's cultural failings.[246] Counsel Assisting also accept that Crown's current directors recognise that Crown faced serious

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238 Whitaker T1956.13-26.

239 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [108]-[117]; Exhibit RC0427 CRW.998.001.0152 Halton I at [186]-[190]; Exhibit RC0354 CRW.998.001.0232 X Walsh III at [173]-[188]; see also Exhibit RC0419 CRW.998.001.0459 McCann I at [28]-[37].

240 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne (June 2021) at .0180; Arzadon, T-3974.30-32.

241 Arzadon T3977.26-3978.1.

242 Exhibit RC0419 CRW.998.001.0459 McCann I at [31]-[37]; Exhibit RC0223 CRW.998.001.0447 Morrison I at [17]-[19]; Exhibit RC0931 CRW.998.001.0438 Carter I at [41]-[43].

243 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [8.23].

244 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [1.6(d)], [3.16]-[3.27], [5.15], [8.21]-[8.22].

245 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [3.23]-[3.24].

246 Whitaker T1946.31.36.

cultural problems and are aware of the need for cultural reform.[247] Given that evidence and the significant cultural changes described above, there cannot be a realistic suggestion that Crown's current Board are complacent or lack insight. Crown accepts that its cultural reform will be assisted by the appointment of an independent monitor. That monitor may consider it appropriate to establish relevant milestones to track the progression of Crown's cultural change program.

Sustainability of cultural change

C.73. Counsel Assisting submit that Crown will need to ensure, on an ongoing basis, the prioritisation of its statutory, licence and social obligations at the expense of profit.[248] A profit motive per se is not illegitimate. It is an inherent feature of any commercial business. As Ms Whitaker has noted, a profit motive will always be present.[249] The relevant question is how Crown balances the legitimate pursuit of profit on the one hand, and legal and ethical norms on the other.[250] Crown is committed to achieving an appropriate balance and considers it essential to the long term sustainability of the company that it does so. As the evidence demonstrates, that balance has shifted recently. For example, Ms Halton has stated that Crown believes that it cannot deliver and maintain shareholder value if it has a risk appetite which does not reflect the priorities of 'doing the right thing' and its social licence to operate.[251] Similarly, Mr McCann gave the following evidence:[252]

> It is my firm view, and I've had this view on most of the things I've been involved in in my professional career, if you take a short-term perspective on what the rules and regulations are and what your social permission is to carry on any activity, you are likely to reach a different set of priorities to if you take a long-term view. The long-term viability and sustainability of Crown requires both a social licence and a regulatory licence to operate. Increasingly, the focus on Responsible Gaming and the focus on other issues, environmental and other social issues more broadly in the community, has changed exponentially. It has changed and will continue to change. And unless Crown keeps pace with that change, it is simply a matter of time before Crown loses its social licence and/or its regulatory licence to operate.
>
> So, taking a long-term view, I see a complete alignment between driving the best outcomes for all of our stakeholders, investors, employees, people that use our facilities. Unless you are aligned in the way that you make your asset available to the public to meet the commitments that you've made to the State, you will go out of business. Maybe the only surprising thing is it has taken this long for Crown to work that out. But certainly I think that is pretty clear to me.

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247 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [1.18].

248 See eg, COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 17 at [3.12].

249 Whitaker T1955.13.

250 Whitaker T1955.13-17.

251 Exhibit RC0427 CRW.998.001.0152 Halton I at [10]-[12].

252 McCann T3510.

C.74. There is no dispute that Crown's cultural reform will require ongoing commitment and time to be fully embedded and self-sustaining.[253] Ms Arzadon provided a "general time frame" (not specific to Crown) that this process might take three to five years.[254] However, this does not suggest that Crown cannot be suitable until such time has elapsed. Ms Arzadon gave evidence that immediate change may occur in a shorter period (of less than 6 months).[255] The early indications are that a cultural shift has started to occur within the organisation,[256] albeit with much work still to be done:

(a) There was evidence before the Commission that the Board is adopting new forms of direct and open communication to staff which have been well received within the organisation.[257]

(b) Ms Korsanos gave evidence that she believed that the message of change and transparency was getting traction, and she had received feedback from people that she spoke to, and also feedback from new people who have joined the business, about how they are seeing that the change is being embraced, no one is putting up obstacles and everyone is engaged and motivated.[258]

(c) Ms Halton gave evidence that she had seen:

i. indications that employees had detected a change in 'tone from the top', and that she had already seen genuine change in the candour and the engagement of senior management; and

ii. a "huge amount of effort amongst staff", who have been "very positive about the messages we have been giving, about what it takes to put this company back on the straight and narrow".[259]

(d) Mr Stokes gave evidence that the organisation's attitude to finance risk had "changed quite considerably to the point where the business now is very proactive in taking on those sort of first line responsibilities" and that he had seen "a significant change in mindset and culture" over the past 18

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253 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne (June 2021) at .0197.

254 Arzadon T3972.28-37.

255 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne (June 2021) at .0197.

256 Whitaker T1947.35-40.

257 Whitaker T1945.21-32; Exhibit RC0437 CRW.998.001.0526 Coonan I [82(e), (g)]; McCann T3500.

258 Korsanos T3698.42-3699.8.

259 Halton T3599.47-3600.1-4, 3644.37-41, 3645.1-7.

months.[260] According to Mr Stokes, "it is a different organisation [to the one] that I walked into some 18 months ago".[261]

(e) Crown's new Chief People and Culture Officer, Tony Weston, gave evidence that:

i. Crown's leadership team is very invested in the Culture Change Program and his role within the organisation. It is Mr Weston's experience that the Crown Resorts Board has prioritised the Culture Change Program as part of the Crown Group's broader reform program, including by bringing forward the delivery of the Culture Reform Program roadmap from an original delivery date of December 2021 to August 2021;[262]

ii. the Crown Resorts Board and senior executives are exhibiting "genuine buy-in" on the issue of cultural change and that while sustained change must be embedded over the longer term, Mr Weston has found it possible to gain traction quickly to instil some of the change that must happen in the very short term. Mr Weston, with considerable experience in driving organisational culture change, has confidence that Crown's leadership will quickly align behind a comprehensive culture reform program;[263]

iii. he has experienced a willingness to make tough decisions about senior leadership changes and a commitment to change how things are done at an operational-level throughout the organisation that impact on Crown's culture.[264]

(f) Employee witnesses gave evidence that the current culture or attitude to responsible gambling was "much more positive" than compared with the culture in 2017.[265]

(g) An employee survey conducted by McGrathNicol[266] in June 2021 indicated that Crown employees were "ready, willing and able to do what

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260 Stokes T385.25-386.6.

261 Stokes T386.5-6.

262 Exhibit RC0478 CRW.998.001.0521 Weston I at [10].

263 Exhibit RC0478 CRW.998.001.0521 Weston I at [16].

264 Exhibit RC0478 CRW.998.001.0521 Weston I at [17]. The example Mr Weston provides is of a review undertaken over the last 9 months of the Crown Group's performance management framework and the training and education that supports that framework. Mr Weston states that the changes that will be made to that framework have been designed to significantly increase the quality of performance feedback and development conversations that we have with staff, whilst also providing increased opportunities for staff to provide informal feedback on where performance and behavioural improvement can be made at all levels of the organisation.

265 Employee 7 T1052.46-1053.40.

266 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0023.

is asked of them when it comes to upholding the rules" and that "employees had a real concern to get this right".[267]

(h) As acknowledged by Counsel Assisting, it is positive that once an issue was raised in relation to CUP, Crown's directors promptly sought advice about the issue and once that advice was finalised, provided notice of it to the Commission.[268]

(i) Nick Weeks, Crown's Executive General Manager, Transformation & Regulatory Response, observed as follows:[269]

> …I developed confidence that I was joining a company that was committed to the steps required to properly address the weaknesses that existed in the business… having now been in the role for several months I am satisfied that my early assessment was accurate.
>
> This opinion has been shaped by my interactions with the Board, with individual directors and with senior management. I've noticed it through a range of discussions and interactions and through the willingness of the Company to direct resources to the execution of Crown's reform agenda.
>
> In particular, I have observed a willingness to address the findings made in the Bergin Report and the need to ensure that appropriate changes and improvements were progressed in a sustainable way.
>
> I have witnessed what I consider to be a genuine desire to improve the culture of the Company and to adopt a more open and collaborative approach to Crown's regulators.

(j) Ms Whitaker gave the following evidence regarding her observations of cultural change beginning to take root at Crown:[270]

> That said, from the conversations that I've had, there is a lot of conversation -- there is a lot of narrative that I hear, which was "then" versus "now" kind of narrative. You can see already that some things are starting to shift in the way that people talk about what happened then versus what happened now, which is largely to do with that changing of the guard.

C.75. Counsel Assisting's submissions raise an understandable concern that Crown will return to its past ways.[271] That type of risk is described in Ms Arzadon's evidence as follows:[272]

> At the moment, Crown is in a fairly favourable position in this regard because there are benefits for engaging in good conduct, and arguably you could say there are some restrictions on the opportunities for the profit generation side of things. So they are

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267 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0013.

268 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [4.18].

269 Exhibit RC0416 CRW.998.001.0423 Weeks I at [12]-[15].

270 Whitaker T1947.35-40.

271 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 13 at [7.7]-[7.8].

272 Arzadon T3950.33-44.

> actually in a good position right now. But in the future, say about three or five years, the conditions will change, and this is what happens often with organisations that are placed into mandated culture change, that later on down the road when things go back to normal, then the usual pattern, which is that revenue generation is rewarded and compliance is less naturally rewarded, that's when you have prioritisation of revenue over compliance and conduct.

C.76. However, the risk of reverting to Crown's "old ways" is also minimised by the firm attitude and priorities of Crown's new Board and senior management, and the commitment to embedding cultural reform. Ms Halton gave the following evidence in support of her view that Crown will not simply revert to its past culture once the threat of regulatory action has concluded:[273]

> There are a series of influences on the company that meant that all was not as it had always been. We are a publicly-listed company and actually, the opportunity to have daylight and accountability through those arrangements, I think, is very real, and we've just discussed the issue about one board versus another board, which [I] think is an element of that.
>
> The reason I am very confident, and I've already spoken to this a couple of times, is all of the executives that we are bringing in bring their professional capability, and they --- they have no obligation other than to deliver the right outcome for the company, for our staff, for our shareholders and in a respectful way, with our regulators. That is who we have brought into the company, these are people who have huge credibility.
>
> You saw, yesterday, Mr McCann being absolutely determined about the culture of the place, something he is very committed to. So I am very confident about that. This is not the same as it has been and, in my contention, it cannot go back because of those very material changes.

C.77. Mr Blackburn gave the following evidence regarding potential reversion to past culture:[274]

> COMMISSIONER: The question is, are the people that we are dealing with going to go back to their old ways when everybody stops looking?
>
> A. Not while I'm on watch.
>
> COMMISSIONER: One person in an organisation of 15,000.
>
> A. One person plus 110 that I'm bringing in.

C.78. Mr Weeks gave the following evidence:[275]

> Q. Finally, Mr Weeks, why do you say that this Commission could have any confidence that Crown will stay the course on culture reform rather than just going back to its old ways after this Commission and perhaps other inquiries have concluded?
>
> A. Yes, I mean my own assessment is there is a range of factors that could give the Commission that comfort, one of which is the quality of people that have come into the organisation. My assessment of those people has been that they are particularly

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273 Halton T3646.7-27.

274 Blackburn T2964.11-19.

275 Weeks T3433.33-3434.6.

> strong. I have spent a lot of time with Steven Blackburn over the short period of time I've been there, and I'm particularly impressed with his strength of leadership. My early insights into Steve McCann [have] been very positive, as someone with a long corporate track record who won't compromise his reputation in a role like this. So I think the people that have come into it, the systems and structure that have been built and then the piece of work that we are focused very much on now is the culture. And so I'm confident that the company will move the culture to one in which the type of conduct that has been observed in the company historically won't be acceptable in the company. That's my assessment.

C.79. Those drivers of change are not simply internal. The impact of external events, including the China arrests, should not be underestimated. Ms Siegers gave the following evidence regarding the extent and impetus for cultural change:[276]

> …there was a shift in the appetite of the organisation that was triggered by the China [arrests]. It was a traumatic event for the organisation. It was not a trivial or underestimated event, it was absolutely traumatic.

C.80. The scorching experience of back-to-back public inquiries is having, and will continue to have, a similar effect on the organisation. Public inquiries take a significant toll on their subject. They demand extensive self-reflection and have a deterrent effect. Crown's experience of the past 18 months will serve as an important safeguard against it reverting to its old ways.

C.81. None of this is to suggest that Crown's cultural change is close to complete, or that Crown can now be complacent regarding its culture. However, it is necessary to appreciate the magnitude of work that Crown's current Board and senior executives have performed to effect cultural change, and the significant internal and external drivers of that change. In circumstances where the entire Board and senior management have in effect been renewed, and new cultural frameworks instilled, it cannot and should not be presumed that Crown will simply revert to its old ways once the spotlight of public inquiries and attention recedes. In any event, the risk that Crown may revert to its old ways will be mitigated by the appointment of an independent monitor. As noted above, that monitor may consider it appropriate to establish relevant milestones for compliance.

C.4. Crown's risk management and corporate governance reforms

C.82. Crown accepts the Bergin Inquiry Report findings that:

(a) the Board failed in its fundamental responsibility to set, monitor and communicate the risk appetite;[277]

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276 Siegers T2039.14-23.

277 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [77], [111].

(b) risk decisions were dominated by a pursuit of profit over the welfare of Crown's employees and compliance with the object of the CCA;[278]

(c) the Board, by its demands upon the VIP International business, and the basis on which it provided incentives, encouraged Management to take inappropriate risks in the pursuit of that business' success;[279]

(d) Crown's risk-management and compliance structures were ineffectual and underutilised;[280] and

(e) there were deficiencies in the various documents designed to capture risks.[281]

C.83. Crown also accepts that it is only in recent years that the Board has taken appropriate steps to address risk management within the organisation. Prior to 2018: Crown did not have a documented risk appetite;[282] and the documentation, escalation and reporting of risks was not systematic, and most risk issues were managed at the level of the individual properties.[283]

C.84. Crown has undertaken significant reform in respect of its approach to risk management procedures since the China arrests. That reform includes the following matters.[284]

(a) The creation of the role of Group General Manager, Risk and Audit to establish a group audit and risk function in December 2017.[285]

(b) The expansion of resourcing in the risk team.

(c) The frequency and duration of meetings of the RMC have increased.

(d) Reporting to the RMC has been significantly enhanced.

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278 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [71], [79], [112].

279 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [77].

280 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [72], [76].

281 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [78], [96].

282 Exhibit RC0187 CRW.512.044.0114 Risk Management Framework Enhancements Timeline. See also Exhibit RC0427g CRW.512.004.0001 Risk Management Framework Progress and Update Memorandum by Anne Siegers provided to the RMC for 25 March 2021 meeting at .0025.

283 Exhibit RC0427 CRW.998.001.0152 Halton I at [52], [56].

284 Exhibit RC0187 CRW.512.044.0114 Risk Management Framework Enhancements Timeline at .0041-.0045.

285 As noted at [26.(f)] above, Crown's internal audit department has now been separated from the risk function under the '3 lines of defence' model described below at C.85 below.

(e) Changes have been made to elevate risk decisions to the board, including reducing materiality thresholds, and the provision of Material Risk and Emerging Risk Reports to the Board.[286]

(f) The adoption of a formal risk appetite in December 2018.

(g) The Board approval of the Risk Management Strategy in June 2019.

(h) The creation of the role of Chief Risk Officer in August 2020 and the appointment of a Chief Risk Officer in December 2020.

(i) The approval of a revised Risk and Compliance Culture Framework in March 2021.

(j) The introduction of an Enterprise Risk Management system in Melbourne to collate risk information and facilitate reporting.[287]

(k) Monthly meetings of compliance officers, including the Chief Risk Officer, have been introduced.[288]

C.85. Crown's risk framework adopts a '3 lines of defence' model, which provides for:

(a) a first line of defence (being operational management) which reports to senior management;

(b) a second line (being risk management, compliance and AML functions) which reports to both senior management and directly to the Board and Committees of Crown; and

(c) a third line of defence (internal audit) which reports to the Board and Committees of Crown.[289]

C.86. Crown's risk appetite is contained in the Risk Management Strategy.[290] The risk appetite comprises an overarching risk appetite statement, seven impact

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286 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [31]; Exhibit RC0187 CRW.512.044.0114 Risk Management Framework Enhancements Timeline at .0042.

287 Exhibit RC0416b CRW.525.001.1581 Crown Resorts Limited Remediation Plan (as at 27 May 2021) at .1629; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0118.

288 Exhibit RC0416b CRW.525.001.1581 Crown Resorts Limited Remediation Plan (as at 27 May 2021) at .1629; CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021) at .0118.

289 Exhibit RC0427 CRW.998.001.0152 Halton I at [23]; CRW.512.087.0072 Three Line of Defence Model; Exhibit RC0427l CRW.512.041.0055 Crown Resorts Limited Risk Management Strategy at cll 6.4 – 6.6.

290 Exhibit RC0427l CRW.512.041.0055 Crown Resorts Limited Risk Management Strategy.

categories and metrics such as risk tolerances and reporting triggers.[291] The overarching risk appetite statement relevantly provides:[292]

> There are a number of areas of the business where Crown does not have appetite to accept material risks. Specifically:
>
> (i) Crown does not have appetite to accept material risk related to regulatory, legal or statutory requirements, including in respect of financial crime. Crown's relationships with its regulators and licensors are foundational and paramount to how it does business.
>
> (ii) Crown does not have appetite to accept material risk related to any association with or influence from criminal elements.
>
> (iii) Crown does not have appetite to accept material risk related to any activity that would be inconsistent with its social licence to operate, which includes, in addition to meeting its regulatory obligations, material risk related to its reputation and brand. Crown takes very seriously its stance on 'doing the right thing' by all its stakeholders.
>
> (iv) Crown does not have appetite to accept material risks related to employee health and safety, the maintenance of appropriate security and surveillance across its properties or loss of, or otherwise unauthorized or accidental disclosure of, customer or other sensitive information or data.

C.87. The risk appetite also provides for reporting triggers.[293] Other than matters (such as financial matters) where the reporting triggers are capable of being defined by reference to quantitative materiality thresholds, the reporting triggers require reporting of 'any event' to the Board, including matters relating to regulatory risk and legal risk (including AML matters), responsible gambling, and workplace health and safety matters.

C.88. Crown's risk management framework has also benefited from review by Deloitte in June 2019.[294] Deloitte made a number of recommendations, some of which were minor enhancements.[295] The substance of those recommendations have been accepted by Crown.[296] The majority of recommendations have already been completed.[297]

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291 Exhibit RC0434 CRW.998.001.0104 Korsanos I at [81].

292 Exhibit RC0427l CRW.512.041.0055 Crown Resorts Limited Risk Management Strategy at cl 7.1.

293 Exhibit RC0427l CRW.512.041.0055 Crown Resorts Limited Risk Management Strategy at cl 7.2.

294 Exhibit RC0427b CRL.581.001.3483 Crown Melbourne Limited - Report on the Risk Management Framework (June 2019).

295 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.43].

296 Exhibit RC0427 CRW.998.001.0152 Halton I at [170].

297 RC0197 CRW.512.116.0001 Current Version of tracker spreadsheet tracking implementation of Deloitte recommendations (Siegers T2044-2047).

C.89. One of the recommendations made by Deloitte concerns the reporting triggers set out in the risk appetite, including the use of quantitative triggers.[298] This recommendation remains under review by Crown.[299] However, it is important to note that not all of the matters set out in the risk appetite are capable of reduction to measurements - some of these matters require judgment to be exercised by the Risk Management Committee.[300] The existing reporting triggers ensure that material events are escalated to the RMC and the Board as appropriate. This enables the RMC and the Board to exercise oversight over risk issues. Further, the improvements to risk reporting mean that Crown is able to document risk in a manner that is "well thought out and comprehensive".[301]

C.90. Counsel Assisting have accepted that the evidence before the Commission demonstrates that the core fundamentals of a risk management framework appear to be in place.[302] A report prepared by Mr Deans of Notwithoutrisk Consulting, on instructions from Solicitors Assisting the Royal Commission, made the following observations in respect of Crown's risk management frameworks and systems.[303]

(a) The RMC Charter has the key foundational elements within it to enable the Group to establish and maintain risk management frameworks, governance, and processes.[304]

(b) The length and content of the Risk Management Strategy is consistent with what would be expected of an Australian publicly listed group of the same size and nature as the Crown Group.[305]

(c) The frameworks and the Group's approach to risk management are supported by an established Risk Management Function.[306]

(d) The position description of the Chief Risk Officer is consistent with what is expected for an organisation such as Crown Resorts. The creation of

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298 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.43].

299 Exhibit RC0197 CRW.512.116.0001 Current Version of tracker spreadsheet tracking implementation of Deloitte recommendations (Siegers T2044-2047).

300 Exhibit RC0427 CRW.998.001.0152 Halton I at [71].

301 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.77].

302 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 12 at [1.6].

303 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited.

304 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.9].

305 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.39].

306 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.103].

this role is expected to have a positive impact on risk management practices within the Group. [307]

(e) There is evidence of work being undertaken by Crown's risk management function and across the Group to identify and escalate business risk. [308]

(f) There is a demonstrated focus by management on controls. [309]

(g) There is evidence of improved reporting of business risk and risk matters generally to the Risk Management Committee and Executive Risk and Compliance Committee. This includes reporting and documenting a wide range of business and risk issues reflecting the range which may face Crown, and reporting a vast array of data and information.[310]

C.91. The substance of the above findings has been accepted by Counsel Assisting.[311] In addition, Mr Deans observed that there are the core fundamentals of a risk management framework at Crown Melbourne[312] (as previously concluded by PwC).[313]

C.92. Mr Deans' report concludes by making a number of recommendations. Ms Siegers has prepared a response to the Deans Report and provided it to the Risk Management Committee for its consideration. Ms Siegers has proposed accepting most of Mr Deans' recommendations.[314] For the most part, Crown is already practically applying most of what Mr Deans has recommended by way of best risk management practice; it is a matter of updating Crown's risk management documents to reflect that practice.

C.93. Ms Siegers has not "peremptorily dismissed" any of Mr Deans' recommendations.[315] To the extent that Ms Siegers has not proposed that a recommendation by Mr Deans be endorsed, she has recommended that it be the subject of further consideration. This is because, as Ms Siegers observes:

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307 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.88].

308 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.58]-[3.60].

309 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.71].

310 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.72]-[3.74].

311 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 12 at [7.1]-[7.5].

312 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.95].

313 Exhibit RC0971 COM.0007.0002.0001 Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited at [3.95].

314 Exhibit RC0433 CRW.512.210.0001 Comments on Recommendations from the Royal Commission's 'Expert Report on the Risk Management Frameworks and Systems of Crown Resorts Limited'.

315 Cf COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 12 at [8.4].

> the report is based on the premise that the practices employed in the financial sector are relevant to Crown Resorts. Crown Resorts has a number of operational and strategic risks which cannot be managed in the same way as financial risks, and therefore require a different risk management response.

C.94. Ms Siegers has recommended that the RMC discuss each of the Deans Report's 22 recommendations at its next meeting in August 2021. Ms Halton, the Chair of the RMC, confirmed that the Deans Report will be considered very carefully by the Committee at its August meeting.[316]

C.95. Counsel Assisting note that an independent review has not been conducted regarding the robustness and effectiveness of Crown's risk management framework.[317] Such a review is scheduled to take place in 2022.[318] Counsel Assisting note that Recommendation 3 of the VCGLR Sixth Casino Review was as follows:

> The VCGLR recommends that, by 1 July 2019, Crown assess the robustness and effectiveness of its risk framework and systems, including reporting lines in the chain of command, and upgrade them where required. This assessment should be assisted by external advice.

C.96. Counsel Assisting appear to have accepted that it was not possible for Crown to have obtained an external assessment of the robustness and effectiveness of its risk framework and systems by June 2019, but ultimately criticise Crown's engagement with the VCGLR on this issue.[319] That criticism is not well founded. Crown provided the VCGLR with a copy of Deloitte's report in September 2019, shortly after the VCGLR requested a copy of the report.[320] The scope of that report indicated that it did not purport to be an assessment of the robustness and effectiveness of Crown's risk framework and systems.[321] Having received that report, the VCGLR concluded that Crown had implemented recommendation 3.[322]

C.97. In the examination of Ms Halton, Counsel Assisting sought to advance the proposition that Crown approaches issues on the "basis of risk, not compliance",[323] apparently in aid of a submission that prioritising a risk-based

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316 Halton T3615.01-04: "*And, in fact, I'm grateful to the Commission for having done the work. We have to make sure --- risk management doesn't stop. You have to keep working on it, and so this is very helpful*".

317 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 12 at [1.7].

318 Exhibit RC0427 CRW.998.001.0152 Halton I at [92].

319 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 12 at [6.20].

320 Exhibit RC0196 CRW.510.029.1745 Letter from Crown to VCGLR (13 September 2019); Siegers T2041.9-43.

321 Exhibit RC0196 CRW.510.029.1745 Letter from Crown to VCGLR (13 September 2019) at .1752.

322 Exhibit RC0195 CRW.510.029.1855 Letter from VCGLR to Crown (9 January 2020).

323 See, eg, Halton T.3571.

approach, instead of an approach based on compliance with the law, is unacceptable.

C.98. Crown respectfully submits that the distinction Counsel Assisting sought to draw between risk and compliance is illusory. While Crown of course accepts the aforementioned risk management and cultural failings which occurred in the past, its current approach is to place emphasis on having *both* quality risk management processes and procedures as well as a strict culture of compliance. Among the risks that Crown Resorts and Crown Melbourne actively monitor within their risk management framework is compliance with the law.[324] That is entirely appropriate and is consistent with (and serves to facilitate) a culture of strict compliance. It cannot be sensibly suggested that a culture of compliance would be better served by not having a formal risk management system to identify potential breaches of the law which ensures those potential breaches are considered and escalated through appropriate channels. As Ms Halton said in answer to this line of questioning:[325]

> [T]he approach to compliance, and certainly since the significant changes in the board, we have been completely unambiguous about the need to be compliant. And that's with the law and with our regulatory obligations.
>
> Now I want to make the point that you have a risk management framework precisely to make sure that in terms of inadvertent behaviours or other risks that you manage those as well. Because what you don't want --- if you simply tell people we need to be compliant, it doesn't necessarily put in place the checks, balances and mitigations to ensure that we actually deliver that outcome.

C.99. Counsel Assisting's submission that the establishment and operation of Crown's overseas offices in Malaysia is reflective of this practice of analysing its activities in terms of "risk" rather than "compliance" is addressed in Annexure C.3 to these submissions.

C.100. The CUP issue does not reflect adversely on Crown's current risk management practices. That is to be contrasted with how that issue reflects Crown's *past* risk management practices (or lack thereof) and *past* culture. The CUP issue in fact reflects positively on how risks are now being identified and escalated within Crown and how "bad news" is travelling within the organisation.[326] Ms Korsanos provided evidence that she considered that this was an example of the improved "speak up" culture and risk management practice at Crown, in that someone felt comfortable escalating the issue.[327] Ms Halton gave evidence that she was "*heartened"* by the fact that people have called her to raise issues and

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324 Exhibit RC0427l CRW.512.041.0055 Crown Resorts Limited Risk Management Strategy at .0068-.0069.

325 Halton T3571.45-T3572.09.

326 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 3 at [4.18].

327 Korsanos T3703.25-3704.17.

that while being a "*difficult and controversial issue, that, for example, China Union Pay actually came through… post these sorts of changes"*.[328]

C.101. Crown accepts that the draft FTI Consulting report on junkets, prepared in September 2019, should have been provided to the Risk Management Committee of Crown Resorts. As Ms Halton acknowledged during the course of her examination:

(a) the failure to put the report before the RMC was a missed opportunity to see if Crown was in breach of the CCA and a missed opportunity to see if Crown was outside its risk appetite;[329] and

(b) Mr Preston should have brought the Report to the RMC's attention and that based on the Brand Committee minutes there should have been questions asked and she should have followed up.[330]

C.102. The manner in which the report was commissioned by Crown in August 2019 (through MinterEllison for the purposes of maintaining (or at least being able to assert a claim of) privilege), and handled by the Chief Legal Officer of Australian Resorts, including not providing a copy of the report to Board members (including any member of the Brand Committee) is reflective of the different corporate culture that obtained within Crown at that time. The Commission should have confidence to find, on the evidence given by Crown's directors and the approach the company has adopted to issues which have emerged during the course of this Commission (such as CUP), that Crown would respond very differently today if it were in receipt of a draft report in the nature of that prepared by FTI Consulting.[331]

C.5. Crown Melbourne's obligations under the Casino Agreement and the proposals for further governance reforms

Clause 22 of the Casino Agreement

C.103. In September 1993, the Victorian Casino Control Authority entered into the 'Melbourne Casino Project Casino Agreement' with Crown Casino Ltd (ACN 006 973 262) (**Crown Melbourne**). That agreement has been the subject of twelve variation agreements, all of which have been incorporated into the Consolidated Casino Agreement.[332]

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328 Halton T3644.37-47.

329 Halton T3584-3585.

330 Halton T3585; T3586.30-47.

331 It does not appear that anyone at Crown other than the Chief Legal Officer was informed about the summary of the FTI Consulting report prepared by MinterEllison. Further, the FTI Consulting report itself does not appear to have been provided to anyone at Crown by MinterEllison or FTI Consulting Please see further at Part E.1.5 below.

332 Exhibit RC0435 COM.0005.0001.0985 Consolidated Casino Agreement.

C.104. Clause 22 of the Casino Agreement contains a series of conditions relating to the structure of Crown Melbourne. Relevantly for present purposes, the clause imposes obligations on Crown Melbourne intended to ensure:

(a) the governance of Crown Melbourne retains a sufficient territorial connection with Victoria; and

(b) the interests of the Melbourne Casino are not subordinate to other gaming businesses that the holding company of Crown Melbourne, Crown Resorts may conduct in other parts of Australia.

C.105. In terms of territorial connection, the Casino Agreement provides that Crown Melbourne must ensure:

(a) at least 75% of the meetings of the Company's board of directors are to be held in Melbourne each calendar year (cl 22.1(b));

(b) at least 75% of the meetings of the Company's Senior Executive Managers are to be held in Melbourne each calendar year (cl 22.1(ba);

(c) that its Senior Executive Managers reside in Victoria (cl 22.1(bb));

(d) that at least one company secretary resides in Victoria (cl 22.1(bc).

C.106. The term "Senior Executive Managers" is defined to include: (a) Crown Melbourne's CEO (however described); (b) Crown Melbourne's CFO (however described); (c) Crown Melbourne's Chief Operating Officer (however described); (d) any director who is an executive officer of Crown Melbourne;[333] (e) Crown Melbourne's heads of gaming, surveillance, international and domestic VIP business, and compliance.

C.107. Clause 22(r) of the Casino Agreement provides:

> the Holding Company Group, if it pursues anywhere in Australia a business similar to that of the Company, will use its best endeavours to ensure that such business is conducted in a manner:
>
> (i) which is beneficial both to that business and to the Company and which promotes tourism, employment and economic development generally in the State of Victoria; and
>
> (ii) which is not detrimental to the Company's interests.

C.108. Clause 22(ra) of the Casino Agreement provides:

> the Company:

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[333] While Ms Coonan is a director of Crown Melbourne, and the interim Executive Chairman of Crown Resorts, she is not an executive of Crown Melbourne and therefore not considered to be a Senior Executive Manager of Crown Melbourne.

must ensure that the Holding Company Group locates the headquarters of its gaming business in Melbourne;

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

(iii) will ensure that the Holding Company Group maintains the Melbourne Casino as the flagship casino of the Holding Company Group's gaming business in Australia…

C.109. Crown Melbourne is not in breach of any of its clause 22 obligations. As explained below, it is possible that there was a breach of cl 22.1(bb) while Barry Felstead occupied the position of CEO – Australian Resorts. Any such breach was rectified by the promotion of Xavier Walsh to CEO of Crown Melbourne in December 2020. Mr Walsh's replacement as CEO of Crown Melbourne will reside in Victoria.

C.110. As matters stand:

(a) The Board of Crown Melbourne meets between four to six times per year. Each of those Board meetings are held in Melbourne. Between March 2020 and July 2021, the majority of Board meetings have been held virtually, out of necessity, due to the COVID-19 pandemic.

(b) Each of Crown Melbourne's 'Senior Executive Managers', listed below, reside in Victoria and conduct their meetings in Melbourne:

i. Crown Melbourne's CEO (Xavier Walsh);

ii. Crown Melbourne's CFO (John Salomone, CFO of Australian Resorts);

iii. Head of Surveillance (Craig Walsh);

iv. Head of Table Games (Tim Barnett);

v. Head of Gaming Machines (Mark Mackay); and

vi. Crown Melbourne's Head of Compliance (Michelle Fielding).

(c) Crown Melbourne's company secretary, Alan McGregor, resides in Victoria.

C.111. Prior to the organisational restructure implemented in late 2020, the CEO of Crown Melbourne was, in substance, Barry Felstead. Mr Felstead held the title of 'CEO – Australian Resorts'. Under this old structure, Mr Walsh was Chief Operating Officer of Crown Melbourne, reporting to Mr Felstead. Mr Felstead divided his time between Western Australia and Victoria. Crown accepts that Mr Felstead having a residence in Western Australia *may* have placed Crown Melbourne in breach of its cl 22.1(bb) obligation. The reason for hesitation on the question of breach is that residency is a question of fact. It is well established

that a person can be a dual resident.[334] The evidence before the Commission was that he spent a considerable amount of his time in this role in Melbourne.[335] In any event, any possible historic breach by Crown Melbourne has been rectified by Mr Felstead resigning and Mr Walsh assuming the role of CEO of Crown Melbourne.

C.112. The Casino Agreement imposes residency obligations on Crown Melbourne's Senior Executive Managers, not on the senior executive managers of the Group. The obligations in cl 22.1(bb) are to ensure that Crown Melbourne has its own executive officers and that those executives are resident in Victoria. As noted below, cll 22 and 22A of the Casino Agreement expressly permit Crown Melbourne to be part of a corporate group with an ultimate holding company (ie, Crown Resorts). The concept of Crown Melbourne having a holding company was introduced into the Casino Agreement effective 30 June 1999. The requirement for Crown Melbourne to have Victorian resident Senior Executive Managers was inserted into the Casino Agreement in 2005. In 2005, additional amendments were made to the Casino Agreement to impose new obligations on Crown Melbourne's ultimate holding company (see discussion of cll 22(r) and 22(ra) below), however those new obligations *did not* impose any residency obligations on the CEO or the management team of the ultimate holding company. Accordingly, the fact that Mr Walsh, as CEO of Crown Melbourne, reports to the Group's most senior executive (currently Helen Coonan as interim Executive Chairman of Crown Resorts, and soon to be Steve McCann as CEO of Crown Resorts, once he obtains regulatory approval), is not inconsistent with Crown Melbourne's obligations in cl 22. While it may be appropriate, going forward, for the Crown Resorts CEO[336] and the majority of the Group's senior management team also to be based in Victoria, currently it is not a breach of the Casino Agreement if this is not the case.

C.113. Clauses 22.1(r) and 22.1(ra) acknowledge that:

(a) Crown Melbourne is a subsidiary company within a corporate group; and

(b) Crown Resorts, as the parent company of that corporate group, may wish to pursue gaming businesses in other Australian states and territories.

C.114. With these premises, cll 22.1(r) and 22.1(ra) then look to impose safeguards to ensure that the interests of Victoria are not prejudiced by reason of (and are benefited by) Crown Melbourne forming part of a corporate group with gaming interests elsewhere in Australia. The mechanism by which Victoria's interests

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334 *Gregory v Deputy Federal Commissioner of Taxation* (1937) 57 CLR 774 at 777 - 778; *Pike v Commissioner of Taxation* [2019] FCA 2185 at [54].

335 See Coonan T3816, 27-37.

336 Crown notes, in that regard, that Mr McCann gave evidence that he had committed to spending at least 50 per cent of his time in Melbourne and indeed would relocate to Melbourne if required for compliance with Crown's obligations: McCann T3492.20-39.

are sought to be protected in the event that Crown Resorts pursues gaming businesses in other jurisdictions is to:

(a) require *Crown Resorts* and *each of its subsidiaries* to use its best endeavours to ensure that gaming businesses in other jurisdictions are conducted in a manner which is beneficial both to Crown Resorts' *other business* [337] and to Crown Melbourne and which promotes tourism, employment and economic development generally in the State of Victoria; and which is not detrimental to Crown Melbourne's interests;

(b) require *Crown Melbourne* to ensure that Crown Resorts locates the headquarters of its *gaming business* in Melbourne; endeavour to maintain the Melbourne Casino as the dominant commission-based player casino in Australia; and ensure that Crown corporate group maintains the Melbourne Casino as the flagship casino of that group's gaming business in Australia.

C.115. There has been no breach of cll 22.1(r) and/or 22.1(ra). That is so for the following reasons.

C.116. *First*, for cl 22.1(r) to be enlivened, Crown Resorts must pursue a "business similar to that of Crown Melbourne" and then ensure that the *conduct* of that business is in accordance with the best endeavours obligation. Crown accepts that the business conducted by Crown Perth, which includes the Burswood Casino, is such a business. The position in relation to Crown Sydney is more complex.

C.117. Crown Sydney does not hold an unrestricted gaming licence in New South Wales. It holds a restricted gaming licence, which is subject to conditions. The *Casino Control Act* 1992 (NSW) (**NSW CCA**) distinguishes between the "casino licence", which is held by The Star, and the "restricted gaming licence" which is held by Crown Sydney. Section 6 provides:

> (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.

C.118. The conditions imposed by the restricted gaming licence provide for three key restrictions which distinguish it from an unrestricted gaming licence. First, poker machines are not permitted to be played within the Restricted Gaming

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337 Crown respectfully notes that it is not correct to say that the Casino Agreement does not impose any obligation on Crown to "care about Perth" or that the agreement contemplates Crown "sacrificing the interests of Perth and NSW, if that is what is to be done to promote the interests of Victoria". The obligation in cl 22.1(r) is clear that the conduct of the gaming business in NSW and WA must be done in a manner which is beneficial to *both* jurisdictions (cf, remarks made by the Commissioner during, for eg, Morrison T2273, 6-11.

Facility (clause 4). Secondly, minimum bet limits apply to gaming within the Restricted Gaming Facility (clause 5). Thirdly, the Barangaroo Restricted Gaming Facility is not open to the general public; it is only open to VIP Members, VIP Members' Guests and the Licensee's Guests (clause 6).

C.119. Crown Sydney is also of a significantly different size and scale to Crown Melbourne, both in terms of physical size and breadth of operation. The main Crown Melbourne site is located on a footprint of approximately 58,000m^2, whereas the Crown Sydney site is located on a footprint of approximately 6,000m^2. Crown Melbourne is licensed to operate 540 table games and 2,628 gaming machines. Whilst the terms of the Restricted Gaming Licence limit the number of table games which Crown Sydney can operate by floor area (clause 8), it is intended that Crown Sydney will operate approximately 160 table games on opening,[338] and as discussed above, Crown Sydney is not permitted to operate any gaming machines. The difference in scale is also evidenced by the non-gaming amenities at each location – for example, the Crown Melbourne entertainment complex comprises three hotels with over 1,600 hotel rooms, approximately 70 restaurants and bars and a number of other non-gaming amenities (such as a large scale conferencing facility, cabaret venue, retail precinct, cinema complex and bowling alley), whereas Crown Sydney comprises a single hotel with 349 rooms, approximately 15 restaurants and bars, limited conferencing facilities and approximately 80 luxury apartments, all within a single tower.

C.120. Put another way, Crown Melbourne's business extends to multiple hotels, events spaces, restaurants, luxury retail and an entertainment complex. The brand is associated with tourism and entertainment, as well as the casino. This, in turn, promotes tourism, employment and economic development generally in the State of Victoria. Crown Sydney, on the other hand, is intended to be a VIP Casino and luxury hotel, which is not intended to compete with or detract from Crown Melbourne's broader market

C.121. Further, even if Crown Sydney is *pursuing* a business similar to that of Crown Melbourne, it has not yet *conducted* any such business. As this Commission is aware, Crown Sydney is continuing to work with ILGA in connection with its remediation plan and will not be conducting any business pursuant to its restricted gaming licence until ILGA is of the view that Crown Sydney (and Crown Resorts) are suitable persons under the NSW legislation.

C.122. *Second*, and in any event, from the conception of the Barangaroo casino project, Crown Resorts considered that pursuing that project was expected to be of long-term benefit to Crown Melbourne. The Crown Sydney business case broadly

338 Refer to Exhibit RC0009eee VCG.0001.0002.2522 Crown's ASX release (25 September 2020).

considered two key and distinct gaming markets: the International VIP market and the Local VIP market.[339]

C.123. In respect of the International VIP market, which is a contestable market on a global basis, Crown Sydney was expected to grow Australia's share of this market. Given the large distances International VIP patrons are required to travel to visit Australia, Crown's belief was that an International VIP patron would visit multiple properties on a single trip – ie, patrons would visit both Crown Melbourne and Crown Sydney (and possibly other properties such as The Star's). Therefore, Crown's expectation was that a successful International VIP business at Crown Sydney would drive additional visitation to Crown Melbourne by international players who would have otherwise chosen a different gaming destination (such as Macau or Singapore), in turn promoting tourism, employment and economic development within the State of Victoria.

C.124. In respect of the Local VIP market, there was expected to be limited cross-over between Crown Sydney and Crown Melbourne within this market given the significant distance between the respective properties and the fact that patrons are generally local residents. The business case for this segment was based on an estimated size of the potential local VIP gaming market (for table games) in Sydney based on Crown's experience with customers in Melbourne, but sized for the respective attributes of Sydney – for example, based on respective population size and demographics. Crown believed (and continues to believe) that there was a significant opportunity to grow the overall size of this market, given the relative underperformance historically of the local VIP market in Sydney relative to Melbourne. [340]

C.125. *Third*, Crown Resorts has used its best endeavours to ensure that the conduct of its Crown Perth business is beneficial to both Crown Perth and Crown Melbourne, is not detrimental to Crown Melbourne, and has promoted tourism, employment and economic development generally in the State of Victoria. Assessing compliance with a best endeavours requires analysis of all the surrounding facts and circumstances.[341] Having multiple properties operating under a common brand has served to promote the interests of all properties in all States, including promoting tourism, employment and economic development in both Victoria and Western Australia.[342]

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339 CRW.512.220.0289 Crown Sydney Hotel Resorts Financial submission to NSW Government (June 2013).

340 CRW.512.220.0289 Crown Sydney Hotel Resorts Financial submission to NSW Government (June 2013) at .0376.

341 *Weatherbeeta Ltd v Hammersmith Nominees Pty Ltd* [2019] VSC 559.

342 Following the acquisition of Crown Perth (the Burswood Casino) acquired in 2004 and the cross-marketing of the Crown Melbourne and Crown Perth facilities, revenue from international patrons increased across each facility. For example, in FY18 revenue from international patrons in Crown Melbourne and Crown Perth was 144% and 74% (respectively) greater than revenue from international patrons in FY04.

C.126. Similarly, when operations at the Barangaroo restricted gaming facility commence, Crown Resorts will exercise its best endeavours to ensure that business is conducted in a way that is beneficial, not detrimental, to Crown Melbourne. It is in Crown Resorts' interests to cross-promote and develop each of its properties and harness the benefits that arise from the Crown brand (a quintessentially Melbourne brand) having a physical presence in other States.

C.127. Counsel Assisting's submissions in relation to cl 22.1(r) should not be accepted. The assertion that merely developing facilities elsewhere "would seem inconsistent with the best endeavours obligation"[343] is inconsistent with the obligation's premise. It cannot be the case, as Counsel Assisting seem to contend, that the mere opening of a casino in NSW which would generate tax revenue for the NSW government constitutes a breach of the obligation in cl 22.1(r).[344] The conduct of gaming operations by Crown Resorts in any other jurisdiction in Australia was always going to generate tax revenue for the State in which those operations were conducted. This is what cl 22.1(r) expressly contemplates. The obligation is for Crown Resorts to use its *best endeavours* to ensure the gaming businesses in other jurisdictions are *beneficial to both* Crown Melbourne and Crown Sydney or Crown Perth (as the case may be), promote Victoria's interests, and not be detrimental to Crown Melbourne's interests. For the reasons set out, that is precisely what Crown Resorts has done. Counsel Assisting are wrong to assume that Crown Sydney and Crown Melbourne are competing for the international VIP market in a zero-sum game. On the contrary, the more international customers that Crown Resorts are able to attract to Australia on the strength of an additional casino offering the better for *both* Crown Sydney and Crown Melbourne, and the better for tourism, employment and economic development in Victoria.

C.128. There will not be conflicts of interest between Crown Melbourne and properties in other States. As noted, having Crown Melbourne as one property operating under a brand with interests in other States serves to promote the interests of Crown Melbourne in those other States. Melbourne is where the company is headquartered and where it has "grown" from. The Crown brand is synonymous with Melbourne. It has since opened in Sydney and the Burswood property has been rebranded as "Crown Perth". Rather than directly competing for patrons in those States, or international patrons, having other properties operating under the Crown brand serves to promote, rather than undermine or detract from, Crown Melbourne's interests.

C.129. *Fourth*, Crown Melbourne has ensured that Crown Resorts locates the headquarters of its *gaming business* in Melbourne. Crown Resorts is

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343 COM.0500.0001.0001 Counsel Assisting Closing Submissions, 'Chapter 18 – Breaches' at .0333 [3.22].

344 COM.0500.0001.0001 Counsel Assisting Closing Submissions, 'Chapter 18 – Breaches' at .0333 [3.25] – [3.28].

headquartered in Melbourne. Its registered office is 8 Whiteman Street, Melbourne.

C.130. *Fifth,* Crown Melbourne and Crown Resorts have ensured that the Melbourne Casino remains the "flagship casino" of the Crown Resorts gaming business in Australia:

(a) As noted above, Crown Sydney is yet to operate a casino. When it does, it will be a qualitatively (and quantitatively) different gaming business to that conducted by Crown Melbourne. While 'flagship' is not defined in the agreement, its ordinary meaning, in a business context, is the best or most important product that the organisation owns or produces. While impossible to compare the two in circumstances where Crown Sydney is yet to offer *any* gaming services to customers, it suffices to note that the significant differences in scale between the two operations (physical size, product count, room count etc) is such that there is no present (or realistic future) risk of Crown Sydney usurping Crown Melbourne as the flagship casino in the group. Indeed, the financial submission to the NSW Government in June 2013 demonstrated that Crown Sydney would not be as big as Crown Melbourne.[345]

(b) Crown Perth does not compete with Crown Melbourne at a level sufficient to deprive, or risk depriving, Crown Melbourne of its status as Crown Resorts' flagship gaming business. For instance, in the figures for the last full financial year unaffected by COVID, Crown Melbourne generated revenue of $2.167 billion compared to Crown Perth's revenue of $812 million, and profit of $615 million compared to Crown Perth's $244 million.[346]

C.131. Counsel Assisting's submissions on cl 22.1(ra), with respect, misconstrue the nature of the obligation and misapprehend the nature of the restricted gaming facility which Crown Sydney is licensed to conduct in NSW. None of the matters Counsel Assisting rely on from the Crown Sydney Proposal can have breached the obligation in cl 22.1(ra)[347] (and, in fairness, the submission is put no higher than that these matters "rais[e] serious questions over whether there was any consideration given to Crown Resorts' obligations under cl 22(ra)").[348] Clause 22.1(ra) does not require any subjective consideration to be given to that obligation by Crown. Rather, it is an obligation to either *maintain* or *ensure* that Crown Melbourne's position as the peak gaming business within Crown Resorts'

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345 CRW.512.220.0289 Crown Sydney Hotel Resorts Financial submission to NSW Government (June 2013) at 0335.

346 CRW.515.004.9268 FY19 Annual Report at 9310-9311.

347 COM.0500.0001.0001 Counsel Assisting Closing Submissions, 'Chapter 18 – Breaches' at [3.31] – [3.36].

348 COM.0500.0001.0001 Counsel Assisting Closing Submissions, 'Chapter 18 – Breaches' at [3.37].

stable remained. Performance of the obligation is a question of objective fact. For reasons already set out, this has never been in doubt. Crown Sydney has not overtaken, nor has there ever been any realistic prospect that it could overtake, Crown Melbourne as the dominant Commission Based Player casino in Australia, or, for that matter, become the 'flagship casino' of Crown Resorts' gaming business.

Crown's centralisation proposal

C.132. In its Sixth Review, the VCGLR made the following observations about Crown's governance structure:

> On 2 August 2013, Crown Resorts announced a restructure of its executive management team and created the new position of CEO–Australian Resorts, filled by the then chief executive of Crown Perth, Mr Barry Felstead. This role is responsible for Crown's two Australian casino properties, its high roller business and certain international business.
>
> …
>
> It has been noted earlier in this report that some Crown Melbourne executive roles now extend beyond the management of the Melbourne business—that is, they are "group" roles. The following aspects of the business are now managed at a Crown group level: Information Technology; Regulatory & Compliance; Responsible Gaming; International Business Operations; Learning & Development; Public Relations; Product, Strategy & Innovation; Procurement & Supply; Risk & Audit; Finance; Anti-Money Laundering; Enterprise Reporting; Legal; VIP International; Customer Analytics; Strategy & Finance; Hotels; Retails and Food and Beverage.
>
> Crown advised the VCGLR that the benefits of group level management are: greater consistency in approach across the group and developing executives with greater expertise through having a broader experience.

C.133. Crown has recently considered taking additional steps to centralise its governance structure.

C.134. While under Crown's current operating model many key management functions are undertaken at a group level, in a centralised manner, at a structural level, the Boards and operational functions of each of Crown Melbourne, Crown Sydney and Crown Perth continue to operate on a decentralised basis. Each subsidiary licensee Board has different membership and receives much of the same State-based management information as the Crown Resorts Board receives. A core component of Crown's remediation plan initially submitted to ILGA in March 2021 is improvement of the group's governance and oversight functions.[349]

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[349] Exhibit RC0416b CRW.525.001.1581 Crown Resorts Limited Remediation Plan (as at 15 March 2021; Exhibit RC0416h CRW.512.110.0008 at .0010 Crown Resorts Limited Remediation Plan (as at 27 May 2021); CRW.512.253.0074 Crown Resorts Limited – Remediation Plan (as at 30 July 2021).

C.135. From a structural perspective, centralisation could involve:

(a) appointing Crown Resorts senior management to the Crown Melbourne Board, to ensure consistency of oversight across the group's businesses;

(b) delegating certain responsibilities relating to group governance and strategy from Crown Melbourne to the Crown Resorts Board and Board committees;

(c) adopting the policies and governance practices of Crown Resorts at the Crown Melbourne level, with the inclusion of subsidiary-specific policies and practices where necessary.

C.136. While under this model certain functions of the business would be delegated to Crown Resorts' central management and Crown Resorts' Board, Crown Melbourne (and the other licensees in Sydney and Perth) would continue to maintain its own management and operational teams, continue to operate its own executive risk and compliance committees (ERCC),[350] and continue to have active Boards.

C.137. If Crown were to move toward a more centralised governance structure, it would only do so with the approval of the VCGLR[351] and *after* any legislative or contractual impediments to it doing so were removed by way of amendment. Crown is conscious that this is a question of considerable interest to this Royal Commission, and will defer any approach to the VCGLR or any other regulators on this matter until it has the benefit of reading the Commissioner's Report.

C.138. However, in Crown's respectful submission, there are a number of reasons why (further) centralisation is appropriate and serves the interests of not only Crown and its shareholders, but also the interests of Victorians.

C.139. *First*, there are significant efficacy and efficiency benefits in the centralisation of functions across the Crown properties. These include: the creation of consistent culture and values; the setting of principles regarding compliance;[352] and more effective risk and compliance functions.[353] Mr McCann considers that a restructure would assist to address the various failings outlined in the Bergin Inquiry Report by modernising and upgrading Crown's processes, people and systems.[354] His evidence was that his proposed reforms would include:

> the investment of considerable resources in the oversight and standardised and centralised management of compliance, financial crime, responsible gaming, risk

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350 The observation made in Counsel Assisting's submissions at [11.4.3], that Crown Melbourne does not have a separate risk management framework or committee and is entirely dependent on Crown Resorts in that regard is incorrect.

351 Korsanos T3680.5-12.

352 Morrison T2272.9-30.

353 Exhibit RC0416 CRW.998.001.0423 Weeks I at [37].

354 Exhibit RC0419 CRW.998.001.0459 McCann I at [32].

> appetite and management, reporting, training and culture. As part of this I intend to revise the organisational structure to ensure clear visibility, transparency and accountability across these matters, including elevating reporting lines for roles such as responsible gaming directly to myself as CEO and implementing clear performance objectives regarding these roles.

C.140. The centralisation of Crown's operations enables Crown to optimise the quality of the support provided to each of the licensees, and principally Crown Melbourne as the group's largest and premier casino, across a range of critical functions. This is consistent with the obligation in clause 28 of the Casino Agreement that Crown Melbourne "conduct its operations in the Melbourne Casino in a manner that has regard to the best operating practices in casinos of a similar size and nature to the Melbourne Casino". Delivering world's best practice in critical functions such as the responsible service of gaming, compliance and AML is facilitated by having a corporate group with substantial resources and multiple assets centralising those functions and the centralised function then working with dedicated teams based at each of the properties to implement those practices, having regard to the particular requirements of each casino.[355] A centralised function with greater oversight and responsibility is likely to attract higher quality candidates which will improve the overall functioning of the group. Conversely, decentralised roles will by definition be smaller and most likely less attractive to high quality candidates, and do not get the efficiencies from a larger group (not just cost but also capability).

C.141. Under a decentralised structure, there is a risk that silos may form within the different subsidiaries, where the efforts and governance improvements created by one subsidiary are not leveraged to benefit other operating subsidiaries. A centralised governance model will also enable Crown to set core governance standards across the group, which each of the Casino Subsidiaries must meet.

C.142. *Second*, building a national brand and strong reputation is conducive to the success of each individual casino Crown Resorts operates, including Crown Melbourne. Crown respectfully submits that adopting a best practice centralised governance model, which is in line with the practices of other large ASX listed companies,[356] would improve the governance of *all* of its casino businesses, in turn promoting tourism, employment and economic development within the State of Victoria as well as in other States.

C.143. *Third*, centralised governance does not preclude local risk management and local supervision and policy-setting by management. Having a centralised governance framework should better enable the management team for Crown

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355 Siegers T2034.40-2035.23; Halton T3618.5-3619.12, T3621.37-3622.25; Korsanos T3672.20-3674.37.

356 There are many examples of large ASX listed companies who have been able to drive revenue synergies, brand synergies, cost efficiencies, performance and risk management improvements through centralised governance and management oversight of assets and businesses across multiple jurisdictions.

Melbourne to exercise Line 1 and Line 2 oversight and risk/compliance monitoring of Crown Melbourne's operations.

C.144. Under a decentralised model where a variety of people at different locations are responsible for risk management, there is a prospect that the identification and management of certain risks may fall between the cracks (for example, if Crown Melbourne assumes that another subsidiary, or Crown Resorts' centralised management, is already addressing the risk). Under a centralised model, Crown Melbourne is able to adopt a clearer and more effective enterprise-wide approach to risk identification, management and remediation.

C.145. *Fourth*, to the extent that there is a concern that a centralised corporate governance model, with Crown Resorts setting the requirements for the group, may give rise to conflicts of interest between Crown Melbourne and properties in other states, the potential for such conflicts are a common feature of the modern corporate group structure, arise as a function of the regulatory environment in which many large ASX companies operate, and are capable of being managed.[357]

C.146. The financial services sector provides an apposite example.

C.147. Australia's large financial services groups often have multiple APRA-regulated entities, each with their own specific regulatory requirements and fiduciary obligations (eg to prioritise the interests of their beneficiaries). These subsidiaries are able to delegate many key functions to group level management, in a centralised manner, whilst still continuing to operate their individual businesses in a compliant manner. The operational subsidiaries may have a mixture of senior executives and independent directors on their boards, and conduct core operational functions on a decentralised basis. However the existence of the ultimate holding company and the subsidiaries' use of centralised group management functions does not detract from the subsidiaries' individual businesses. The board of the ultimate holding company is able to manage the potential for conflicts of interest between the various subsidiaries on a daily basis.

C.148. As a consequence of the regulatory and licensing requirements to operate various aspects of their businesses, it is not uncommon for subsidiary boards in a corporate financial services group to have duties that are paramount to those owed to their shareholders. An obvious example is the potential for conflict between the duties of a professional trustee (the trustee of a superannuation fund or the responsible entity of a managed investment scheme) and the parent corporation's duty to shareholders. Similarly, offshore subsidiaries of an authorised deposit taking institution are regulated by the local prudential regulator and are obliged to maintain prudential capital, which restricts

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357 The directors of Crown Melbourne have duties to act in the bests interest of the company: Halton – T3620.46-3621.15.

dividends and other returns of capital being made to their holding companies and ultimate shareholders. Again, such obligations do not sit neatly with taking steps to maximise shareholder value but such conflicts are required to be managed on a daily basis in these organisations. The potential for conflict to arise as between the interests and duties of Crown Melbourne and those of Crown Resorts or other subsidiaries in a centralised Crown corporate group can similarly be managed.

C.149. *Sixth*, a centralised model would not preclude the VCGLR (or any other State-based regulator) from having oversight and receiving information about the Melbourne Casino. Crown Melbourne's reporting obligation to the VCGLR will continue to apply regardless of how the group's governance is structured given that the Casino Agreement and other regulatory frameworks exist between Crown Melbourne and the State of Victoria.

C.150. It is to be recalled that the current governance requirements for Crown Melbourne under the Casino Agreement were introduced in the context of the casino's historical development. Since that time, Crown Melbourne has become a wholly owned subsidiary of an ASX listed company (Crown Resorts Limited), which is subject to all the governance requirements that entails. As outlined above, the Victorian regulatory provisions already require the Crown Resorts board to make decisions in the interests of Crown Melbourne and the State of Victoria.

Responses to further questions from the Commissioner about governance

C.151. By letter dated 23 July 2021 from Solicitors Assisting, the Commissioner called for further submissions in answer to the following four questions about governance:

(a) Should the restriction on holding, or having a relevant interest in, more than 5% of the shares in Crown Melbourne be extended to holding, or having a relevant interest in, 5% (or 10%) of the shares in the holding company (Crown Resorts)?

(b) If a restriction in holding, or having a relevant interest in, shares in the holding company is imposed should that restriction apply to the CPH group as from September 2024 when their undertaking to ILGA not to exercise the power to appoint directors expires?

(c) Should the obligation imposed on the State to pay compensation in the events described in cll 24A.2(i), 24A.3 and 24A.4 of the Casino Management Agreement be repealed?

(d) Should the CCA be amended to require that some directors of a casino licensee be independent of any holding company?

C.152. Crown answers those questions as follows:

(a) Clause 22.1(f) of the Casino Agreement currently restricts Crown Melbourne from allowing a person to hold more than 5% of its total shares without the prior written approval of the VCGLR. This is also reflected in Article 2.7 of Crown Melbourne's articles of association.[358] Currently, cl 22B.1 of the Casino Agreement provides that cl 22.1(f) is not breached if a person holds more than 5% of Crown Melbourne's shares solely through that person's shareholding in Crown Resorts.

Crown Resorts submits that if a restriction were to be imposed on a person holding, or having a relevant interest in, more than a prescribed percentage of its issued shares, the appropriate restriction would be that a person's interest in Crown Resorts must not exceed 10% without the written consent of the Victorian gaming regulator and/or the Minister.

This reflects the restriction that the NSW and Queensland governments have imposed on shareholdings in Star Entertainment Group Limited (**Star**). Star holds the casino licence in NSW and three of the casino licences issued in Queensland. In each instance the shareholding cap is 10% but can be exceeded if written consent is sought and obtained from ILGA in NSW and the Minister for Liquor and Gaming Regulation in Queensland.

Crown accepts that there is no reason why a similar restriction, subject to a similar exception, should not be imposed in relation to shares in Crown Resorts.

Crown respectfully submits that there is also no reason to impose a different restriction in respect of Crown Resorts, either as to percentage limit or terms, to that which applies to Star in NSW and Queensland.

A further reason why a 10% restriction is more appropriate than a 5% restriction is that a cap set at the lower level would require arms-length institutional investors, who presently hold in excess of 5% (but less than 10%) of the shares in Crown Resorts,[359] to sell down their shares (or, if the written consent exception applied, formally seek that consent). That is unnecessary in circumstances where those investors have held in excess of 5% of Crown Resorts' shares for some time and there is no suggestion (nor should there be) that those shareholdings have influenced any of the conduct which Counsel Assisting relies on as supporting a finding of present unsuitability.

There is also no need to impose a 'hard' 10% shareholding cap as distinct from a person being permitted to hold in excess of that amount with regulatory and/or ministerial approval. Providing written consent to a

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358 CRW.512.045.1330.

359 Perpetual Limited and its related bodies corporate beneficially hold ~8.019% and The Blackstone Group Inc. and its affiliates hold 9.99%.

shareholder to go above the limit would necessarily involve the regulator and/or Minister becoming satisfied that the shareholder is, in effect, a suitable person.[360]

(b) Any restriction on a person holding more than 10% of the issued shares in Crown Resorts without the prior written approval of the VCGLR and / or the Minister should apply to all shareholders. However, appropriate transitionary provisions will be required to address any person who has such a shareholding at the time the restrictions are implemented.

(c) **Clause 24A.2(i) (public interest)**

Crown accepts that it should not be entitled to compensation if its licence were to be cancelled due to disciplinary action.

Clause 24A.2(i) provides that the State or VCGLR must not cancel or vary the casino licence other than in accordance with section 20 of the CCA (except where the Authority is relying on section 20(1)(e) of the CCA as a ground for disciplinary action). The ground under s 20(1)(e) is where "for specified reasons, it is considered to be no longer in the public interests that the licence remain in force". Crown accepts that it should have no entitlement to compensation if any conduct on its part leads to the VCGLR taking disciplinary action against it and proceeding to cancel or vary its licence as a result. Crown understands that this reflects the intention behind cl 24A.2(i).[361]

Clauses 24A.3 and 24A.4 (regulatory events)

Crown accepts that cll 24A.3 and 24A.4 of the Casino Management Agreement (the **Regulatory Events Regime**) should not operate so as to create a significant monetary disincentive for the State or VCGLR taking measures to give effect to any recommendations made by this Royal Commission.

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360 Crown notes that the quote from the 1983 Report of Board of Inquiry into Casinos in the State of Victoria relied on by Counsel Assisting for the proposition of a 5% cap suggests that the Board contemplated that it would be possible to go above 5% with regulatory approval (ie, following regulatory 'investigation') (Counsel assisting submissions, [11.3.11]).

361 Consideration may need to be given to the appropriate form of amendment to Part 5A of the Casino Management Agreement so that Crown is not entitled to compensation if its licence is cancelled because the State or the VCGLR determine that it is not in the public interest for Crown to continue as licensee (in contradistinction to, eg, the situation if State were to decide to cease the licensure of casinos simpliciter, resulting in Crown's licence being cancelled for public interest reasons unrelated to its conduct as licensee).

Crown is willing to engage in discussions to agree appropriate amendments to Part 5A (titled 'Regulatory Certainty') of the Casino Management Agreement to achieve this outcome.[362]

In circumstances where:

(i) the regulatory events are specific and were the outcome of extensive commercial negotiation between the State and Crown;

(ii) any compensation payable under cll 24A.3 and 24A.4 is capped; and

(iii) these arrangements were one aspect of a suite of matters which were agreed between Crown and the State, for which Crown agreed to make substantial payments to the State,

Crown submits that it would be appropriate that, rather than being repealed, the Regulatory Event Regime be amended, to ensure that no compensation is due or payable in respect of measures taken by the State or VCGLR to give effect to any recommendations made by this Royal Commission.

Having regard to the issues raised in this Royal Commission and current circumstances, Crown is willing to discuss with the State other possible amendments to Part 5A of the Casino Management Agreement.

(d) Yes: Crown has no objection to the CCA being amended to require that some directors of a casino licensee be independent of any holding company.

362 We note that the Regulatory Events Regime already provides that no compensation is due or payable to Crown with respect to actions which arise directly from disciplinary action validly taken against Crown: see cl 2.3 of the Casino Management Agreement.

D. AML

D.1. Introduction

D.1. Crown recognises that its ability to effectively identify, manage and mitigate Money Laundering/Terrorism Financing (**ML/TF**) risk is central to this Commission's assessment of its suitability to continue to hold the casino licence in Victoria. Crown is under no illusion as to the dimension of the challenge it faces on (AML[363]) reform. That challenge is significant because, historically, Crown has not done enough to manage the risk that money laundering presents to its operations. Crown's historic failing to effectively manage the risk of money laundering is a matter of significant concern given that, as Counsel Assisting point out, money laundering is one of the principal ways a casino can be exploited by organised crime.[364]

D.2. However, for the purposes of this Commission's assessment of suitability, it is important to be precise about Crown's current framework, mindset and approach to managing financial crime risk. While on the question of suitability Crown's past AML failings cannot be wholly consigned to the past, those failings must be properly contextualised by looking closely at what Crown has done to address them and where Crown is currently positioned to identify, manage and mitigate ML/TF risk at the casino.

D.3. For the reasons developed in this section of Crown's submissions, the evidence before the Commission, analysed carefully, shows the breadth and depth of the reforms already in place are such that Crown Melbourne is presently suitable from an AML perspective.

D.4. Counsel Assisting appropriately acknowledge that Crown's reform program is impressive in its scope and ambition and appears properly targeted and prioritised.[365]

D.5. A significant number of these reforms have already been implemented. Crown has recently introduced a suite of new and amended controls which have radically reduced its exposure to the risk of facilitating money laundering, with those controls having been externally assessed as effective, including measures designed to prevent reoccurrence of the activity identified in Crown's patron bank accounts at the Bergin Inquiry.

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363 The regulatory regime under which Crown (and other providers of designated services) operate concerns both anti-money laundering and counter-terrorism financing (**AML/CTF**). These submissions are focused on anti-money laundering given the significance of money laundering risk in the context of a casino (cf. counter-terrorism financing). Where "AML/CTF" is used in these submissions it is used interchangeably with "AML".

364 Counsel Assisting Oral Closing Submissions T-4021.02-04.

365 COM.0500.0001.0001 Counsel Assisting Closing Submissions Ch 8 at [1.3]; Counsel Assisting Oral Closing Submissions T.4025.30-31.

D.6. Further, for the reasons set out below (including in Part D.10), the evidence does not support Counsel Assisting's submission that Crown has recently engaged in a pattern of behaviour of instructing external experts with confined terms of reference,[366] that its investigation of the Riverbank and Southbank matters in the final months of the Bergin Inquiry reflect adversely on its character, honesty or integrity,[367] or that any of the actions taken by Crown in addressing AML issues since the close of evidence in the Bergin Inquiry reflect on it in that way.[368]

D.7. Work remains to be done to lift Crown's program to the 'advanced' state of maturity to which Mr Blackburn's plan aspires (scheduled to be achieved by December 2022), but it is necessary to avoid confusing the 'advanced' state of maturity to which Mr Blackburn's plan aspires (scheduled to be achieved by December 2022) with what is required for Crown Melbourne to be a suitable licensee.

D.8. To the extent that Counsel Assisting raise the risk of the FCCCP not being successfully completed and embedded, [369] the evidence shows that Mr Blackburn's plan is properly funded and has the backing of Crown's directors and senior executives. Prior to joining Crown, Mr Blackburn sought and received assurances from members of the Crown Board that he would receive the backing to execute that reform program.[370] The Board has since approved the necessary funding and has committed to continuing to do so.[371] Further, this risk can be ameliorated and managed by an Independent Monitor supervising the implementation of Crown's FCCCP.[372]

D.2. Crown's AML/CTF Program

D.9. As the provider of designated services within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**), Crown is required to adopt and maintain an AML/CTF program.[373] The objective of an effective AML/CTF program and its associated processes, systems and controls is to identify, mitigate and manage the risk of money

366 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [5.21].

367 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.78] – [2.79].

368 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [1.5].

369 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [4.34]ff.

370 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0012.

371 CRW.510.102.0034 Minutes from Meeting of Board of Directors of Crown Resorts Limited (24 May 2021) at .0037; Korsanos T3716.35-3718.30.

372 This is in circumstances where Kroll is to assess the adequacy of the FCCCP as part of its engagement as Independent Monitor in NSW.

373 Section 81 of the AML/CTF Act. If a reporting entity is a member of a designated business group, the reporting entity may adopt a Joint AML/CTF Program with the other members of the designated business group.

laundering and terrorism financing activity.[374] The processes, systems and controls are intended to operate in a coordinated way and must therefore be considered together.[375]

D.10. It is necessary to bear in mind that ML/TF risks are inherent in the business of a casino. It is acknowledged and understood that it is not possible to eliminate the risk of money laundering from financial transactions,[376] and the casino sector is particularly vulnerable to the risk of money laundering, given the variety, frequency and volume of cash transactions involved.[377]

D.11. McGrathNicol's survey of Crown staff indicated a significant reduction in the proportion of Crown staff who viewed money laundering as being likely to occur at Crown.[378] In noting the results of McGrathNicol's survey, Counsel Assisting observed that it "remains of concern" that almost one in four of the Crown staff surveyed assessed the likelihood of money laundering occurring at Crown as being either highly or extremely likely.[379] It is important to view this evidence in light of the reality that casinos, including Crown, cannot guarantee their systems are 100% impervious to exploitation by money launderers.[380] Moreover, given the wide ambit of the employees surveyed,[381] it is doubtful that they (as a group) would have been familiar with *all* of the ways in which Crown has developed, and is continuing to develop, its systems to detect, deter and disrupt potential money laundering activity.

D.12. Further, Crown's controls are subject to a number of limitations, including elements of transactions that Crown is unable to control, such as the inability to stop patrons from making cash deposits at bank branches or preventing cash structuring from occurring at a financial institution prior to receipt by Crown. Other relevant limitations arise from limitations in the transactional data available to Crown, privacy requirements which limit the data which financial

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374 Exhibit RC0083 DTT.0000.0005.0031 Dobbin I at [26].

375 Exhibit RC0083 DTT.0000.0005.0031 Dobbin I at [28].

376 Exhibit RC0084e DTT.010.0002.0008 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0006.

377 Exhibit RC0310b CRW.INQ.130.001.2034 Financial Action Task Force Vulnerabilities of Casinos and Gaming Sector (2009) at [86]-[87].

378 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [4.18]; Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at p. 9.

379 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [4.19].

380 Exhibit RC0084e DTT.010.0002.0008 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0006.

381 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0092.

institutions can share with Crown, and constraints on the ability of law enforcement agencies to share information with Crown.[382]

D.13. In that context, the focus of organisational AML controls is to "take reasonable measures to understand the risk and put in place controls to mitigate those identified risks".[383] Accordingly, an effective AML/CTF program should include systems and controls related to the following: risk assessment; customer due diligence; ongoing customer due diligence (including refresh of customer due diligence and the transaction monitoring program); enhanced customer due diligence (**ECCD**); and employee due diligence.[384] As indicated by the evidence before the Commission, Crown has systems and controls that respond to each of these matters.

D.14. On 2 November 2020, the Crown Resorts Board and each of the boards of Crown Melbourne, Crown Sydney and Crown Perth approved and adopted a joint AML/CTF Program (**Program**) comprising the following:

(a) Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A (**Part A**);[385]

(b) Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part B (**Part B**);[386] and

(c) Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Policy and Procedures (**AML Policies**).[387]

D.15. Part A is subject to ongoing oversight by the Crown Board and Crown Senior Management.[388]

D.16. The Program provides for a 'Three Lines of Defence' Model in respect of money laundering and terrorism financing (ML/TF) risk.[389] Under this model, the first line of defence, comprising Crown's business units, owns the ML/TF risk. As the same parts of the business own both the ML/TF risk and the

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382 Exhibit RC0084e DTT.010.0002.0008 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0006.

383 Dobbin T982.1-2.

384 Exhibit RC0310b DTT.0000.0005.0031 Dobbin I at [26]-[37].

385 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A.

386 Exhibit RC0309b CRW.514.002.0145 Crown Resorts Limited Joint Anti-Money Laundering and Counter- Terrorism Financing Program Part B.

387 CRW.514.002.0001 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Policy and Procedures.

388 Section 7.1 of Part A provides that the Part A program will be approved by and subject to the ongoing oversight of the Crown Board and Crown Senior Management: Exhibit RC0309a CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at .0118.

389 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [7.2].

commercial business risk, this ensures that commercial motivations are appropriately balanced with ML/TF risks.[390] The second line of defence performs an oversight function and ensures the effective design and implementation of internal controls. The third line of defence provides independent assurance to the Crown Board and Crown Senior Management on the effectiveness of the first and second lines of defence through a risk-based approach. The second and third lines of defence have been significantly expanded and bolstered already, with further increases to the second line of defence being implemented under Mr Blackburn's plan.

D.17. The Program is also supported by Standard Operating Procedures (**SOPs**) for relevant parts of the business. For example, the SOPs for Cage operations, and for Table Games operations, include procedures directed to ML/TF risks.[391]

D.18. Crown has also established an AML/CTF Committee to facilitate senior management oversight of AML/CTF compliance.[392] The AML/CTF Committee currently comprises senior representatives from each of the relevant business units of each reporting entity.[393] Members of the committee include the CEOs of each reporting entity, as well as senior executives from each of the key business areas and second line of defence functions, including Cage and Count, Gaming Machines, Table Games, Security and Surveillance, Risk, Audit and Compliance.[394] The AML/CTF Committee contributes to board oversight of AML issues through regular reporting.[395]

D.19. Pursuant to the FCCCP (see further at paragraph D.36 below), a process is underway to replace the AML/CTF Committee with the Financial Crime Oversight Committee (**FCOC**) and the Financial Crime Working Group (**FCWG**).[396]

(a) The FCOC will be accountable to the Board, will be chaired by the Chief Compliance and Financial Crime Officer, with all Group chief-level executives and property CEOs as members, and will meet a minimum of six times each calendar year. The purpose of the FCOC will be to improve financial crime and compliance risk reporting, to improve governance and to assist the Board and senior management in

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390 Blackburn T3078.6-35.

391 See, eg: Exhibit RC0470 CRW.510.013.2736 Standard Operating Procedures (Cage Operations) cl 2, 5; Exhibit RC0471 CRW.512.216.0001 Standard Operating Procedures (Table Games) cl 24.

392 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [27].

393 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [7.6].

394 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [27].

395 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [29].

396 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1768; Exhibit RC0309 CRW.998.001.0036 Blackburn I at [35].

discharging their oversight responsibilities with respect to financial crime.

(b) The FCWG will be accountable to the FCOC, will be chaired by the AML Compliance Officer, with all Executive General Managers, Group General Managers and General Managers from all three levels of defence as members, and will meet a minimum of 12 times each calendar year. The purpose of the FCWG, alongside the FCOC, will be to drive accountability by requiring the business to present on how they are meeting their financial crime obligations.

D.20. The Program, therefore, provides for a formal framework for reporting to the Board and Senior Management on AML/CTF, the escalation of all material AML/CTF matters, and for ongoing review and oversight by the Board and Senior Management.

D.21. The Program was developed with the assistance of Initialism. In a letter of 30 October 2020, Initialism stated:[397]

> We have worked with Crown and its legal representatives to develop a Part A AML/CTF Program and the supporting Policy and Procedures and, based on our work, we are of the opinion that the revised documented Part A AML/CTF Program as drafted complies with the relevant AML/CTF Rules, and is appropriately designed to identify, manage and mitigate the money laundering and terrorist financing risks faced by the Reporting Entities that are part of the Crown [Designated Business Group].

D.22. Mr Blackburn is in the process of engaging a firm to perform an independent review of the Program, in accordance with Section 8 of Part A. He anticipates that the work under the engagement will commence in the fourth calendar quarter of 2021.[398] The Program requires an independent review of Part A to be conducted at least every three years to ensure continued oversight of the status and efficacy of the Program.[399]

D.23. On 5 July 2021, McGrathNicol delivered its report following a forensic review of Crown's AML controls.[400] Although McGrathNicol questioned whether the Program was compliant on the basis that an enterprise wide risk assessment had

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397 Exhibit RC0062j INI.0004.0001.0289 Letter from Initialism (30 October 2020).

398 Exhibit RC0311 CRW.998.001.0414 Blackburn III at [28].

399 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [8]. Section 8 of the Part A Program provides that Part A must be subject to a periodic independent review, and that the Part B Program may be included in the independent review at the discretion of the AML/CTF Compliance Officer. While the AML/CTF Act only require that the Part A Program be independently reviewed periodically, Crown considers that it is good practice to also have Part B independently reviewed periodically.

400 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021).

not as yet been carried out,[401] it was not instructed to and did not purport to offer an opinion regarding the compliance of the Program[402] (and Ms McKern did not purport to suggest that the Program was not compliant).[403]

D.24. In fact, Ms McKern accepted that the Program adopted risk-based systems and controls, as required by the AML/CTF legislation.[404] She did not dispute Mr Blackburn's opinion that the Program was "above foundational" – that is, that the Program was compliant.[405]

D.25. The Program provides for both manual and automatic monitoring.[406] The automatic elements of Crown's transaction monitoring system are addressed in Part D.9 below.

D.3. Crown's AML Response to the Bergin Inquiry

D.26. As acknowledged from the outset of this Commission, Crown accepts the findings in the Bergin Report that third parties engaged in apparent money laundering through the Riverbank and Southbank accounts, and that Crown inadvertently facilitated or enabled this activity despite concerns being raised by its bankers.[407] The key failings identified in the Bergin Report in respect of those accounts may be summarised as follows:

(a) Deposits into the Riverbank and Southbank accounts were aggregated by cage staff in Crown's casino management system. The aggregation of transactions, including structured transactions, obscured important information and compromised Crown's ability to effectively monitor those transactions for money laundering;[408]

(b) Concerns raised by banks with respect to the Riverbank and Southbank accounts were not escalated to the Board or the Risk Management

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401 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0011.

402 McKern T3934.6-27; Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0011.

403 McKern T3934.24.27.

404 McKern T3935.28-34.

405 McKern T3934.29-3935.14. The questions raised regarding the state of compliance of Crown's Program were based on a form of assumption or backwards reasoning – that is, McGrathNicol relied upon the extensive nature of Mr Blackburn enterprise-wide risk assessment (which was not required by the AML/CTF legislation) to suggest that previous risk assessments were wanting: McKern T3933.3-39.

406 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [12.3].

407 Letter from Crown to The Honourable Ray Finkelstein AO QC (17 March 2021).

408 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Chapter 3.2 at [31]-[33].

Committee and no reviews of the bank accounts were conducted until August 2019;[409]

(c) There were serious shortcomings in the transaction monitoring of the Riverbank and Southbank accounts;[410]

(d) Crown could not identify and verify the identity of individuals who were depositing money into the Riverbank and Southbank accounts;[411] and

(e) Crown's AML policies relating to patron bank accounts were ignored by patrons and were not enforced by Crown.[412]

D.27. Commissioner Bergin concluded that these failures to appropriately manage ML/TF risk at Crown were sufficient, in and of themselves, to warrant a finding that Crown was unsuitable in New South Wales.[413]

D.28. Crown has taken steps to comprehensively address each of the specific criticisms identified in the Bergin Report.

D.29. *First,* Crown has prohibited aggregation of patron telegraphic transfers,[414] and reviews its patron bank accounts on a daily basis to verify that no aggregation has occurred.[415]

D.30. *Second,* as noted, the Program creates a prescriptive framework for both formal reporting and informal escalation of AML/CTF related matters. It provides for Crown Board oversight of AML matters and requires quarterly reporting to the Crown Board and monthly reporting to Crown senior management and that material AML/CTF matters be escalated at each Crown Board meeting or as frequently as required.[416] Crown has also established an AML/CTF Committee to facilitate senior management oversight of AML/CTF compliance[417] and is in the process of restructuring that committee into the FCOC and FCWG which will meet on a more frequent basis.[418]

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409 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Chapter 3.2 at [45], [48], [60], [80], [83]-[84], [95].

410 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Chapter 3.2 at [70]-[75].

411 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Chapter 3.2 at [87].

412 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1, Chapter 3.2 at [144]-[146].

413 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Chapter 4.5 at [65]-[66].

414 CRW.998.001.0062 Salomone I at [4]-[5].

415 CRW.998.001.0062 Salomone I at [20].

416 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at .0118.

417 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [27].

418 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1768.

D.31. *Third,* Crown has implemented the following additional controls in relation to transaction monitoring:

(a) Pursuant to Part A of the Program, Crown conducts weekly manual reviews of its bank statements to identify the following typologies: possible structuring behaviour; possible smurfing behaviour; funds transfers with transaction descriptions that do not appear associated with a gaming purpose; cash deposits where this is evident from the bank statement; and deposits from third parties (including money remitters) where this is evident from the bank statement.[419]

(b) Patron accounts – Crown has reduced the number of patron accounts, which enhances Crown's ability to monitor for money laundering activity.[420]

(c) Automation – Further account monitoring is conducted automatically via the Sentinel system,[421] with 26 of these rules already in operation [422] Crown has also automated its bank account monitoring in its 'TM1' system. [423] The automated bank account monitoring is operating in tandem with the existing manual monitoring as the automated monitoring is embedded and its efficacy is assessed.[424] The shift to automated rules enhances Crown's ongoing ability to monitor bank account activity, particularly as and when levels of activity rise.[425]

D.32. *Fourth*, Crown has implemented a number of controls to address the risk of money laundering through its patron bank accounts:

(a) the third party transfer and money remitters policy,[426] pursuant to which Crown no longer accepts payments from third parties and remitters into its accounts without approval, and any departure from the default

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419 Exhibit RC0023a CRL.742.001.0009 Bank Statement Monitoring (16 November 2020).

420 Dobbin T919.38-40; Blackburn T2999.5-25. In addition to closing the Riverbank and Southbank accounts, Crown has rationalised the accounts used by patrons of Crown Perth (CRW.708.008.8594) and Crown Melbourne has only one AUD bank account (with foreign currency accounts for each of the main currencies used by foreign patrons). Crown is continuing to rationalise its patron accounts further.

421 Exhibit RC0023 CRW.998.001.0084 Stokes I at [40]-[50].

422 CRW.512.240.0001 Consolidated Sentinel Rule Documentation as at 28 July 2021.

423 Exhibit RC0023 CRW.998.001.0084 Stokes I at [12]-[13].

424 Exhibit RC0062 INI.0000.0005.0001 Jeans I at [83]; Jeans T823.21-37, 827.28.32.

425 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0018.

426 Exhibit RC0023e CRL.742.001.0101 Crown Designated Business Group AML/CTF Policy Statement – Third Party Transfers and Money Remitters (v1.0) (16 November 2020).

position requires the provision of identification details and approval from the AML Team; and[427]

(b) the return of funds policy,[428] which specifies that Crown will not accept cash deposits and only accept payments that are transferred into its bank account from a personal bank account belonging to the patron seeking to transfer funds, and requires the patron's full name, Crown rewards number and appropriate documentation before funds can be released to the patron. Where transfers are made other than in accordance with Crown's policies, those funds will be returned.[429]

(c) Crown has implemented improvements to its Know Your Customer (**KYC**) processes, which are contained within Parts A and B of the Program. Further enhancements to Crown's KYC processes will occur as part of Crown's FCCCP.[430]

D.33. *Fifth*, regarding the effectiveness of Crown policies, Crown has engaged Deloitte to conduct a comprehensive forensic review of its patron bank accounts and to conduct an assessment of the patron account controls. Crown is in the process of implementing all recommendations identified in Deloitte's Phase 1 Report through changes to policies and procedures as well as improvement to oversight, reporting and escalation.[431] The status of Crown's implementation of Deloitte's Phase 1 recommendations (and those of Promontory) is addressed further at Part D.5 below.

D.34. Each of these matters is dealt with in further detail below. In addition to these specific matters, Crown is in the midst of a substantial financial crime and compliance reform program.

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427 Exhibit RC0023e CRL.742.001.0101 Crown Designated Business Group AML/CTF Policy Statement – Third Party Transfers and Money Remitters (v1.0) (16 November 2020) at cl 2.1-3.2.

428 Exhibit RC0023c CRW.512.025.1110 Crown Designated Business Group Corporate Policy Statement – Return of Funds (v1.0).

429 Exhibit RC0023c CRW.512.025.1110 Crown Designated Business Group Corporate Policy Statement – Return of Funds (v1.0) at cl 1.3 and 2.3.

430 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1771-.1772, .1775.

431 Exhibit RC0311g CRW.512.112.0001 Memorandum from Mr Blackburn to the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment (7 June 2021).

D.4. Crown's FCCCP

D.35. On 24 May 2021, the Crown Resorts Board endorsed the FCCCP.[432] The FCCCP aspires to achieve an aggregate 'advanced' maturity state by 31 December 2022, with ongoing enhancements beyond 2022.[433]

D.36. The key elements of the FCCCP are set out in the Financial Crime & Compliance Board Pack dated 24 May 2021.[434] Those elements include the following:

(a) the recruitment of 55 new financial crime and compliance permanent employees;[435]

(b) improvements to risk reporting and the introduction of a FCOC accountable to the board of Crown Resorts;[436]

(c) the introduction of key performance objectives for each employee related to their compliance and financial crime obligations;[437]

(d) new and enhanced financial crime controls, including:

(i) enhanced collection of KYC information and enabling a more comprehensive customer risk assessment;

(ii) additional peer-to-peer gaming controls to reduce the risk of collusion;

(iii) reduced cash thresholds for un-carded play and enhanced information gathering to assist transaction monitoring;

(iv) changes in policy relating to customer identification and verification;

(v) improved employee training to assist employees to understand and comply with financial crime obligations and the role Crown can play in protecting the vulnerable and community at large from financial crime;[438]

(e) investments in data analytics capability and data infrastructure;[439]

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432 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021); Exhibit RC0311 CRW.998.001.0414 Blackburn III at [10].

433 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1760.

434 Exhibit RC-0311a CRW.512.081.1750 FCCCP (24 May 2021).

435 RC0311 CRW.998.001.0414 Blackburn III at [16].

436 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1768.

437 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1770.

438 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1771.

439 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1772.

(f) introducing a financial crime enterprise wide risk assessment based on enhanced risk assessment methodologies.[440]

D.37. These further enhancements build on the already substantive reforms and improvements undertaken by Crown, some of which have been touched on above, and all of which are canvassed in detail below.

D.38. McGrathNicol make the following observations in respect of the FCCCP:[441]

> It is our assessment that **it is likely that the FCCCP will give rise to a significant change** in Crown's understanding of and performance in AML/CTF over the ensuing 18 months. We say this because:
>
> - We consider that Mr Blackburn has the capability, track record and standing to lead such an ambitious program. Further, he is not burdened by the history of Crown's past underperformance and has the "fresh eyes" advantage through having subject matter expertise honed in a different sector, which enables him to question practices and ideas which may not be considered open to question by those with only Crown or casino experience.
>
> - The FCCCP he has developed is comprehensive and the areas of priority are apt.
>
> - There is currently a rare window of opportunity to embed new processes and practices which may be challenging to customers, in an environment of little international patronage and lower patronage overall.
>
> Should Sydney Casino open, it too presents an opportunity to introduce practices and technology to bolster ML/TF resilience in a greenfield environment which can be replicated at other properties.

D.39. Mr Blackburn's opinion is that Crown's Program is (as a whole) past the level of "foundational". While at an early stage of maturity, a level of foundational is indicative of a compliant AML/CTF program with foundational resources and capability.[442] Further, Mr Blackburn's evidence is that he considers the Program to be adequately resourced given its present state, though he intends to increase resourcing to further enhance the Program over the coming months.[443]

D.40. Counsel Assisting appears to rely upon Ms McKern's statement that, if the Program is foundational, it is "only barely and recently" so.[444] However, this statement must be read within the context of McGrathNicol's report and evidence as a whole, which includes the fact that Ms McKern accepted Mr Blackburn's assessment that the Program was past the level of foundational (and

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440 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1767.

441 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0012.

442 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1753; Blackburn, T3079.44-3080-9.

443 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [28].

444 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [4.5] and [4.17].

therefore compliant).[445] In any event, whatever view is taken of the timing and degree by which the program became foundational, it is important to keep in mind that it presently does "do the job" even though Crown accepts that, for an operation of its scale and long history, that is not good enough, and Crown is already progressing with a far-reaching uplift program that will take Crown's AML function well beyond that level.

D.41. The FCCCP prepared by Steve Blackburn is precisely the transformation strategy and change management process which Promontory[446] recommended be put in place. [447] Crown has also embraced each of Promontory's recommendations with respect to addressing the vulnerabilities, or potential vulnerabilities, which Promontory identified in its review of Crown's AML framework. Crown's response to each of Promontory's recommendations is set out in Mr Blackburn's memorandum to the Crown Resorts Board dated 7 June 2021. [448] In accordance with Mr Blackburn's memorandum, Crown is implementing Promontory's recommendations on each of these areas. Therefore, to the extent that Promontory identified immature elements of, or remaining vulnerabilities in, Crown's AML framework,[449] those elements are being attended to as part of Crown's uplift of its financial crime and compliance function.

D.42. As fairly observed by Counsel Assisting, "the program of reform is impressive in its scope and ambition and appears properly targeted and prioritised".[450]

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445 McKern T3934.29-3935.14.

446 On 24 May 2021, Crown received phase one of Promontory's report addressing potential AML vulnerabilities: Exhibit RC0311c CRW.512.086.0003 Promontory Phase 1 Report: AML Vulnerability Assessment (24 May 2021). Promontory identified Crown as having controls in place across all relevant areas, albeit some controls were only 'partially effective' (Carmichael T1034.24-27). These 'partially effective' controls were the areas identified by Promontory in its Phase 1 report as areas requiring attention (Carmichael T1034.24-27).

447 Exhibit RC0311c CRW.512.086.0003 Promontory Phase 1 Report: AML Vulnerability Assessment (24 May 2021) at .0037; Carmichael T1030.30-1031.14, 1044.20-32. Counsel Assisting also raised with Mr Carmichael the risks of implementing change without a transformation strategy or change management process (Counsel Assisting AML Opening Submissions T596.20-22). Mr Carmichael agreed that, having spoken to Mr Blackburn at a high level about his plan at the time he gave evidence, that the plan was "aligned with the idea of creating a unified end state" (Carmichael T1044.30-32).

448 Exhibit RC0311g CRW.512.112.0001 Memorandum from Mr Blackburn to the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment (7 June 2021) at .0034.

449 It is to be noted that Promontory also identified that some, important, elements of Crown's AML control framework were already 'mature': Carmichael T1034.34-46.

450 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [1.3].

D.5. Crown's Patron and Deposit Account Balance ("DAB") Accounts

D.5.1 Patron accounts

D.5.1.1 Patron account controls implemented since the Bergin Inquiry

D.43. The apparent money laundering in the Riverbank and Southbank accounts caused Crown to commission a comprehensive audit of its bank accounts related to gaming and to impose stringent controls regulating the circumstances in which Crown will accept funds into those accounts. Those controls are specifically designed to mitigate the risk of money laundering through Crown's accounts. They include the following.

Third party transfer and money remitters policy

D.44. Crown accepts that third party transfers (both into and out of its bank accounts) present a ML/TF risk. That is because there is a risk that a third party transfer arrangement can be used to disguise the true beneficial owner or the source of funds, in order to evade AML controls.

D.45. Pursuant to the third party transfer and money remitters policy,[451] Crown no longer accepts payments from third parties into its accounts for the benefit of customers, and will not make payments to third parties on behalf of customers without written approval in accordance with the terms of the policy.

Return of funds policy

D.46. The return of funds policy governs the return of cash deposits or third party transfers into Crown bank accounts.[452] Under the policy, Crown will only accept payments that are transferred into its bank account from a personal bank account belonging to the patron seeking to transfer funds. Funds will be returned in particular circumstances outlined in the policy.

D.47. Cash deposits into Crown's bank accounts are prohibited. Cash transactions are returned to the patron by Cage staff issuing the patron with a cash equivalent of the original deposit, with an accompanying receipt that states, "*Return of cash as a result of unauthorised cash deposit into Crown [Melbourne/Sydney/Perth] bank account."*[453] This ensures that patrons cannot "clean" cash through the casino by presenting the returned moneys to their bank as winnings at Crown.

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451 Exhibit RC0023e CRL.742.001.0101 Crown Designated Business Group AML/CTF Policy Statement – Third Party Transfers and Money Remitters (v1.0) (16 November 2020).

452 Exhibit RC0023c CRW.512.025.1110 Crown Designated Business Group Corporate Policy Statement – Return of Funds (v1.0).

453 Exhibit RC0023c CRW.512.025.1110 Crown Designated Business Group Corporate Policy Statement – Return of Funds (v1.0).

D.48. The policy also requires Unusual Activity Reports (**UAR**) to be submitted where cash deposits are made.[454] Crown has also issued a memorandum which makes specific provision for funds received from joint accounts.[455] The VIP Banking team reviews Crown's patron bank account statements on a daily basis for patron transfers that do not meet these policies.[456] Cash deposits in breach of the policy may result in warnings or a withdrawal of licence.[457]

Prohibition of aggregation

D.49. Crown has issued directions to its Cage team prohibiting aggregation of patron telegraphic transfers. Staff are now required to complete a separate entry in SYCO and Transfer Acknowledgment form for each deposit.[458] Crown reviews its patron bank account on a daily basis to verify that no aggregation has occurred.[459]

Bank Account Monitoring

D.50. The VIP Banking team were also tasked with conducting daily reviews of Crown Melbourne's patron bank account statements to identify any transfers that did not meet Crown's policies at the time regarding third party payments and the return of funds.

D.51. From 22 April 2021, Crown also implemented further checks to ensure that no outgoing transfer was to be processed by VIP Banking until the Cage and Count Finance Integrity Manager had reviewed the transfer.[460] From 23 April 2021, two Cage Management members were also required to sign and check all incoming and outgoing telegraphic transfers to ensure that they comply with Crown's requirements.[461]

Manual Bank Statement Monitoring Rule

D.52. On 16 November 2020, Crown issued the AML/CTF Manual Rule on Bank Statement Monitoring (**Manual Bank Monitoring Rule**). The Manual Bank Monitoring Rule requires that the Financial Crime team conduct a manual

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454 Exhibit RC0023c CRW.512.025.1110 Crown Designated Business Group Corporate Policy Statement – Return of Funds (v1.0) at [3.4(c)].

455 Exhibit RC0023f CRW.520.003.9552 Crown Resorts Limited Executive Office Memorandum from Barry Felstead re: Prohibition on Third-Party Payments – Commonly Asked Questions (21 October 2020).

456 CRW.998.001.0062 Salomone (21 April 2021) at [9]-[10].

457 Exhibit RC0023c CRW.512.025.1110 Crown Designated Business Group Corporate Policy Statement – Return of Funds (v1.0) at [3.5].

458 CRW.998.001.0062 Salomone I at [4]-[5].

459 CRW.998.001.0062 Salomone I at [20].

460 Exhibit RC0023 CRW.998.001.0084 Stokes I at [38].

461 CRW.512.214.0001 Email from Stephen Hancock to Cage Melbourne re: *Telegraphic Transfer Completion – Four Eyes Check* (23 April 2021).

review of the bank statements for the Crown entity accounts on a weekly basis to identify:

(a) cash deposits, including structuring or smurfing behaviour;

(b) funds transfers with transaction descriptions that do not appear associated with a gaming purpose;

(c) third party transfers for the benefit of Crown customers; and

(d) any other transaction or series of transactions characteristic of an ML/TF typology.[462]

D.53. That manual monitoring is continuing in tandem with Crown's automatic monitoring of bank accounts via the TM1 system as that system is embedded. The TM1 system reviews for the same transactions set out above and produces alerts where such transactions in breach of Crown's Patron Account Controls are identified by the system.

Effect of controls

D.54. As explained below, these controls are presently effective, and Crown is taking steps to ensure they are effective on a sustainable basis. In short, if cash cannot be successfully deposited into Crown's accounts, transfers from third parties (including money remitters) into Crown's accounts are prohibited, and Crown is actively monitoring its patron bank accounts to ensure compliance and to detect indicia of money laundering, the ability to launder money through those accounts is radically diminished.

D.55. Mr Jeans explained that implementing controls regarding the prohibition and reduction in the use of cash at the casino would mean that cuckoo smurfing and structuring transactions would be "easily identifiable and easily investigable."[463] McGrathNicol concluded that the prohibition of cash deposits into Crown bank accounts, when they operate in combination with existing controls, can reasonably be expected to prevent money laundering activity and be effective in deterring cash structuring and cuckoo smurfing activity.[464]

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462 Exhibit RC0023a CRL.742.001.0009 Bank Statement Monitoring AML/CTF Manual Rule (16 November 2020).

463 Jeans T875.12-14.

464 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic Review – AML/CTF (5 July 2021).

D.5.1.2 Deloitte's patron account review

D.56. Following the release of the Bergin Report, Crown engaged Deloitte to conduct a forensic review and controls assessment relating to Crown's patron bank accounts.[465] The review is structured in three phases:

(a) Phase 1 assessed the design and operating effectiveness of the current controls in place over Crown's patron bank accounts, including those that are designed to prevent and detect activities identified during the Bergin Inquiry;

(b) Phase 2 is ongoing and will confirm whether there are any transactional patterns or behaviours indicative of any money laundering typologies through historic or current patron accounts, including the typologies identified in the Grant Thornton and Initialism reports; and

(c) Phase 3 will assess the design effectiveness and the operational effectiveness of a broader set of Crown's direct AML/CTF controls, including its transaction monitoring program, ECDD, ongoing due diligence and KYC;[466] and

(d) an additional phase has been added to include a review into the hotel card transactions practice.[467]

Deloitte Phase 1

D.57. On 26 March 2021, Deloitte delivered its report in respect of Phase 1.[468] The report addressed the design and operating effectiveness of Crown's current patron bank account controls to prevent two money laundering typologies: structuring and cuckoo smurfing.[469]

D.58. In respect of the design of Crown's patron bank account controls, Deloitte concluded as follows:[470]

> Deloitte considers that the design of Crown's controls is aligned with industry practice, and that the **Patron Account Controls are effective in addressing cash structuring**

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465 Exhibit RC0310e CRW.512.023.0026 Deloitte Letter of Engagement – Forensic Review and Controls Assessment (22 February 2021).

466 Exhibit RC0310e CRW.512.023.0026 Deloitte Letter of Engagement – Forensic Review and Controls Assessment (22 February 2021).

467 Exhibit RC0476 CRW.512.217.0008 Deloitte: Forensic Review: Updated timings for Phase 2 and 3 of Forensic Review (including HCT matter) at .0010; see also Blackburn T2997.18-26.

468 Exhibit RC0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021). This report was supplemented with an Addendum on 5 May 2021.

469 Exhibit RC0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0105.

470 Exhibit RC0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0106-.0107.

and cuckoo smurfing activity occurring in the Crown Patron Accounts. If executed correctly, the Patron Account Controls:

- Prohibit patrons from depositing cash at all into the Patron Accounts (noting that Crown cannot prevent a customer making a cash deposit at a bank branch, but that cash is returned to any patrons making such deposits). Cash structuring is therefore not possible because cash cannot be used in the Patron Accounts. Similarly, cuckoo smurfing using cash deposits is also not possible for the same reason.

- Require patrons to transfer funds to the Patron Accounts from an account in their personal name (transfers from any other person/entity, or where the sender name is not clear, are rejected by Crown). Cuckoo smurfing using electronic funds transfer is therefore not possible where Crown will not accept third party payments on behalf of a patron.

- Stop every patron transaction within the Patron Accounts from being credited to a patron's gaming account, prior to a review by the Crown Cage staff. This creates a preventative control. In this respect we note that banks, for example, do not typically pre-screen transactions on a preventative basis in this way, and rely on detective controls.

(Emphasis added.)

D.59. Counsel Assisting appear to conclude that Crown's patron account controls are not presently effective.[471] That is inconsistent with Deloitte's findings set out above.

D.60. Counsel Assisting also rely upon Ms Dobbin's evidence that Crown's control framework was *"in the ball park, if you like, kind of average"*.[472] That does not suggest that Crown's Program is not compliant, nor does it detract from a finding of present suitability.

D.61. Deloitte's review of Crown Melbourne's bank accounts relevantly found as follows:

(a) Deloitte did not identify any patron cash deposits in Crown's current patron bank accounts;

(b) Deloitte observed 48 instances where electronic funds transfer transactions were rejected by Crown on the basis that the transactions were not in line with Crown's policies; and

(c) of all patron transactions into the patron accounts during the review period (approximately 1,183), Deloitte identified only two electronic funds transfer transactions where there were "fairly technical deficiencies" with Crown's policy requirements.[473]

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471 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [3.35].

472 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [3.24].

473 Exhibit RC0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0107.

D.62. Deloitte qualified their primary conclusion (referred to in paragraph D.58 above) by noting that "*Deloitte considers that the Patron Account Controls are not yet sufficiently mature to be effective on a sustainable basis*".[474] Deloitte then made a series of recommendations designed to make the controls sustainably effective.[475] A summary of the recommendations made in Deloitte's Phase 1 Report is set out in the Statement of Mr Blackburn dated 21 April 2021. [476] Crown is currently in the process of implementing all recommendations. The changes implemented in response Deloitte's report include the automation of bank account monitoring through the 'TM1' system, described in further detail in paragraph D.178 below.[477]

D.63. The status of each recommendation is addressed in Mr Blackburn's memorandum to the Crown Resorts Board dated 7 June 2021 and an updated memorandum to be presented to the Board Risk Management Committee of the Crown Resorts Board on 11 July 2021.[478] As at 30 July 2021:

(a) 23 had been completed;

(b) 4 are due to be completed by 1 October 2021;

(c) 1 is due to be completed by November 2021;and

(d) 1 will commence on or shortly before 31 December 2021[479]

D.64. Deloitte further observed that:[480]

> It is evident to Deloitte from our work in this Phase 1, and the discussions and interactions we have had with relevant Crown staff, that Crown is constructively embracing the opportunity to address ML risk within the bank account channel. In this respect, Deloitte notes:
>
> - The Patron Account Controls represent a significant and positive shift in the way that Crown operates the Patron Accounts
>
> - Controls to assess and validate incoming transfers to Patron Accounts had been in place for a period of time before the Patron Account Controls were established.

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474 Exhibit RC0084e DTT.010.0002.0008 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0007.

475 Dobbin T957.5-10.

476 Exhibit RC0309 CRW.998.001.0036 Blackburn I at Appendix B (.0055).

477 Exhibit RC0023 CRW.998.001.0084 Stokes I at [12].

478 CRW.512.249.0004 Memorandum from Mr Blackburn to the Board Risk Management Committee of the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment as at 30 July 2021 (to be presented on 11 August 2021).

479 CRW.512.249.0004 Memorandum from Mr Blackburn to the Board Risk Management Committee of the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment, as at 30 July 2021 (to be presented on 11 August 2021).]

480 Exhibit RC-0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0110.

We understand that Crown have iteratively enhanced the Patron Account Controls over the calendar year 2020 to address the specific ML risks identified from the GT and Initialism Review and that this happened during a period of operational disruption brought about by the COVID-19 pandemic.

- Crown is continuing to discuss with its bank, ANZ, opportunities to enhance the data available to Crown to facilitate the Patron Account Controls
- Crown is actively scoping the automation of the Line 2 Patron Account monitoring
- Crown's Line 2 team has been in a rapid growth phase, and that a new Group Chief Compliance and Financial Crime Officer commenced with Crown in early March 2021.

D.65. McGrathNicol's Report made the following findings in respect of Crown's new AML patron account controls:[481]

We have reviewed Deloitte's methodology and analysis and concur with Deloitte's conclusions in regard to the design effectiveness of the controls within the new AML regime as they relate to patron accounts. The controls, if implemented, are likely to be effective in deterring cash structuring and cuckoo smurfing activity because:

(a) They prohibit cash deposits being transferred into patron accounts and require that they be returned as cash to the patron as well as levying a [withdrawal of licence] penalty if cash is deposited more than once. The elimination of cash … eliminates structuring to avoid a threshold transaction report (TTR) and cuckoo smurfing.

(b) They prohibit funds being credited to a patron account if it is not evident that the funds were transferred from the patron's personal bank account; the funds are returned to the bank account from which they came.

(c) The review of transactions for compliance with policies occurs before the funds are transferred into the patron's DAB account and available for withdrawal.

D.66. McGrathNicol's analysis broadly aligned with the conclusions reached by Deloitte in respect of its review of the efficacy of Crown's patron account controls. Ms McKern confirmed in her evidence that:

(a) McGrathNicol did not conduct any examination of the ultimate destination of the funds, nor whether Crown's analysis had identified that there was in fact no third party transfer. Accordingly, the number of *potential* third party transfers identified by McGrathNicol was overinclusive.[482] McGrathNicol did not perform the labour-intensive exercise (which Deloitte's analysis included) of checking any potential transactions identified.[483]

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481 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0054.

482 McKern T.3926.20-3927.27.

483 McKern T.3928.14-26.

(b) McGrathNicol's analysis indicated that Crown's return of funds policy was effective.[484] (Although McGrathNicol identified one instance of a potential third party transaction after the sending of an Executive Office Memorandum on 20 October 2020,[485] Crown's records indicate that the transaction was initially returned to the patron.[486] The patron subsequently provided evidence that the transfer was not in fact a third party transfer - due to the length of his name, his name could not be recorded in ANZ's transfer narrative.)

D.67. In opening, Counsel Assisting submitted that Deloitte's analysis of the effectiveness of Crown's recently introduced controls on the prohibition of cash deposits and third party payments had found those controls to be wanting.[487] This was used as a springboard for the submission that it is open for the Commission to conclude that Crown's first steps on its reform pathway are "simply a knee-jerk reaction" and that "even the supposed new and improved Crown has continuing anti-money laundering problems".

D.68. The evidence does not support this submission. As noted above:

(a) As part of Deloitte's Phase 1 assessment of Crown's controls on cash deposits[488] and third-party transfers,[489] Deloitte:

(i) did not find *any* cash deposits in the period analysed;[490] and

(ii) did not find *any* third-party transfers that were not returned (the only third party transfers not refunded being in respect of 'technical deficiencies').[491]

(b) Deloitte concluded that the patron account controls are aligned with industry practice, and are effective in addressing cash structuring and cuckoo smurfing activity.[492]

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484 McKern T.3928.22-31.

485 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0016.

486 Exhibit RC0475 CRW.512.217.0020 Letter from ANZ to Crown Melbourne Ltd (15 December 2020).

487 Counsel Assisting AML Opening Submissions T595.25-35.

488 Exhibit RC0023c CRW.512.025.1110 Cash deposit prohibition directions and Return of Funds Policy; Exhibit RC0096 CRW.512.040.0001 Email from Crown Melbourne (24 December 2020).

489 Exhibit RC0023e CRL.742.001.0101 Third Parties and Money Remitters policy.

490 Exhibit RC0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0107; Dobbin T982.18-21.

491 Exhibit RC0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0107; Dobbin T982.23-29.

492 Exhibit RC0309e CRW.512.023.0100 Deloitte Phase 1 Report: Assessment of Patron Account Controls (26 March 2021) at .0106.

(c) Deloitte opined that the controls were not yet sufficiently mature to be effective on a sustainable basis, and made a series of recommendations designed to make the controls sustainably effective.[493]

(d) Crown responded to Deloitte's Phase 1 report accepting each of the recommendations and setting out the steps Crown proposes to carry out to implement each of those recommendations.[494]

(e) Deloitte has assessed Crown's proposed response to the Phase 1 report and recommendations and concluded that Crown's response adequately addressed each of the issues which Deloitte had raised.[495]

D.69. It follows that Crown's patron account controls are effective in Crown's current operating environment and Crown is implementing the measures necessary to make those controls effective on a sustainable basis. The Deloitte Phase 1 report does not, in short, establish that Crown has "continuing anti-money laundering problems". On the contrary, it demonstrates the efficacy of the immediate steps Crown has taken to prevent and detect potential structuring activity and any money laundering involving third party transfers.

Deloitte Phase 2

D.70. In her report, Commissioner Bergin stated:[496]

> The [Independent Liquor and Gaming] Authority could have no confidence that either the Licensee or Crown could be rendered suitable without a full and wide-ranging forensic audit of all of their accounts to ensure that the criminal elements that infiltrated Southbank and Riverbank have not infiltrated any other accounts. Obviously such an audit must be in the context of a need for compliance with the provisions of the *Casino Control Act* apart from any need to comply with general auditing requirements and/or principles. Any audit must be on the premise that the main aim is to ensure that the casino operations are free from criminal influence and exploitation.

D.71. Deloitte's Phase 2 work constitutes this full and wide-ranging forensic audit. The terms of engagement in respect of this phase of work were agreed with ILGA before being finalised.[497] Although Counsel Assisting contend that the Deloitte Phase 2 Forensic Review was initially expected to be completed by 25 June 2021,[498] that is not correct. The document relied upon by Counsel

493 Dobbin T957.05-10.

494 Exhibit RC0098 CRW.512.023.0160 Crown's response to recommendations identified in the Deloitte Phase 1 report, (26 March 2021).

495 Exhibit RC0084f DTT.010.0002.0007 Deloitte Phase 1: Assessment of Patron Account Controls – Assessment of Crown's response; Dobbin T983.21-26.

496 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report, Chapter 4.6 at [16].

497 Exhibit RC0086 DTT.006.0001.1356 Letter from Crown to ILGA (22 February 2021).

498 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.84].

Assisting in support of this proposition in fact shows an estimated completion date for Phase 2 of 27 August 2021.[499]

D.72. Counsel Assisting has sought to advance two criticisms regarding, or by reference to, the initial work performed by Deloitte on its patron account review:

(a) *First,* that Deloitte's review of Crown's patron accounts is not comprehensive and will not exhaustively identify instances of money laundering in Crown's accounts; and

(b) *Second*, that preliminary analysis from Deloitte revealed that there was evidence of money laundering in 14 of Crown's patron accounts, and evidence of potential structuring in Crown's accounts identified as recently as February of this year.

D.73. As to the *first*, the Deloitte patron account review is comprehensive and fulfils the intent of Commissioner Bergin's recommendation for a "full and wide ranging forensic audit".[500] Crown fairly (and correctly) considered this recommendation by Commissioner Bergin to relate to Crown's bank accounts used by patrons for gaming. Deloitte interpreted the recommendation the same way.[501]

D.74. While Deloitte is looking at "quite a broad set of accounts",[502] the more detailed assessment is into Crown's patron bank accounts.[503] Focusing on Crown's patron bank accounts is reasonable and logical: it is through these accounts which funds are deposited for the purposes of gaming at Crown's casinos. Counsel Assisting did not identify any way in which patrons could launder money through Crown's non-patron bank accounts, such as bank accounts used for Crown's corporate purposes (eg payroll). It should also be noted that Deloitte undertook a review to ensure that the patron and non-patron accounts were correctly identified and that non-patron accounts could not be used by patrons to deposit funds. The money laundering issues identified at the ILGA Inquiry, which primarily concerned Riverbank and Southbank accounts, also related to patron bank accounts.

D.75. Counsel Assisting pursued questioning with Ms Dobbin which suggested that the Deloitte Review did not fulfil the requirements of the 'forensic audit' recommended by Commissioner Bergin on the basis that it did not include non-patron accounts, such as accounts used for payroll and corporate operations, and

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499 Exhibit RC1291 CRW.512.073.0106 Deloitte – Forensic Review – Updated estimated project timelines (Draft as at 7 May 2021) at [0109].

500 RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.2 at [16].

501 Dobbin T902.27-32. As noted, ILGA has also reviewed and provided comments on the terms of Deloitte's engagement: CRW.512.025.0087 Letter from ILGA to Crown (10 March 2021).

502 Dobbin T886.16-19.

503 Dobbin T886.16-19.

it did not include DAB accounts.[504] The Bergin Report's recommendation, read fairly, was to undertake a forensic review of all of Crown's *bank accounts* which received funds for the purposes of gaming. While that is the appropriate focus of Deloitte's review, Ms Dobbin's evidence was clear that Deloitte are not ignoring other accounts, including DAB accounts. As Ms Dobbin explained:[505]

> Our work is being driven by the activity that we see in the patron accounts and related activity, for example, patrons that may have used that channel. We will then go and retrieve other records for those patrons, or other related transactions from other systems which would include the DAB accounts.

D.76. Thus, to the extent that the DAB accounts can assist to show relevant behavioural patterns that will assist Deloitte to understand transactions identified as being of potential interest in the bank accounts,[506] they are being examined as part of Deloitte's review. The issue of DAB accounts more generally is addressed at Part D.5.2 below.

D.77. Far from suggesting that Deloitte's patron account review is unduly narrow and constrained, the evidence tells in favour of the opposite conclusion. The evidence shows that Deloitte's review:

(a) is going back over a seven-year period, which Deloitte considered was the appropriate date range in circumstances where *"*it would be difficult to access records beyond a seven-year period … and we felt there was probably limited utility beyond the seven-year period… *"*;[507]

(b) is not being undertaken on a sample basis, but rather will be reviewing all transactions across the relevant period, using a combined approach of applying an analytical model across the transactions, supplemented by manual review;[508]

(c) while directed to those Crown accounts where gaming customers can deposit or withdraw funds, as set out at paragraph D.74 above, Deloitte has also performed sample testing over Crown's other accounts to ensure that these accounts are not being used for the purposes of patron deposits or withdrawals.[509] As part of this process, Deloitte has identified those patron accounts which are properly in scope of the review, and those which are outside. Deloitte has also identified and verified all Crown patron and non-patron related accounts;[510]

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504 See Dobbin T899ff.

505 Dobbin T901.04-09.

506 Dobbin T901.46-47.

507 Dobbin T897.07-11.

508 Dobbin T897.39-44.

509 Dobbin T905.17-23.

510 Dobbin T920.34-921.07; Exhibit RC0090 DTT.010.0004.0169 Listing of banking accounts in existence since 2014.

(d) has also been expanded to include hotel card transactions and the relevant hotel accounts through which CUP transactions were processed;[511]

(e) applied a series of money laundering typologies developed following "fairly extensive research".[512] Ms Dobbin said these typologies serve as a "starting point" for Deloitte's analysis and that its review would look "more broadly for patterns that may well be additional to these" which is part of a broader behavioural analysis Deloitte is undertaking.[513]

D.78. The comprehensiveness of Deloitte's review is also supported by the evidence of Ms McKern. McGrathNicol's Report stated the following in respect of Phase 2 of Deloitte's review:[514]

> In our view, it is necessary to consider the transactions in the bank accounts and also how they are reflected, and how the funds are subsequently transacted, within the DAB/SK accounts in order to gain a fulsome picture of what has transpired. It is likely that additional information including gaming records and Unusual Activity Report (UAR)/Suspicious Matter Report (SMR) mentions would be necessary to gain a full understanding of a patron's actions and whether they are indicative of ML.

D.79. Ms McKern was taken to a Deloitte presentation regarding Phase 2 and 3 of the Forensic Review dated 8 July 2021. That document indicates that Deloitte's review will include the following sources of information: external bank statements; SYCO system data; third party information sources; patron gaming activity; and UAR and Suspicious Matter Reports (**SMR**).[515] The document also indicates that the scope of Deloitte's review has been expanded to include hotel card transactions.[516] Ms McKern confirmed that Deloitte "were examining everything [McGrathNicol] said they should be examining".[517]

D.80. The *second* criticism made by reference to the Deloitte patron account review was the point, made with emphasis in opening submissions by Counsel Assisting, that there was evidence of recent money laundering in Crown's bank accounts. Counsel Assisting submitted in opening that Deloitte's preliminary analysis:[518]

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511 Exhibit RC0476 CRW.512.217.0008 Deloitte: Forensic Review: Updated timings for Phase 2 and 3 of Forensic Review (including HCT matter) at .0009-.0010; see also Blackburn T2997.18-26.

512 Dobbin T941.46-47; DTT.010.0005.0043 Deloitte money laundering typology mapping table.

513 Dobbin T941.15-18, 942.01-02.

514 Exhibit RC0476 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0015.

515 Exhibit RC0476 CRW.512.217.0008 Deloitte: Forensic Review: Updated timings for Phase 2 and 3 of Forensic Review (including HCT matter) at .0010.

516 Exhibit RC0476 CRW.512.217.0008 Deloitte: Forensic Review: Updated timings for Phase 2 and 3 of Forensic Review (including HCT matter) at .0009; see also Blackburn T.2997.18-26.

517 McKern T3929.19-44.

518 Counsel Assisting AML Opening Submissions T594.11-15.

> [S]uggest that of the 45 bank accounts [examined by Deloitte] there are 14 bank accounts with evidence of money laundering" and that "there are instances of potential structuring on Crown's bank account as recent (sic) as February this year.

D.81. The foundation on which that submission rested was shown to be wholly erroneous through the examination of Lisa Dobbin, the Deloitte partner overseeing the patron account review. While the error in that submission was exposed through the examination of Ms Dobbin, a thorough examination of the spreadsheet would have revealed it because the typology relevantly identified was structuring, and the only transactions highlighted as those of potential concern in the spreadsheet involved electronic payments which, ipso facto, cannot be structuring as they do not involve cash.

D.82. Prior to Crown's analysis of the underlying transactions in the spreadsheet,[519] Ms Dobbin had emphasised in answers to questions from Counsel Assisting that the spreadsheet was a preliminary working document[520] which had been updated and superseded since the point at which it was produced to the Commission,[521] and reflected only the starting point of the analysis that Deloitte was undertaking.[522] Ms Dobbin gave evidence that *"*as this is a working document I'm not sure what the team is referring to when they talk about evidence of money laundering … This is clearly a work in progress*"*.[523]

D.83. After questioning by Crown's senior counsel, the evidence regarding the spreadsheet was as follows:

(a) The heading "evidence of money laundering" in the Deloitte working document was inapt in circumstances where Deloitte's analysis was at too early a stage to draw a conclusion as to whether any particular transaction was money laundering.[524]

(b) The highlighting of transactions in the spreadsheet, which were given the inapt descriptor 'evidence of money laundering', in fact did no more than indicate transactions which Deloitte should have a closer look at.[525]

(c) In any event, of the 14 bank accounts Deloitte had identified as having *possible* indications of money laundering, nine of those were Riverbank and Southbank accounts that were already closed.[526]

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519 Exhibit RC0092 DTT.010.0004.0031 Deloitte bank account review spreadsheet.

520 See Dobbin T923.44, T924.24, T933.06.

521 Dobbin T922.10-11, 926.17.

522 Dobbin T926.24.

523 Dobbin T927.12-15.

524 Dobbin T986.13-15.

525 Eg, Dobbin, T992.38-46, 994.43-995.01.

526 Dobbin T986.17-43.

(d) In respect of the active Crown patron accounts, *none* of the transactions identified [in the period since December 2020] contained any "evidence of money laundering":

(i) *First*, the transactions which had been identified as comprising potential structuring activity were all electronic OSKO payments, meaning they were not cash and therefore incapable of being structuring, [527] given that structuring as a money laundering typology necessarily involving cash.[528]

(ii) *Second*, on the information available, there was either no indication of involvement of third parties in the transactions highlighted or, if there was a third party involved in respect of payments into Crown, Deloitte had satisfied itself through the Phase 1 controls review that any such payments had been returned. This meant these transactions could not have indicated smurfing or potential smurfing.[529]

(e) Ms Dobbin agreed that it was inaccurate to say that Deloitte's preliminary analysis indicated that there is evidence of money laundering in 14 of Crown's bank accounts,[530] and that the transactions identified in the document as 'potential structuring' could not accurately be described as 'potential structuring'.[531]

D.5.2 DAB Accounts[532]

D.84. In opening remarks to the Commission on 24 May 2021, Counsel Assisting raised the possibility of money laundering occurring through the DAB accounts by referring to an example whereby cash is deposited to a patron bank account and credited to a patron's DAB account, following which the customer could then withdraw the cash as chips, and would be, according to Counsel Assisting:[533]

> [F]ree, with or without gaming, to cash in their chips and take the winnings out of the casino say in the form of a cheque. As there is no way of knowing if the cheque represents money legitimately won on the gaming floor or deposited by someone else,

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527 See, eg, Dobbin T992.03-06.

528 Dobbin T980.20-29.

529 See, eg, Dobbin T990.01-04, 992.18-30.

530 Dobbin T996.41-46.

531 Dobbin T997.18-25.

532 These submissions do not seek to distinguish between DAB accounts and safekeeping accounts, which, although often used for slightly different purposes by patrons (see McKern XN T3881.20-31), are essentially the same. These submissions will use the term 'DAB accounts'.

533 Counsel Assisting AML Opening Submissions T589.26-34.

> the money which may have started as the proceeds of crime is now washed and appears as legitimate casino winnings.

D.85. Consideration of the potential for Crown's DAB accounts to be used for structuring needs to be undertaken recalling that, by definition, structuring involves the patron *intentionally* splitting cash transactions into sub-$10,000 transactions to avoid triggering a Threshold Transaction Report (**TTR**).[534] It is important to note that merely identifying cash transactions under $10,000 that, when combined with other sub-$10,000 transactions over a stated time period exceed $10,000, does not, by itself, identify transactions that are indicative of structuring. That is because structuring necessarily involves an intention on the part of the patron to avoid triggering a TTR. There is only potential structuring if there is something about the patron, or the patron's activities (including their gaming and transactional history) which raises suspicion that the necessary intention may exist.

D.86. Three immediate points may be made in response to the example raised by Counsel Assisting.

(a) *First*, cash can no longer be deposited into Crown's patron bank accounts.

(b) *Second*, by using a DAB account, the patron is identifying themselves. As Mr Jeans observed in his evidence to the Commission, "one of the major requirements or support activities for money laundering is anonymity. So one of the first things I would consider is mitigating or reducing the level of anonymity possible. That ultimately means identifying people that are undertaking gaming and bringing money to my casino, being in a position to be able to identify them".[535]

(c) *Third*, the example ignores the various controls and processes Crown has in place to detect and report conduct of this kind. In respect of the example given, Cage staff would check the gaming activity before paying out, and where the gaming activity did not support the deposits, would complete a UAR as required by the Cage SOP.[536] Such activity is also designed to be caught by two automated monitoring rules: AL12 and AL13.[537]

D.87. As Steve Blackburn explained in evidence:[538]

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534 AML/CTF Act, s 142; Exhibit RC0310b CRW.INQ.130.001.2034 Financial Action Task Force Vulnerabilities of Casinos and Gaming Sector (2009) at [113].

535 Jeans T.872.17-22.

536 Exhibit RC0470 CRW.510.013.2736 Standard Operating Procedures (Cage Operations) at [2.5.3(c)] (if a patron cashes out with little or no play after a buy-in/deposit).

537 These effect of these rules is described in in Exhibit RC0062 INI.0000.0005.0001 Jeans I; Exhibit RC0062 INI.0000.0005.0001 Jeans I, Annexure H at .0217 and .0218.

538 Blackburn T3003.06-10.

> The ability to money launder through DAB accounts is extremely minimal. Also, if you consider DAB accounts, there are controls at the entry, the exit and the currency. So there are many controls around DAB accounts that would necessarily identify improper behaviour.

D.88. Mr Blackburn was not challenged on this evidence.

D.89. On instruction from Solicitors Assisting, McGrathNicol conducted analysis of the DAB accounts for two indicia of money laundering: structuring and parking.[539] Each is considered in turn below, but before doing so it is necessary to say something about Counsel Assisting's submissions generally on DAB accounts. After addressing in their written submissions McGrathNicol's review of Crown's patron accounts and the evidence which showed that McGrathNicol did not find any indications of structuring in those accounts,[540] Counsel Assisting then submitted "that there is a different story however when it comes to Crown's DAB accounts".[541] It is important to be clear about McGrathNicol's evidence in relation to its review of Crown's DAB accounts. It is not possible to say that any of the transactions identified by McGrathNicol on the DAB accounts is 'indicative' of money laundering, in the way that Initialism's review of the Riverbank and Southbank accounts identified such indications before the Bergin Inquiry.

D.90. McGrathNicol was careful to emphasise, and Ms McKern confirmed in her oral evidence, that the transactions identified may relate to genuine gaming behaviour and that additional information sources needed to be looked at before any view could be formed. The sample transactions which Crown obtained additional information for in the time available (one chosen at random, and two addressing the sample patrons referred to in the body of McGrathNicol's report) revealed that none of those transactions were, in fact, indicative of money laundering but instead indicated genuine and legitimate gaming behaviour by the patron.

D.91. There is, in short, no evidence before the Commission on which it is open to find that money laundering is occurring, or has occurred, through Crown's DAB accounts.

D.5.2.1 Structuring

D.92. McGrathNicol were asked to identify, and identified, transactions in the DAB accounts which satisfied the following criteria: (a) two or more instances of cash

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539 McKern T3874.38-44, 3905.16-19.

540 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8, at [2.92].

541 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8, at [2.98].

deposits of less than $10,000 into a patron's DAB account; (b) in a 24, 48 or 72 hour period; (c) when combined amounted to more than $10,000.[542]

D.93. McGrathNicol identified 481 instances responsive to the 24 hour window, 833 instances responsive to the 48 hour window, and 1,103 instances responsive to the 72 hour window.[543] McGrathNicol appropriately caveated the reporting of these results with the following:[544]

> [The] behaviours … may relate to genuine gaming behaviour; additional information including the gaming records, past and contemporaneous and potentially a statement of funds declaration (if applicable) would add to an understanding of whether this behaviour was indicative of ML activity.

D.94. In her evidence:

(a) Ms McKern confirmed that McGrathNicol did not identify any instances of structuring in Crown's DAB accounts; rather, McGrathNicol had only collated a 'data set' of transactions which would require further analysis to determine whether any structuring or suspicious activity had occurred.[545]

(b) Ms McKern agreed that *'quite a lot of further examination*' has to occur before a transaction or series of transactions can be said to amount to structuring, including considering the temporal interval between transactions of interest, the patron's gaming history, whether the patron is playing carded, and the patron's TTR history.[546] The depth of the necessary examination of a patron's gaming and transaction history was illustrated by the sample packs put together by Crown for three example patrons (see below).

(c) Having been shown analysis by Crown relating to three example patrons,[547] one chosen at random,[548] and two being patrons specifically referred to in the McGrathNicol report,[549] Ms McKern accepted that

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542 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [5.5.2].

543 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [5.5.3(a)-(c)].

544 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [5.5.5(a)].

545 McKern T3899.3-3902.7.

546 McKern T3900.33-3902.07.

547 Exhibit RC0466 CRW.512.218.0001 Crown document extracting transaction data in respect of Customer 1; Exhibit RC0467 CRW.512.221.0001 Extract of account transactions in respect of Customer 1; Exhibit RC0468 CRW.512.219.0001 Crown document extracting transaction data in respect of Customer 6; Exhibit RC0469 CRW.512.220.0127 Documents extracting transaction data in respect of Customer 7.

548 As explained by counsel for Crown at T3902.21-29.

549 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [5.5.4(a) and (b)].

McGrathNicol *has not* reached the conclusion that there is structuring,[550] but rather, that for each of those patrons, the evidence showed that there was *nothing suspicious in the transactions* (either on each day or the combination of days identified), and there was *no indication of structuring*.[551]

(d) Ms McKern accepted that, for example, a patron with a history of transactions that have generated TTRs, is highly unlikely to be suddenly trying to avoid a TTR in relation to the transactions of interest – the patron's history tends against the purpose of the transactions being to avoid a TTR, and so that the transactions are not indicative of structuring. Similarly, Ms McKern accepted that if a player is playing carded, and depositing money in and out of their DAB account in cash, it is objectively less likely that they are trying to engage in structuring.[552]

(e) McGrathNicol did not examine whether Crown had submitted any UARs or SMRs, and did not conclude that Crown's AML processes had failed in any respect in relation to the DAB accounts.[553]

D.95. It is therefore not open on the evidence to conclude that there has been any structuring in Crown's DAB accounts.

D.96. Crown will, nevertheless, undertake a further, larger sample review of the transactions identified by McGrathNicol. Crown will determine whether to undertake a review of all transactions identified by McGrathNicol based on the results of that further sample review. The results of the sample review and any further review will be provided to VCGLR and Crown will engage with VCGLR regarding any further steps.

D.5.2.2 Parking

D.97. Although parking of funds (using time as a distance between the proceeds of crime and the crime itself) can be an indicator of potential money laundering, the mere fact that funds remain in a DAB account is not, of itself, necessarily suspicious.[554]

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550 McKern T3920.17-41.

551 See generally McKern T3902.16-3918.02.

552 McKern T3905.44-3906.4.

553 McKern T3918.4-3921.4.

554 McKern T3921.6-16; cf COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.103].

D.98. In any event, Crown does have processes that address the risks posed by parking of funds in DAB accounts and is also in the process of reviewing the accounts of patrons with large DAB account balances.[555]

D.99. Crown's existing controls relating to possible 'parking' involve conducting annual periodic manual reviews of dormant accounts (currently those which have been inactive for 12 months) with balances over $2,000, as well as an existing transaction monitoring rule for deposit account activity with no associated rated play.[556]

D.100. In response to a recommendation in Promontory's Phase 1 report to the effect that Crown review its DAB account procedures to address risks associated with parking funds and dormant accounts, Crown has proposed to introduce the following further controls:[557]

(a) A new Sentinel automated transaction monitoring rule addressed at identifying balances in DAB accounts which have not been touched for a period of time, and so which might require further investigation as being possible instances of parking for money laundering purposes.[558] This rule will further reduce the possibility of the DAB accounts being used to assist money laundering by way of parking.

(b) Updating terms and conditions and procedures so that funds will be returned to the patron if no activity is detected for a defined period and the balance is over a certain amount. Crown also proposes that return of funds in such circumstances prompts a UAR investigation.

D.101. Through the McGrathNicol report and the evidence of Ms McKern, Counsel Assisting sought to suggest there was evidence of large-scale parking of funds, and thus an indication of potential money laundering activity involving the DAB accounts. However, the caveats and notes of caution set out in the McGrathNicol report and Ms McKern's evidence, make it clear that there are myriad legitimate reasons for patrons having balances in their DAB accounts, even large balances. Those reasons include the impact of COVID-19, the closure of international and state borders, the closure of the Melbourne and Perth casinos, Crown's cessation of junket relationships, and the simple fact that patrons might chose to leave

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555 CRW.510.087.0550 Crown's Response to Recommendations and Findings in Promontory Vulnerability Assessment (24 May 2021), 'Recommendation 19', at .0598.

556 Exhibit RC0311g CRW.512.112.0001 Memorandum from Mr Blackburn to the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment (7 June 2021) at .0053.

557 Exhibit RC0311g CRW.512.112.0001 Memorandum from Mr Blackburn to the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment (7 June 2021) at .0053.

558 Blackburn T3003.11-13, 3004.18-24.

money with Crown pending their next visit.[559] Further, as the Commissioner observed in commentary, with interest rates as low as they are, patrons would suffer no material disadvantage in leaving funds in a DAB account rather than moving them back and forth to an interest-bearing bank account. In addition, patrons living overseas who wished to move funds back and forth between their DAB account and a bank account in their home country would incur the inevitable costs associated with foreign currency conversions and bank fees.

D.102. This is consistent with other evidence before the Commission. As Mr Blackburn explained:[560]

> [P]arking money in some instances may represent unusual activity, potentially amounting to suspicious activity, but it is certainly not definitive. Parking money is fairly common for customers who live overseas or customers that visit Melbourne on occasion, they want to park their money so that when they come back they can use that money. It is not necessarily indicative of money laundering.

D.103. Ms McKern was taken in her evidence to two examples of patrons identified by McGrathNicol as having potentially 'parked funds'. In each case, she agreed that having regard to the patron's circumstances, including evidence of previous gaming history, junket membership and overseas residency, the balances in these accounts were not suspicious.[561] It is therefore not open to the Commission, based on McGrathNicol's evidence to reach any conclusion that Crown's DAB accounts have in fact been used to "park" funds in suspicious circumstances.

D.104. On the basis of this evidence, Crown submits that the Commission may find that parking of funds in DAB accounts does present some AML risk but that Crown is properly addressing that risk through its current controls and further controls in development.

D.6. Cash and the Risk of Money Laundering on the Casino Floor

D.6.1 Cash as a money laundering risk

D.105. As noted by Victoria Police in evidence to this Commission, the casino is the largest cash business in the State of Victoria, and thus a prime target for criminals seeking to launder money.[562] The Financial Action Task Force's report on the *Vulnerabilities of Casinos and Gaming Sector* states that it is the "variety, frequency and volume" of transactions that makes a casino particularly

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559 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [5.4.5(b)]; McKern T3875.5-8, 3921.18-45, 3922.17-22.

560 Blackburn T3003.29-38.

561 McKern T3924.26-3926.7.

562 Victoria Police T28.45-29.7, 29.25-34.

vulnerable to money laundering.[563] While reducing the casino's exposure to cash will not, of itself, obviate the risk of money laundering,[564] it materially reduces the casino's exposure to that risk. This is because cash is a preferred medium for criminals to launder money.[565]

D.106. The measures Crown has taken with respect to prohibiting cash deposits in Crown's accounts, and returning such funds to patrons, have been dealt with above. This section focuses on the use of cash at the casino and the measures Crown is taking to respond to the money laundering risk that use presents.

D.6.2 Crown's significant cash transactions policy

D.107. Crown has introduced restrictions in relation to cash transactions at the Cage by issuing the Significant Cash Transactions (Source of Funds) Policy.[566] The policy contains the following restrictions in relation to cash transactions at the Cage:

(a) cash deposits of over $150,000[567] are not permitted and will not be accepted in any circumstances;[568]

(b) cash deposits of over $100,000[569] will only be accepted in the following circumstances:

(i) receipt of a Source of Funds declaration form from the customer;

(ii) approval from Cage Management or Table Games Management; and

(iii) approval from two 'Second Approvers' as defined in the policy, including at least one of the respective property CEO, the CFO Australian Resorts, the Executive General Manager - Table Games or the Executive General Manager - Gaming Machines.

(c) cash deposits of over $25,000 will only be accepted in the following circumstances:

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563 Exhibit RC0310b INQ.130.001.2034 Financial Action Task Force Vulnerabilities of Casinos and Gaming Sector (2009) at .2058.

564 Blackburn T.3014.33-38.

565 Victoria Police T29.25-27.

566 CRW.512.102.0003 Crown Resorts Limited – Significant Cash Transactions (Source of Funds) (21 May 2021).

567 Reduced from previous level of $250,000: see Blackburn T3014.40-3015.03.

568 CRW.512.102.0003 Crown Resorts Limited – Significant Cash Transactions (Source of Funds) (21 May 2021) at [4.3].

569 $50,000 in respect of Crown Perth.

(i) receipt of a Source of Funds declaration form from the customer; and

(ii) approval from Cage Management or Table Games Management.

D.108. If a customer declines to complete a Source of Funds declaration form, or a Source of Funds declaration form is not approved, the customer must be requested to leave the premises and the customer's details may be added to Crown's Facial Recognition System.[570]

D.109. Further, an UAR is required to be completed if a Source of Funds declaration is completed by a customer (regardless of whether the declaration form is approved), or when a customer refuses to complete a source of funds declaration.[571]

D.110. McGrathNicol observed that participants in its focus group noted that the implementation of the source of funds policy has added extra controls to the casino floor and has caused many cash transactions to be declined.[572] Responses recorded by McGrathNicol in their report include the following:[573]

> "Currently around two out of three SOF forms are rejected by Cage cashiers as they don't satisfy the requirements e.g. 'given money by a friend' or 'bank loan' in which case the buy-in transaction is not completed."
>
> …
>
> "Since the Bergin Inquiry we've now gone to having a policy where they must actually declare where the money's from...above a certain threshold...and I would say probably 2 out of every 3 are probably rejected."

D.111. These controls are supported by Crown's new automated transaction monitoring system, Sentinel.[574] Sentinel presently has seven rules specifically designed to detect large cash transactions. Sentinel is addressed in Part D.9 below.

D.6.3 Uncarded play limit

D.112. On 30 June 2021, Crown reduced the limit by which patrons may buy-in at a table game 'un-carded' - that is, without identifying themselves - to $4,999.[575]

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570 CRW.512.102.0003 Crown Resorts Limited – Significant Cash Transactions (Source of Funds) (21 May 2021) at [4.4].

571 CRW.512.102.0003 Crown Resorts Limited – Significant Cash Transactions (Source of Funds) (21 May 2021) at [4.5].

572 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [8.5.11].

573 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0069.

574 Exhibit RC0023 CRW.998.001.0084 Stokes I at [40]-[50].

575 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1788.

This will have a significant impact in Crown's understanding of its customer-base and the risk it presents.

D.113. Requiring patrons to identify themselves when depositing cash at the Cage is effective in discouraging criminals, as it removes the ability to anonymise the origin of the cash.[576] As McGrathNicol observed: "the reduction of the un-carded play limit to $4,999 is a significant move which will restrict the activities of those previously undetected and undetectable launderers".[577]

D.114. The technical feasibility of implementing limits on uncarded play for Electronic Gaming Machines/Electronic Table Games for transactions above $1,999 in Melbourne is also being examined by Crown.[578]

D.6.4 Cashless gaming

D.115. Crown is also considering cashless gaming initiatives to reduce the use of cash in its casinos. In his examination, Mr Blackburn explained that a digital payments committee at Crown is looking at various alternatives to cash, including the introduction of a digital wallet program that would allow patrons to transact digitally in the casinos.[579] Although the cashless gaming initiatives would significantly reduce the ML/TF risks associated with cash in the casino, any cashless payment method will need to be subject to regulatory approval from gaming regulators in Victoria, New South Wales and Western Australia respectively. There is a public policy decision to be made in relation to cashless gaming which must balance other considerations.[580] The Western Australian Gaming and Wagering Commission (**GWC**) has already granted approval for Crown Perth to allow the use of debit card transactions for purchases of chips at the table.[581] Of specific relevance for Crown Melbourne, s.68 of the CCA prohibits Crown from providing money or chips as part of a transaction involving a credit card or a debit card.

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576 Victorian Police T28.26-30.

577 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0022.

578 Exhibit RC0311a CRW.512.081.1750 FCCCP (24 May 2021) at .1788.

579 Blackburn T.3014.12-24.

580 A prominent harm minimisation strategy for casinos has traditionally been to limit a patron's access to cash, with legislation restricting the location or availability of ATMs in the casino venue and also mandating withdrawal limits (Exhibit RC0407 CRW.512.077.0075 Crown Resorts Evolution to Digital Payments Report (August 2020) at .0093.). By going cashless, such harm minimisation strategies will need to be emulated through digital payment technologies. Cashless gaming does not generally provide an opportunity for a break in play when compared to the use of cash where withdrawal from an ATM is required to continue gaming (Exhibit RC0407 CRW.512.077.0075 at .0095).

581 Exhibit RC0407 CRW.512.077.0075 Crown Resorts Evolution to Digital Payments Report (August 2020) at .0076.

D.6.5 Crown's front-line employees

D.116. As McGrathNicol observes, the first line of defence against money laundering on the casino floor are the employees who deal directly with casino patrons or observe patrons at the time of gaming. Crown has in place thorough processes in relation to the recruitment, conduct of ongoing due diligence, and training of its 'on the floor' staff (each of whom must hold a special employee licence in order to provide designated services). Crown's Standard Operating Procedures (**SOPs**) include specific provisions for employees to follow in respect of ML/CT risks.[582]

D.117. It is of critical importance that Crown has a comprehensive process both for vetting potential recruits, as well as for conducting ongoing due diligence of its employees who provide designated services. That process consists of:[583]

(a) Recruitment:

(i) individuals being considered for a position at Crown providing designated services are subject to due diligence procedures by both Crown and the VCGLR. This involves face-to-face interviews, applicable capability testing, reference checks, police checks, credit assessment and international police checks if the individual has lived outside of Australia in the past 10 years;

(ii) once Crown has satisfied itself as to aptitude for the position and that the candidate is of low risk of corruption or non-compliance with Crown's Code of Conduct and likely to be approved by the VCGLR for a Casino Special Employee Licence (**CSEL**), an offer will be made to the candidate and Crown will arrange for the CSEL application the VCGLR; and

(iii) the VCGLR reviews the application, makes its own enquiries and determines whether to issue the CSEL to the prospective employee.

(b) Ongoing employee due diligence:

(i) ongoing employee due diligence is undertaken by Crown's Financial Crime team. This includes screening moderate and high-risk employees (using Dow Jones) on a daily basis for exposure to financial crime matters, corruption, drug trafficking, fraud, tax evasion, inappropriate associations etc. Any hits are

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582 See, eg: Exhibit RC0470 CRW.510.013.2736 Standard Operating Procedures (Cage Operations) cll 2, 5; CRW.512.216.0001 Standard Operating Procedures (Table Games) cl 24.

583 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0082 and .0083.

investigated. McGrathNicol found that matches are rare and to date all have proved to be false positives other than two instances which Crown was already aware of.

(ii) Crown's surveillance analysts search for signs of potential corruption or collusion by, inter alia: (a) analysing employee information against patron or other person of interest information (e.g. emergency contacts, addresses); (b) conducting social media scraping; and (c) reviewing patterns of play which may connect certain croupiers with certain patrons.

D.118. McGrathNicol's assessment of Crown's first line of defence against 'on the floor' money laundering was positive. After conducting surveys and focus groups of Crown staff, McGrathNicol concluded that:[584]

- ['On the Floor'] employees have a good understanding of the different methods of money laundering that may occur and they believe they have the knowledge they need to recognise when something is not right;
- They are aware of what is expected of them should they see behaviours which are to their mind unusual;
- They appeared to understand the obligation to report, via a UAR, what they see as an individual responsibility – if they see it and think it is unusual they report it, irrespective of whether their colleague has the same view;
- They are aware of the UAR process and what is required; and
- They receive both formal and informal training on AML/CTF.

D.119. Crown has recently updated and expanded its AML training program. This is addressed in Part D.8 below.

D.7. Patrons

D.120. Crown has also introduced a number of processes designed to identify, investigate and, if appropriate, cease dealing with patrons who present an unacceptable risk from a money laundering perspective. The decision in November 2020 to cease all dealings with junkets has also reduced Crown's money laundering risk by an appreciable degree.

D.7.1 Significant player review

D.121. In July 2020, Crown implemented a Significant Player Review (**SPR**) process, which is applied to customers based upon their level of actual or prospective

584 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0022.

gaming activity at Crown.[585] The purpose of the SPR process is to identify and mitigate AML/CTF, regulatory compliance and reputational risk.[586]

D.122. A customer is subject to the SPR process if their rated gaming activity meets the following thresholds:

(a) Crown Melbourne and Crown Sydney:

(i) Existing customers: $100,000 theoretical revenue over 12 months;

(ii) New or emerging/returning customers: Either:

(A) $50,000 over 1 month (either actual or theoretical revenue); or

(B) $100,000 accumulated over a rolling 12 months (either actual or theoretical revenue).[587]

(b) Crown Perth:

(i) Existing customers: $50,000 theoretical revenue over 12 months;

(ii) New or emerging/returning customers: Either:

(A) $25,000 over 1 month (either actual or theoretical revenue); or

(B) $50,000 accumulated over a rolling 12 months (either actual or theoretical revenue).[588]

D.123. In addition to gaming activity and source of wealth information, information from the Regulatory and Compliance, Financial Crime, Surveillance, Security Investigation Unit, Credit Control and Responsible Gambling departments, as well as external sources such as ASIC registers, property searches and media hits, is collated and used to build a profile of the individual.[589] Depending upon the risk rating assigned to the customer, a customer may be escalated to the

585 Exhibit RC0353 CRW.998.001.0067 Walsh II at [112].

586 Exhibit RC0354g CRW.700.008.0137Crown Resorts Limited Significant Player Due Diligence Policy (12 March 2021) at [3.1].

587 Exhibit RC0354g CRW.700.008.0137 Crown Resorts Limited Significant Player Due Diligence Policy (12 March 2021) at [3.2].

588 Exhibit RC0354g CRW.700.008.0137 Crown Resorts Limited Significant Player Due Diligence Policy (12 March 2021) at [3.3].

589 Exhibit RC0354g CRW.700.008.0137 Crown Resorts Limited Significant Player Due Diligence Policy (12 March 2021) at [5.2]-[5.7]; Exhibit RC0354 CRW.998.001.0232 Walsh III at [37].

Persons of Interest (**POI**) Committee for a decision whether to continue a business relationship.[590]

D.124. The SPR policy has continued to be developed, particularly since Mr Blackburn joined the organisation.[591] If, throughout the SPR process, there is an AML concern, the business submits a UAR which initiates an investigation by the AML team.[592] Mr Stokes spoke to the comprehensive investigation the AML team undertake upon receipt of an UAR.[593]

D.125. The UAR process connects with the critical risk escalation policy, in that once a customer is investigated by the AML team, that customer's risk rating is reassessed.[594] If the AML team member conducting the assessment considers that the risk rating needs to be elevated, a critical risk escalation form is submitted to Mr Stokes for his endorsement before being submitted to the property CEO. The default position is that, once a critical escalation form is submitted, the customer is to be exited unless the risk presented by the customer can be suitably managed or mitigated. Any such proposed management or mitigation plan must be endorsed by the AML/CTF Compliance Officer.[595] All customers that have been subject to this critical risk escalation process have been exited.[596]

D.126. As at May 2021, approximately 1,850 customers have been subject to the SPR process, and over 100 have had their licence to enter the property withdrawn.[597] Approximately 500 International Premium Players, who have been identified as likely to visit when border restrictions are lifted, are currently being assessed via the SPR process.[598]

D.7.2 The POI Committee

D.127. In October 2020, Crown implemented improvements to its POI Committee, following consideration of recommendations by Deloitte.[599] The role of the POI Committee, as set out in the POI Committee Charter, is to ensure that Crown's casinos "remain free from criminal influence or exploitation by reviewing POI who are brought to the attention of the Committee for a variety of unacceptable

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590 Exhibit RC0354g CRW.700.008.0137 Crown Resorts Limited Significant Player Due Diligence Policy (12 March 2021) at [7].

591 Stokes T427.6-8.

592 Stokes T430.3-6.

593 Stokes T430.10-17.

594 Stokes T468.05-13.

595 Stokes T468.11-16.

596 Stokes T468.18-26.

597 Exhibit RC0354 CRW.998.001.0232 Walsh III at [40].

598 Exhibit RC0354 CRW.998.001.0232 Walsh III at [41].

599 Exhibit RC-0354 CRW.998.001.0232 Walsh III at [63].

behaviours...", including but not limited to money laundering and terrorism financing.[600]

D.128. Membership of the POI Committee includes the CEOs of each Crown property, the Head of Security and Surveillance at each property, the Chief Compliance and Financial Crime Officer, the Group General Manager of AML, the Group Chief Risk Officer, the Group Executive General Manager – Regulatory and Compliance and the Group General Manager – Responsible Gaming.[601] The Committee holds scheduled meetings on a monthly basis.[602] However, patrons rated 'high' are sent to the POI Committee for determination through an 'out of meeting' process.[603]

D.129. The POI Committee may determine whether to issue a withdrawal of licence, notice revoking licence and/or exclusion order.[604] The POI Committee is also assisted by a Patron Decision Assessment (**PDA**) tool, which is designed to enhance the objectivity of decision making.[605] The PDA tool includes a variety of general background information, detail of the customers AML risk rating, details of any allegations (and the source of the allegations)[606] and includes inputs for money laundering issues. If the inputs suggest money laundering activity occurring at Crown, the PDA tool recommends banning the patron.[607]

D.7.3 Junkets

D.130. As recognised in AUSTRAC's *Money Laundering and Terrorism Financing Risk Assessment (Junket Tour Operations in Australia)*, junkets are particularly vulnerable to risks of money laundering and terrorism financing.[608] Crown accepts that it did not do enough in the past to scrutinise the probity of junket operators, agents and participants.

D.131. In November 2020, Crown announced that it would permanently cease dealing with all junket operators, subject to consultation with gaming regulators in

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600 Exhibit RC0310d CRW.510.004.0129 Crown Resorts Limited Person of Interest (POI) Committee Charter (24 October 2020).

601 Exhibit RC0354 CRW.998.001.0232 Walsh III at [33]

602 Exhibit RC0310d CRW.510.004.0129 Crown Resorts Limited Person of Interest (POI) Committee Charter (24 October 2020) at [4.1].

603 Exhibit RC0354 CRW.998.001.0232 Walsh III at [71].

604 Exhibit RC0310d CRW.510.004.0129 Crown Resorts Limited Person of Interest (POI) Committee Charter (24 October 2020) at [1].

605 Exhibit RC0354p CRW.512.048.0035 PDA Tool – Persons of Interest (POI) Committee (19 April 2021); Exhibit RC0354 CRW.998.001.0232 Walsh III at [38].

606 Exhibit RC0354 CRW.998.001.0232 Walsh III at [69].

607 Exhibit RC0354p CRW.512.048.0035 PDA Tool (Risk Assessment inputs 1 and 4).

608 Exhibit RC0310c CRW.512.041.0001 AUSTRAC Money Laundering and Terrorism Financing Risk Assessment – Junket Tour Operations in Australia (11 December 2020).

Victoria, Western Australia and New South Wales.[609] Crown does not intend to recommence junket operations.[610]

D.132. Crown would only recommence dealing with a junket operator if that junket operator were licensed or otherwise approved or sanctioned by all gaming regulators in the States in which Crown operates.[611] Further, as of 27 April 2021, Crown is prohibited by the VCGLR from recommencing junket operations until such time as Crown applies to and receives permission from the VCGLR to recommence junket operations.[612] Given the position of Crown's regulators in respect of junkets, it is not presently conceivable that junkets would be approved in respect of the jurisdictions where Crown operates.

D.7.4 Crown's approach to customers identified in Riverbank/Southbank and hotel card reviews

D.133. Crown's Financial Crime team has also initiated a lookback of transactions identified by Initialism and Grant Thornton in the Riverbank and Southbank accounts as being indicative of money laundering to identify whether any of the transactions require further suspicious matter reporting to AUSTRAC.[613] Crown is also conducting additional enhanced due diligence on the patrons associated with the transactions identified in the Initialism and Grant Thornton reviews and considering whether to exit them.[614]

D.134. It is appropriate that Crown conduct a thorough process in determining whether to cease dealing with these patrons. Ms Shamai from Grant Thornton observed that, before making a decision as to whether or not to exit a patron, it is *"important to consider all the information available about the patron"*.[615]

D.135. Initialism's Southbank and Riverbank review concluded that the majority of instances of structuring are indicative of cuckoo smurfing.[616] As Mr Jeans confirmed in evidence, cuckoo smurfing is, by definition, structuring activity

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609 Exhibit RC0354 CRW.998.001.0232 Walsh III at [182]; Exhibit RC0009fff VCG.0001.0002.6158 ASX Media Release: Future Junket Relationships – Update (17 November 2020).

610 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [57].

611 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [54] and [57].

612 Exhibit RC0354t CRW.512.048.0039 VCGLR Media Release: Crown Melbourne Limited's $1 million fine for junket conduct (27 April 2021).

613 CRW.512.249.0001 Memorandum from Adam Sutherland and Shannon Byrne to Steve Blackburn: Update on lookback on Southbank and Riverbank transactions and steps to address recommendations in McGrathNicol Review (30 July 2021).

614 CRW.512.249.0001 Memorandum from Adam Sutherland and Shannon Byrne to Steve Blackburn: Update on lookback on Southbank and Riverbank transactions and steps to address recommendations in McGrathNicol Review (30 July 2021).

615 Shamai T661.12-15.

616 Exhibit RC0062c INI.0004.0001.0038 Initialism Review of Riverbank and Southbank accounts for Indications of Money Laundering (16 November 2020) at .0052.

without the involvement of the patron.[617] Thus, it follows that the majority of instances of structuring identified by Initialism was done in circumstances where the patron was likely innocent.[618] To the extent that Counsel Assisting submitted that this was not an appropriate basis to proceed, because "further investigation would be required in order to confirm whether the patron was involved" that pays insufficient regard to the fact that this is a typology which is, by definition, conduct without the patron's involvement.[619] It is also difficult to see how the submission that Initialism's conclusions were expressed in qualified language[620] – "may be indicative of cuckoo smurfing" – can be used as a basis to criticise Crown's approach when an AML expert (Initialism) has identified an activity as potentially involving money laundering because their analysis identifies behaviours reflective of a specific typology (cuckoo smurfing) and not some other typology (ie, one that is likely to involve the patron).

D.136. In any event, in May 2021, at the request of the VCGLR, Crown decided to subject these patrons to the SPR process despite this being a review process designed to assess patrons based on gaming activity levels, not other activity.[621]

D.137. When the Deloitte forensic review and hotel card transactions review is completed, Crown will undertake a similar lookback and review for any patrons identified by Deloitte as engaging in potentially suspicious activity.

D.138. When the approach Crown has taken to these patrons is viewed in light of all relevant circumstances, including the other pressing priorities Crown has needed to attend to, and has been attending to, from an AML/CTF perspective, the submission by Counsel Assisting that Crown's approach "lacked due haste and rigour"[622] should not be accepted.

D.8. Resources and Culture

D.8.1 Resourcing of financial crime function

D.139. Crown's significant investment in its financial crime functions, both prior to and during this Commission, is indicative of its ongoing commitment to mitigating AML/CTF risks. The evidence demonstrates that:

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617 Jeans T.838.18-35.

618 Jeans T839.36-41.

619 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [3.10].

620 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [3.10].

621 Exhibit RC0399 CRW.512.078.0001 Letter from Xavier Walsh to Catherine Myers (12 May 2021).

622 COM.0500.0001.0001 Counsel Assisting Closing Submissions Ch 8 at [3.12].

(a) Crown has recruited qualified experts to lead its centralised AML team and strengthen its Program; and

(b) Crown is committed to supporting its AML leadership with adequate resources to enhance and monitor its Program.

D.140. In November 2019, Nicholas Stokes was recruited as Group General Manager AML and AML/CTF Compliance Officer. Mr Stokes has extensive experience in AML/CTF, including experience at major banks and AUSTRAC.[623]

D.141. The role and responsibilities of the AML/CTF Compliance Officer are articulated in section 7.5 of Part A of the Program.[624] The AML/CTF Compliance Officer has responsibility for the continued compliance of each of the reporting entities with the requirements of the AML/CTF Act

D.142. , the AML/CTF Rules, and the Program (subject to the oversight of the Crown Board and Crown Senior Management).[625] The AML/CTF Compliance Officer is given access to all relevant areas of each of the reporting entity's operations and to all relevant staff members, and is given the power to address any issue arising in relation to AML compliance by any of the reporting entities.[626]

D.143. The AML/CTF Compliance Officer has responsibility for reporting to the Crown Resorts board, the boards of each of the reporting entities and to Crown's senior management, on matters relevant to the performance and effectiveness of the Program.[627] The AML/CTF Compliance Officer is also charged with the development of internal policies, procedures, manuals, systems and rules referable to each of the reporting entities' compliance with the Program, the AML/CTF Act and the AML/CTF Rules.[628]

D.144. In February 2021, Steven Blackburn joined Crown as Chief Compliance and Financial Crime Officer. Mr Blackburn's AML/CTF experience is detailed in his first statement.[629] His experience includes roles as Chief Financial Crime Risk Officer and Group Money Laundering Risk Officer at National Australia Bank, and Chief AML Officer at Canadian Imperial Bank of Commerce.

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623 Exhibit RC0023 CRW.998.001.0084 Stokes I at [4]-[6].

624 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [0120]-[0121].

625 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [7.5(f)].

626 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [7.5(c)].

627 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [7.5(g)].

628 Exhibit RC0023d CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A at [7.5(i)].

629 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [4]-[12].

D.145. In those roles, Mr Blackburn has been responsible for designing, implementing, monitoring and testing financial crime programs. Whilst Chief AML Officer at Canadian Imperial Bank of Commerce, he built the team from one that was poorly positioned to respond to financial crime risk to one of the largest and most respected teams and programs in Canada.[630] Further, Mr Blackburn has developed relationships with key regulatory bodies, including AUSTRAC and the Australian Federal Police.[631]

D.146. Mr Blackburn's financial crime responsibilities include:

(a) providing expert advice to the Board and the CEO on compliance and financial crime issues;

(b) developing and leading the strategic approach for managing and enhancing compliance and financial crime to ensure efficiency, consistency and quality across the Crown Group;

(c) enhancing the Crown Group's capacity to respond proactively to financial crime threats and vulnerabilities; and

(d) leading teams in the analysis and interrogation of financial crime incidents and allegations to ensure appropriate and timely responses.[632]

D.147. Mr Blackburn's track record and capability is endorsed by McGrathNicol, who express the view that:[633]

> We consider that Mr Blackburn has the capability, track record and standing to lead such an ambitious program [ie, the Financial Crime & Compliance Change Program]. Further, he is not burdened by the history of Crown's past underperformance and has the "fresh eyes" advantage through having subject matter expertise honed in a different sector, which enables him to question practices and ideas which may not be considered open to question by those with only Crown or casino experience.

D.148. Notwithstanding these additional leadership roles, Crown's Board and Senior Management retain oversight of ML/TF risks. In that regard, Mr Blackburn reports directly to the CEO and Board of Directors of Crown Resorts.[634] Mr Blackburn's FCCCP will also implement an uplift to Crown's board reporting process.[635]

D.149. In addition to the recruitment of Mr Blackburn and Mr Stokes, Crown has significantly increased the resources available to the Financial Crime team.[636]

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630 Blackburn T2914.32-2915.16.

631 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [9].

632 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [9].

633 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0012.

634 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [9].

635 Exhibit RC0311 CRW.512.081.1750 FCCCP (24 May 2021) at .1777.

636 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [27].

The Financial Crime team currently has 22 full-time equivalent roles.[637] This represents a 600% increase in the full-time equivalent positions allocated to Crown's Financial Crime team since 1 January 2020. A further 3 full-time equivalent positions are currently being seconded to the financial crime team. In addition to Crown's dedicated Financial Crime team, the three lines of lines of defence model places ownership of ML/TF risks within operational management. Accordingly, the number of Crown employees with AML functions is significantly larger.

D.150. Although Mr Blackburn considers the financial crime team to be adequately resourced given its current maturity level,[638] Crown recognises that further investment in financial crime personnel and systems will be required to build a sustainable and ever-evolving financial crime program.[639] Mr Blackburn has already identified particular areas of focus for recruiting, including Financial Crime risk assessment, Financial Crime intelligence, assurance, Financial Crime operations, management reporting and regulatory affairs.[640] Crown's change program involves the recruitment of 55 additional full-time Financial Crime and Compliance personnel.[641] That recruitment process is well underway.[642] On 23 July 2021, Crown announced two further senior appointments to the Financial Crime and Compliance team, pending probity:[643]

(a) Armina Antoniou (Executive General Manager, Financial Crime Risk) – Ms Antoniou's role is focused upon building and maintaining the financial crime program, providing advice and training to the business, establishing and maintaining risk methodologies and assessments, and developing intelligence to improve the detection and reporting of financial crime. Ms Antoniou has over 20 years' experience as a risk and legal professional, including as General Manager of Financial Crime Risk at Tabcorp, and has been responsible for significant financial crime work programs, including the introduction of standardised training, operational and systems-based compliance procedures; and

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637 CRW.512.104.0001 Crown Resorts – Financial Crime Team (as at 28 June 2021).

638 This assessment is supported by McGrathNicol's report: Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0011. Further, as part of Deloitte's 'Phase 1' controls assessment, Deloitte considered the suitability of the Crown business units charged with implementing the recommendations proposed by Deloitte to enhance the AML/CTF control environment. Crown considered the Crown personnel within those units to be suitable to carry out those enhancements (Dobbin T983.02 – .09; Exhibit RC0084 DTT.010.0002.0007 at .0002).

639 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [28].

640 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [49].

641 Exhibit RC0311 CRW.512.081.1750 FCCCP (24 May 2021) at .1763.

642 Exhibit RC0311 CRW.998.001.0414 Blackburn III at [16].

643 CRW.512.244.0001 Memorandum from Mr Blackburn titled New Executive Appointments (23 July 2021).

(b) Daniel Rule (Executive General Manager, Financial Crime and Compliance Operations) – Mr Rule's role is focused upon building the financial crime transaction monitoring and investigations function, the customer due diligence function, third party requests, and the Financial Crime and Compliance Solutions function. Mr Rule was previously the General Manager of Financial Crime Remediation at the National Australia Bank (**NAB**). Prior to this, he was the Global Head of Financial Crime Solutions responsible for leading the financial crime change program at NAB.

D.151. Mr Blackburn has also identified areas for further investment to support a sustainable financial crime program.[644] The Commission can be confident that Crown will support efforts to enhance and improve Crown's Financial Crime function, and that he will be provided sufficient resources to do so.[645] What Mr Blackburn has asked for by way of resources, he has received.[646] The Board is supportive of providing the further resources as necessary to support the FCCCP. [647] In those circumstances and the changes to Crown's culture (described below), the management of ML/TF risk has been given a clear priority ahead of 'commercial pressures'.[648] Mr Blackburn's evidence was that, although AML is typically viewed as a cost centre in most businesses, he has not seen a tension between AML functions and profits while at Crown.[649]

D.152. Counsel Assisting submitted that in assessing the adequacy of Crown's current AML resourcing, it is necessary to have regard to the adequacy of Crown's resourcing of this function historically. As Counsel Assisting properly acknowledges, Crown has created and is filling an "impressive list of new financial crime roles".[650] Whether or not Crown's financial crime resourcing is apt to appropriately manage the risk of money laundering at its casinos is to be assessed by reference to the current state of that resourcing. Crown's historic resourcing of its financial crime team, while relevant from a cultural perspective (as it illustrates the previous cultural lack of proper focus on AML) is of little or no relevance to this Commission's assessment of whether Crown Melbourne is a suitable licensee from the perspective of its current and future state of AML controls, resources and personnel.[651]

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644 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [28].

645 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [19]-[29].

646 Blackburn T3011.13-31; Exhibit RC0310 CRW.998.001.0177 Blackburn II at [19]-[29].

647 Korsanos T3716.35-3718.30.

648 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [4.47]-[4.48].

649 Blackburn T2978.4-21.

650 Counsel Assisting AML Opening Submissions T588.06.

651 Cf Counsel Assisting AML Opening Submissions T588.08-19.

D.8.2 Training

D.153. Since 2020, Crown has significantly updated and expanded its AML training program. Training is delivered on the Crown Learn online learning platform, ensuring that employees and contractors are allocated AML/CTF training that is relevant to them, based upon their role, area of responsibility and level, in accordance with Part A of the Program.[652]

D.154. The training provided to Crown's staff working on the casino floor is designed to mitigate the risk that an employee will not identify behaviours indicative of financial crime. As McGrathNicol observed, "*AML/CTF training is an important aspect in ensuring that Crown employees understand the risk of money laundering and the ways in which it can be carried out*". [653]

D.155. In his FCCCP, Mr Blackburn states that training has been bolstered in the past 18 months and in the future:[654]

> to further advance the effectiveness of our training the FCCCP will place a greater focus on financial crime outcomes by tying Crown's efforts in detecting and reporting financial crime to protecting those most vulnerable in our society.

D.156. Crown's expanded AML training program includes the following:

(a) induction training for new employees and contractors (including gaming and non-gaming departments);

(b) more detailed online risk awareness module which provides all employees and contractors with an overview of AML/CTF risks and typologies;

(c) targeted business unit specific AML/CTF training aligned to the ML/TF risk faced by employees and relevant contractors in higher risk roles, including cage, table games, gaming machines, and security and surveillance;

(d) refresher training annually for high and moderate risk roles, and every two years for low risk roles; and

(e) remedial training where required.[655]

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652 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [74].

653 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0022.

654 Exhibit RC0311 CRW.512.081.1750 FCCCP (24 May 2021) at .1769.

655 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [73].

D.157. The training program is designed to ensure that employees demonstrate an understanding of the learning materials and includes a series of assessment questions that employees and contractors must answer.[656]

D.158. Crown receives reporting on completion rates, and monitors employees and contractors who have failed to complete their training within the prescribed timeframe.[657] The Financial Crime team also uses data from the AML Portal as an indicator of training effectiveness.[658]

D.8.3 Culture

D.159. Crown's extensive AML reforms program, in conjunction with the company's broader cultural change program (addressed in Part C above), have produced a necessary shift in Crown's AML culture.

D.160. This cultural shift is evident from Deloitte's Phase 1 Report (addressed in further detail above), which stated as follows:[659]

> It is evident to Deloitte from our work in this Phase 1, and the discussions and interactions we have had with relevant Crown staff, that Crown is constructively embracing the opportunity to address ML risk within the bank account channel.

D.161. A further barometer of Crown's cultural shift is evident in Mr Blackburn's evidence. Mr Blackburn, who joined Crown in the midst of Crown's AML reform process, observes in his second statement:[660]

> I am impressed by CRL's and Crown's current compliance culture. Having met with most senior management and many employees since I joined CRL in late February 2021, my impression is that CRL's current Board and management is focused on ensuring that compliance is not only central to how the Crown Group operates, but also drives compliance-focused outcomes. I believe that CRL's management and Board are open to suggestions on tactics and strategies that will further embed compliance into the culture of the Crown Group.

D.162. Mr Blackburn gave oral evidence that he had also perceived a cultural change at the level of Crown employees:[661]

> I certainly hope the culture of Crown has changed. At least my perspective is that it has changed, and that the concept of money laundering would be front of mind for Crown employees today whereas it may not have been at the time.

D.163. During the questioning of Mr Blackburn, Counsel Assisting sought to draw conclusions regarding Crown's culture from the hotel card practice (addressed

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656 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [79].

657 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [78].

658 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [80].

659 Exhibit RC0084 DTT.010.0002.0008 Deloitte Report Phase 1: Assessment of Patron Account Controls (26 March 2021) at .0010.

660 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [29].

661 Blackburn T2933.11-14.

in further detail in Part H.1 below).[662] However, this does not bear on Crown's current AML culture.

D.164. Mr Blackburn stated:[663]

> Well, I can only speak from my experience, Ms O'Sullivan, but I would say the culture I have come into is not reflected in the culture that I've seen evidenced through this past activity. The culture that I have joined is one where compliance and financial crime and risk management are prioritised. That is my experience since coming to Crown. Of course I would say past reflection on Crown based on the evidence I've seen and what I've read, it certainly looks like the culture was really problematic…

D.165. The changes in respect of Crown's AML culture are also evident in McGrathNicol's findings following employee surveys and focus groups. McGrathNicol made the following observations in their report.[664]

- Employees in the first line of defence are ready, willing and able to do what is asked of them when it comes to upholding the rules; but they rely on others to set them in accordance with Crown's values which include "do the right thing".

- Employees in the AML and Compliance team have welcomed the additional resources and the priority being given to their work. They also reported having experienced an increased level of understanding and co-operation from the floor staff; they did not wish to imply that they not receive co-operation before, but they were of the view that changes and training have made their jobs easier now.

- Overall employees had a real concern to get this right. For some this was expressed in the context of fear that the casino license, and therefore their jobs, are at risk; for others it was expressed in terms of recognising they have a rare window while there is increased funding and support and they can make real strides in what they see as purposeful work. It appears that employees have an increased awareness of money laundering since the Bergin Inquiry due to increased training and communication.

D.166. McGrathNicol further stated that the responses to the survey indicate a current view that "Crown presently takes its role in detecting and reporting ML/TF activity very seriously".[665] An example which illustrates the priority given to AML controls is the response to the prompt "I believe all staff are encouraged by their managers to report any unusual or suspicious behaviour or transactions which may indicate money laundering". McGrathNicol found as follows:

(a) 87% of 'on the floor' employees indicated that they agreed or strongly agreed with the proposition;

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662 Blackburn T2961.13-2962.34.

663 Blackburn T2962.36-44.

664 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0013.

665 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0098.

(b) 100% of Cage and Count, Gaming Machines and Security employees agreed or strongly agreed with the proposition; and

(c) 92% of second line of defence employees indicated that they either strongly agreed or agreed with the proposition (with the remaining respondents neither agreeing nor disagreeing).[666]

D.167. In cross examination, Counsel for the VCGLR drew Ms McKern's attention to the prompt "*If I report unusual or suspicious behaviour in relation to potential money laundering I believe appropriate action will be taken to investigate my report*".[667] Only 7% of respondents disagreed with the proposition.[668] Ms McKern considered that this was in fact a "good result".[669]

D.168. Crown, under Mr Blackburn's leadership, is seeking to make further changes which will support sustaining the necessary cultural attitude to AML.[670] Those refinements include the introduction of key performance objectives for each employee related to their compliance and financial crime obligations.[671]

D.9. Technology

D.169. As Mr Blackburn observed in his memorandum to the Board of 24 May 2021:[672]

> To effectively manage financial crime risk and the associated regulatory risk, Crown must continue to evolve the financial crime program through material and ongoing investment in capacity, capability and technology.

D.170. Crown is investing in technology and is already making significant headway in its use of technology to manage ML/TF risk.

D.171. *First,* on 2 February 2021, Crown implemented a new transaction monitoring system, Sentinel. Crown is continuing to review, test and refine Sentinel.[673] This

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666 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0096.

667 Exhibit RC0465a MGN.0001.0001.0107 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF – Appendices (5 July 2021) at .0147; McKern T3892.1-10.

668 McKern T3892.28-29; Exhibit RC0465a MGN.0001.0001.0107 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF – Appendices (5 July 2021) at .0147.

669 McKern T3892.39-42.

670 Exhibit RC0309 CRW.998.001.0036 Blackburn I at [36]-[39].

671 Exhibit RC0311 CRW.512.081.1750 FCCCP (24 May 2021) at .1770.

672 As McGrathNicol observed, Mr Blackburn's Financial Crime and Compliance Change Plan relies on technology: Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0071 and .0079-.0080.

673 Exhibit RC0023 CRW.998.001.0084 Stokes I at [76].

includes developing additional Sentinel monitoring rules,[674] targeted at identified specific ML/TF typologies confirmed as presenting a high ML/TF risk to Crown.[675] In addition, the Cage and Finance teams have automated the manual checks of bank account transactions for compliance with Crown's patron account controls through the TM1 system, and the Financial Crime team is in the process of rolling out further transaction monitoring rules to detect large inbound telegraphic transfers over a defined threshold and period. While the majority of the transaction monitoring rules have already been implemented, Crown will continue refining its rules and implementing new rules as it enhances its transaction monitoring.[676]

D.172. Sentinel enhances Crown's ability to detect and monitor transactions from an AML/CTF perspective, enables sophisticated analysis of data ingested from multiple sources in order to detect unusual gambling or transaction patterns and assists in the detection of changing ML/TF typologies.[677]

D.173. As at April 2021, there were 24 automated rules that could trigger in the Sentinel Dashboard. Seven of these were designed to detect large cash transactions. The remaining 17 were 'risk-based alerting' rules.[678] Two further risk-based alerting rules were added in May 2021, bringing the total of automated rules to 26.[679] The operation of these rules is set out in Mr Stokes' statement of 25 April 2021.[680] Initialism's review indicated that the relevant information necessary for Crown's automated transaction monitoring rules to alert is appropriately flowing through to SPLUNK from SYCO.[681]

D.174. It is also notable that each of Crown's AML/CTF policies and transaction monitoring program are designed to apply on an enterprise-wide basis. This

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674 See, eg, Exhibit RC0311g CRW.512.112.0001 Memorandum from Mr Blackburn to the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment (7 June 2021) at .0012 (emphasis in original).

675 See, eg, Exhibit RC0311g CRW.512.112.0001 Memorandum from Mr Blackburn to the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment (7 June 2021) at .0012-.0013.

676 CRW.512.249.0004 Memorandum from Mr Blackburn to the Board Risk Management Committee of the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment, as at 30 July 2021 (11 August 2021) at .0014 - .0016.

677 Although Crown has not yet completed its transition from manual to automated transaction monitoring, a composite of manual and automated monitoring controls was endorsed by Promontory. Mr Carmichael said in evidence that Promontory consider manual controls "to be important but not completely robust, even with the best training material" (Carmichael T1029.08-10) due to the risk of human error, which is why manual controls should exist but be supplemented by automated monitoring (in this regard see Jeans T827.28-32).

678 Exhibit RC0023 CRW.998.001.0084 Stokes I at [39].

679 CRW.512.240.0001 Consolidated Sentinel Rule Documentation as at 28 July 2021.

680 Exhibit RC0023 CRW.998.001.0084 Stokes I at [40]-[50].

681 Exhibit RC0062 INI.0000.0005.0001 Jeans I Annexure H at .0254.

addresses the concern that different Crown properties have historically operated in 'silos'.[682] It also ensures that Crown has the benefit of customer information across each of its properties.[683]

D.175. On 28 June 2021, Initialism delivered a report to the Crown Group on the Crown Group's transaction monitoring program.[684] The report confirmed that the Crown Group's transaction monitoring program included appropriate systems and controls to meet the Crown Group's obligations under s 36(1) of the AML/CTF Act and the requirements in Chapter 15 of the AML/CTF Rules.[685] Initialism also expressed the view that the Crown Group had refined and evolved its transaction monitoring program to address the findings of Initialism's review in 2019.[686]

D.176. McGrathNicol has endorsed the use of the SPLUNK engine in Crown's transaction monitoring program,[687] and has observed that it appeared that transaction monitoring had become more effective since the introduction of Sentinel.[688]

D.177. *Second*, since the Bergin Report, Crown has implemented an AML Portal, a digitised tool which allows employees to submit UARs electronically, and allows the Financial Crime team to document investigations.[689] The portal can be also used by the Financial Crime team to monitor the effectiveness of training.[690] The portal was described by McGrathNicol as 'user-friendly' and had contributed to an increased number of UARs submitted by floor staff.[691] Sentinel and the AML Portal also complement each other in that unusual or potentially suspicious alerts from Sentinel are fed into the AML Portal, and the AML Portal data will periodically be used to tune Sentinel rules.[692] The Financial Crime team also plans to use the data generated by the AML Portal to

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682 Jeans T815.22-45.

683 Jeans T831.32-45.

684 Exhibit RC0311d CRW.512.072.0128 Initialism Report – Crown Resorts Limited Transaction Monitoring Review Report (20 May 2021).

685 Exhibit RC0311d CRW.512.072.0128 Initialism Report – Crown Resorts Limited Transaction Monitoring Review Report (20 May 2021) at .0003-.0004.

686 Exhibit RC1351 CRW.512.188.0001 Initialism Report – Crown Resorts Limited Transaction Monitoring Review Report (June 2021) at .0005.

687 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0061.

688 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0105.

689 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [82].

690 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [80].

691 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [13.3.2] (Table 21).

692 Exhibit RC0023 CRW.998.001.0084 Stokes I at [74].

test the effectiveness of targeted AML training by reviewing spikes in UAR reporting by staff.[693]

D.178. *Finally,* in response to Deloitte's report, Crown has automated its bank account monitoring, and developed and operationalised automated flags in a system called 'TM1' to identify transactions in Crown entity bank accounts that do not comply with the Return of Funds Policy (ie cash deposits, incoming telegraphic transfers from companies, third party transfers, inter-casino transfers, etc).[694] The TM1 system is a technology solution for financial reporting and spreadsheet analytics. In the context of bank statement monitoring, it acts as a user interface for matching bank deposits in the Crown ANZ account with transfer acknowledgement information recorded in the casino management system, SYCO. Since 21 December 2020, Crown has been working closely with ANZ to obtain the relevant data file feeds to ensure the efficacy of this process. On 12 March 2021, Crown received the necessary bank data file feeds and testing commenced in May 2021. In June 2021, the automated alerts were activated and became operational on 30 June. As noted, those automated alerts were supplemented by manual review while the automated system were embedded and tested.

D.10. Crown's Engagement of AML Consultants

D.10.1 Crown has sought extensive external assistance to reform its AML function

D.179. In addition to the reports set out above, Crown has commissioned further reports for the purposes of obtaining expert assistance to enhance and strengthen its Program. These include the following:

(a) Phase 2 of Promontory's Report (Strategic Capability Assessment) - a draft of which was provided to Crown on 20 June 2021;[695]

(b) Phases 2 and 3 of Deloitte's forensic review and controls assessment;[696]

(c) an assurance review by PwC regarding the implementation of the recommendations in the Deloitte Phase 1 Report;[697] and

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693 Exhibit RC0023 CRW.998.001.0084 Stokes I at [98].

694 Exhibit RC0023 CRW.998.001.0084 Stokes I at [12].

695 CRW.512.171.0001 Promontory Phase 2: Strategic Capability Assessment (20 June 2021).

696 Exhibit RC0310e CRW.512.023.0026 Deloitte Letter of Engagement – Forensic Review and Controls Assessment (22 February 2021); Exhibit RC0437h CRW.512.025.0085 variation to Letter of Engagement (19 March 2021).

697 Exhibit RC0311g CRW.512.112.0001 Memorandum from Mr Blackburn to the Crown Resorts Limited Board: Update on steps to address recommendations in Deloitte Forensic Review Phase 1 and Promontory AML Vulnerability Assessment (7 June 2021) at .0002.

(d) an independent review of the Program, which is expected to be commence in late 2021.[698]

D.10.2 Criticisms advanced of Crown's engagements of consultants

D.180. In the examination of Katharine Shamai (Grant Thornton), Neil Jeans (Initialism), Lisa Dobbin (Deloitte) and Alexander Carmichael (Promontory), Counsel Assisting sought to establish the proposition that Crown had instructed its AML/CTF consultants in a constrained or limited way.

D.181. In their submissions, Counsel Assisting has suggested that an inference may be drawn, at least in respect of one engagement that was commenced but not completed,[699] that the analysis was "deliberately curbed".[700] There is no foundation in the evidence to conclude that Crown acted other than in a bona fide and conscientious manner in dealing with external consultants. The notion that there has been a "pattern of behaviour" at Crown of instructing external consultants with "limited terms of reference or limited retainer",[701] and that this "behaviour" reflects adversely on Crown, is not supported by the evidence.

D.182. Moreover, these serious allegations, advanced by Counsel Assisting through examination of consultant witnesses, were never put to Crown's AML employee witnesses. For example, while much was made, in examination of Ms Shamai, of the refinement of the structuring scenarios being run over the Riverbank and Southbank accounts, the suggestion that the limitation of those scenarios was inappropriate, or driven by a desire 'not to look too hard' was never put to Nick Stokes, the very person from Crown who was involved in settling the scenarios to be examined in the first instance.

D.183. The circumstances of Grant Thornton's and Initialism's retainers were comprehensively explained in Mr Blackburn's third statement.[702] The scope of work has in fact expanded as a result.[703] The substance of that evidence has not been addressed in Counsel Assisting's submissions,[704] nor was the evidence ever challenged in Counsel Assisting's examination of Mr Blackburn.

D.184. In these circumstances, and for the reasons expanded on below, Counsel Assisting's submissions regarding Crown's dealings with its consultants should not be accepted. This is particularly so with respect to the serious submissions

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698 Exhibit RC0311 CRW.998.001.0414 Blackburn III at [28].

699 Initialism's review of the accounts of Crown Melbourne and Burswood Nominees (other than Riverbank and Southbank).

700 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.4]; See also Counsel Assisting AML Opening T593.45-47.

701 Counsel Assisting AML Opening Submissions T592.3-5.

702 Exhibit RC0311 CRW.998.001.0414 Blackburn III at [18]-[28].

703 Exhibit RC0311 CRW.998.001.0414 Blackburn III at [26].

704 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.62].

that the Southbank and Riverbank reports were "deliberately curbed"[705] and that "Crown did not display candour"[706] in providing those reports to the Bergin Inquiry. Not only are these submissions not supported by the evidence, but the requirements of procedural fairness demand that such matters be put squarely to Crown witnesses before making submissions to this effect in closing.[707]

D.185. *Bank accounts examined by Grant Thornton and Initialism:* Turning first to the suggestion that the review of the Riverbank and Southbank accounts was not 'fulsome' or 'comprehensive'.[708] Counsel Assisting has submitted that an "important part of this inquiry" is to explore why the Crown Melbourne and Crown Perth accounts were excluded at the time the Riverbank and Southbank accounts review was commissioned, and why the terms of engagement of Grant Thornton and Initialism were "so constrained".[709]

D.186. The Crown Melbourne and Crown Perth accounts were not 'excluded' from review at the time the review of the Riverbank and Southbank accounts was commissioned. Rather, the evidence shows that it was Crown's intention from the outset to conduct a wider review of its patron accounts for indications of money laundering. The review of the Riverbank and Southbank accounts was *prioritised*, with the broader review of patron accounts to be undertaken subsequently. The prioritisation of the review of the Riverbank and Southbank accounts makes sense: they were accounts that had been the subject of extensive examination at the ILGA Inquiry and the prioritisation of that review enabled a report to be produced in relation to the Riverbank and Southbank accounts prior to the close of hearings in that inquiry.[710]

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705 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.4]; See also Counsel Assisting AML Opening T593.45-47.

706 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.78].

707 *Annetts v McCann* (1990) 170 CLR 596, 598; *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 578; *Inquiries Act 2014* (Vic), s 12(a). If the Commission were to make adverse findings against Crown Melbourne on the basis of these untested criticisms, Crown Melbourne's business and commercial reputation would likely be adversely affected. For these reasons, procedural fairness required Counsel Assisting to put matters to Crown's witnesses before submitting these findings were open.

708 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.27]; Counsel Assisting AML Opening Submissions T591.18.

709 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.27]; CA AML Opening, T591.43-47. It is to be noted that Grant Thornton and Initialism were, in a sense, working together on the Riverbank and Southbank review, with Grant Thornton providing the forensic support necessary to enable Initialism to conduct its analysis of the data. The evidence demonstrated that Grant Thornton provided an input into the AML analysis to be undertaken by Neil Jeans of Initialism. Grant Thornton: (a) Converted the bank accounts and did a cleansing process over the converted data, and through that process matched back to the bank accounts to ensure Grant Thornton did not miss anything (Shamai T608.44-47); (b) Built a forensic tool to review three structuring scenarios (Shamai T619.45ff).

710 As the length of time required by Deloitte's current patron account review demonstrates, that would not have been possible if the review of *all* patron accounts, including Riverbank and Southbank, were undertaken at once.

D.187. The evidence showing that the review of the Riverbank and Southbank accounts was prioritised, rather than the Crown Melbourne and Crown Perth accounts being excluded, includes:

(a) Ms Shamai's evidence that, in her briefing discussion with MinterEllison and Initialism, she was told that the Southbank and Riverbank accounts were the accounts of "high priority to review and that Crown Melbourne and Burswood Nominees were to be reviewed at a later point".[711]

(b) Mr Jeans' evidence that he understood "it was always Crown's intention to do an investigation on the [Crown Melbourne and Burswood Nominees] accounts, but obviously the Riverbank and Southbank accounts were prioritised because of their relevance to the Bergin Inquiry".[712]

D.188. Counsel Assisting has also submitted that Grant Thornton was instructed to look only at the Southbank and Riverbank AUD bank accounts, and not the foreign currency bank accounts held by those entities.[713] The rationale for the exclusion of these accounts was explained by Mr McGregor,[714] and in the contemporaneous documents which indicate that the analysis of the foreign accounts performed by Crown at the time did not identify any cash deposits.[715] In any event, Deloitte will consider the foreign currency accounts in the course of its review.[716]

D.189. *Scenarios used in Grant Thornton and Initialism's Riverbank and Southbank analysis:* The evidence has also failed to establish the submission that Initialism and Grant Thornton's terms of engagement were deliberately constrained in respect of the structuring scenarios.[717]

D.190. The decision to run three structuring scenarios across the bank transaction data (reduced from an initial nine scenarios suggested by Mr Jeans) was made following discussion between Mr Jeans and Mr Stokes. The decision was made to prioritise those three scenarios, with the other scenarios to be completed in the next phase of work.[718] The decision was appropriate. This is primarily because, as Mr Jeans said in evidence, "the further you go out, the more

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711 Shamai T636.36-40.

712 Jeans T740.44-47.

713 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.30].

714 McGregor T3546.45-3547.9.

715 Exhibit RC0045 GTA.0001.0001.1082 Memorandum titled "Bank Statement Analysis" (15 October 2020) at .1082.

716 CRW.512.241.0001 Deloitte Patron Account Tracker.

717 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.32].

718 Exhibit RC0056 GTA.0001.0001.2696 Email from Katherine Shamai to Richard Murphy (4 November 2020).

potential you have for noise and to identify things that aren't structuring...".[719] The reason that Mr Jeans agreed to apply three scenarios was because those scenarios would best and most directly identify structuring in the Riverbank and Southbank accounts.[720] Those same scenarios were also used by the Commission's expert, McGrathNicol, to identify the dataset for potential structuring transactions.[721]

D.191. Although, from the perspective of Grant Thornton, adding the additional scenarios to their forensic model would have been "quite straightforward",[722] the burden lay in the potential analysis that would have been required across the transactions that were responsive to the broader searches. As Mr Jeans' evidence established, it was a time consuming and detailed exercise for Mr Jeans to go through each transaction identified as 'responsive' by Grant Thornton's forensic review to determine whether the transaction was indicative of structuring. It required obtaining from Crown, in addition to bank statement data, underlying information regarding the transaction and, in some cases, UAR information, and then reviewing each piece of information. Mr Jeans said that, for each identified transaction, it was a "manual process across multiple different pieces of information".[723] Grant Thornton agreed with Initialism to review for the three scenarios and did not raise any concern about adopting that approach.[724]

D.192. The Commission has seen, in the context of the sample patrons whose records were compiled arising out of McGrathNicol's DAB account analysis, the kind of detailed collation of gaming and transaction records which would form part of the kind of analysis necessary to progress examination of whether cash transactions within stated windows of time might be structuring. Self-evidently, the wider the net is cast (in terms of scenarios) and the greater the temporal gap between transactions being examined, the more extensive the data-collation and analysis exercise would be in assessing whether there is any basis upon which to form a suspicion, and the greater the likelihood of generating false positives. The prioritisation of scenarios for the Grant Thornton and Initialism analysis was entirely appropriate and ought not attract any adverse comment.

D.193. As Mr Jeans said in answer to a question by Counsel Assisting as to what the "narrowing" of the structuring scenarios told Mr Jeans "*about Crown's approach to anti-money laundering*"?[725]

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719 Jeans T866.33-35.

720 Jeans T866.38-42.

721 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at [5.5.2].

722 Shamai T624.25-28.

723 Jeans T838.08-24.

724 Jeans T866.33-35.

725 Jeans T763.12-24.

> I don't think it tells me anything about Crown's approach to anti-money laundering. I think it tells me an approach about getting a piece of work done in a relatively short time scale, and making sure the key issues were identified and potentially other things which may not have been key were not --- were maybe looked at later. And as a result, when we did our analysis, we actually ran a number of longer data scenarios based on the Grant Thornton data, and did not discover any other cash transactions or scenarios that would have triggered. Because we would include that in our investigation.

D.194. Thus, as matters transpired:

(a) the three scenarios that were prioritised captured the key structuring activity;

(b) Initialism did run broader scenarios and did not discover any other transactions indicative of structuring that would have been caught by those broader scenarios.

D.195. In Ms Shamai's examination, Counsel Assisting sought to advance a narrative that Grant Thornton had been instructed in a constrained way which only identified a portion of the potential money laundering activity in the Riverbank and Southbank accounts. But that questioning overlooked the fact that Grant Thornton had done substantial work which was not set out in Grant Thornton's Riverbank and Southbank reports. As Ms Shamai later acknowledged,[726] Grant Thornton in fact undertook a review of each of the typologies set out in the following section of Initialism's Riverbank and Southbank report, viz:[727]

> Grant Thornton's scenarios provided Initialism with the following indicia data sets based on the Riverbank and Southbank bank statement information:
>
> - Instances where more than two cash deposits occurred in a short period of time, both less than $10,000 but combined totalling $10,000 for a single customer.
> - Instances where one cash deposit and one electronic funds transfer occurred in a short period of time, both less than $10,000 but combined totalling $10,000 for a single customer
> - Instances where multiple large cash deposits occurred in a short period for a single customer.
> - Instances where payments were made on behalf of a customer by an overseas money remitter.
> - Instances where international payments were made on behalf of a customer by an apparently unrelated third party.

D.196. Thus, the work done by Grant Thornton was not confined to the three scenarios reported on in their Riverbank and Southbank report, but included the non-structuring AML scenarios listed above.

D.197. Counsel Assisting has also criticised the fact that Grant Thornton did not consider potential structuring across the Riverbank and Southbank accounts.[728] However, the potential for structuring across accounts will be addressed by Deloitte.[729]

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726 Shamai T683.21-24.

727 Exhibit RC0062c INI.0004.0001.0038 Initialism Review of Riverbank and Southbank accounts for Indications of Money Laundering (16 November 2020).

728 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.31].

729 Dobbin T-909.26-34.

D.198. Counsel Assisting appear to suggest that due to the late tender of the Grant Thornton and Initialism Reports, the Bergin Inquiry was unable to glean that the analysis was "deliberately curbed by way of limited instructions".[730] That is not an accurate submission. The Bergin Inquiry was well aware of the limited nature of the Southbank and Riverbank Review. Commissioner Bergin noted the following:[731]

> The urgent work of Grant Thornton and Initialism in the intense environment of the Inquiry at the direction of Minter Ellison is not the ideal environment for Crown to receive advice on its operations. In any event their work in November 2020 was limited and confined by the instructions given to them by MinterEllison. There was no wide-ranging proper forensic full audit of the accounts nor were those firms asked to review any other Crown accounts that operated during the same period. This is of course a serious problem.

D.199. *Termination of Grant Thornton's wider review of patron accounts:* The criticism that the wider review of Crown's patron accounts was started but "not completed" by Grant Thornton, and a possible explanation for this being that "Crown chose deliberately not to know or find out", is also misplaced.[732] As the evidence demonstrates, the work is being completed by Deloitte. Further, Grant Thornton's work on the broader set of Crown Melbourne and Burswood Nominees accounts was at an inchoate stage when transferred to Deloitte, and not yet at a point where there was any relevant information for Crown to "find out". Ms Shamai acknowledged that at the time Grant Thornton ceased work, it had not been provided with data sufficient for the "model [to] work", and therefore, had not progressed to a stage where any structuring activity could be identified.[733] There is no mystery in, and nothing untoward in, Grant Thornton having ceased doing this work: Deloitte was engaged to do it instead.[734]

D.200. *Cessation of Initialism's review of AML controls:* The review to assess the efficacy of Crown's recent AML controls was also transferred from Initialism to Deloitte. Mr Jeans confirmed that Initialism's review was at a preliminary stage when it issued its draft report[735] and this work was a "long way" from complete in terms of ascertaining whether or not Crown's policies prohibiting cash deposits and the making of third party payments had not been complied with.[736] As Mr Jeans explained, further investigations were required before Initialism could reach any conclusions as to the operational effectiveness of these recently introduced controls.[737] That further work was done by Deloitte in circumstances where significant further work would have been required for

730 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [2.4].

731 Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2, Ch 4.5 at [63].

732 Counsel Assisting AML Opening Submissions T593.45-47.

733 Shamai T666.08-16, 667.01-02

734 Shamai 679.26-33; Exhibit RC0311 CRW.998.001.0414 Blackburn III at [24].

735 Exhibit RC0062 INI.0000.0005.0001 Jeans I, Annexure N.

736 Jeans T859.14-29.

737 Jeans T859.31-37 and 860.11-19.

Mr Jeans to reach a conclusion and Deloitte had already been engaged to conduct a forensic review covering the same scope (and more).[738]

D.201. The transfer of this work to Deloitte was the reason Crown did not instruct Mr Jeans to carry out the investigations necessary to reach any conclusions in connection with his 2021 patron account control review.[739] Relevantly, Deloitte's patron account control review concluded that the design of Crown's patron account controls is aligned with industry practice, and that the patron account controls are presently effective in addressing cash structuring and cuckoo smurfing activity occurring in the Crown patron accounts.[740]

D.202. *Cessation of Initialism's risk assessment work:* While Initialism was engaged to conduct a risk assessment, and prepared preliminary drafts, the work was not finalised. Mr Jeans explained that he assumed Crown was "going down a different path and taking a more detailed look at the ML/TF risks. Our piece of work was designed to be a very short piece of work and by its nature was relatively limited. I think that at that point there was a desire by Crown to take a more detailed look at the AML risks".[741]

D.203. Initialism's assessment was undertaken using, as Mr Jeans called it, an "off-the shelf model, which was not specifically designed for casinos".[742] Mr Blackburn's evidence on this issue was as follows:[743]

> With the Promontory AML Vulnerability and Strategic Capability Assessment foundational to completing the EWRA [enterprise wide risk assessment], Initialism's work didn't materially progress over the subsequent months. As the off the shelf solution proposed by Initialism is not designed for casinos, I am working with PwC to develop a more comprehensive, detailed and bespoke EWRA for the Crown Group that I aim to deliver before the end of 2021.

D.204. It is difficult to see how Crown can reasonably be criticised for not finalising this work and substituting it with a more detailed and nuanced risk assessment tailored to address the money laundering risks facing a casino operator.

D.205. *Suggestion of Crown influence in Initialism's transaction monitoring review report:* Counsel Assisting sought to suggest in examining Mr Jeans that Crown had interfered in the drafting of Initialism's transaction monitoring review report in 2019, by suggesting that the word "appears to be" in the sentence

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738 Exhibit RC0311 CRW.998.001.0414 Blackburn III at [24].

739 See Exhibit RC080 CRW.512.083.0001 Email from Caroline Marshall to Christopher Kerrigan et al (19 February 2021); Exhibit RC081 CRW.512.083.0005 Memorandum of meeting from call with Neil Jeans (24 February 2021).

740 Exhibit RC0084e DTT.010.0002.0008 Annexure E, Deloitte, Phase 1: Assessment of Patron Account Controls (26 March 2021).

741 Jeans T773.47-774.04.

742 Jeans T774.18-20.

743 Exhibit RC0311 CRW.998.001.0414 Blackburn III at [20].

"Crown appears to be meeting" be substituted with "is meeting".[744] Mr Jeans rejected any suggestion that he was "leant upon" by Crown to change this wording.[745] As was later clarified in Crown's examination of Mr Jeans, the comment made by Ms Lane, on behalf of Crown, was merely directed toward ensuring the report was internally consistent. Mr Jeans had earlier in his report written that Crown "is meeting" and Ms Lane was doing no more than commenting that "appears to be" was inconsistent with the earlier drafting, and suggesting that the body of the report be made consistent with the executive summary.[746]

D.206. *Cooperation with McGrathNicol:* Finally, McGrathNicol observed that it had experienced full co-operation and timely assistance from Crown personnel and its solicitors in respect of its work for the Commission.[747]

D.207. For the reasons set out above, the manner in which Crown instructed and dealt with consultants in relation to a large number of AML reviews and reports commissioned during and after the Bergin Inquiry has been appropriate and ought not be the subject of any adverse finding.

D.10.3 Crown's communications with the VCGLR regarding work of consultants

D.208. Counsel Assisting suggested in its examination of Mr Jeans, that Crown may have misrepresented to the VCGLR the effect of the work that Mr Jeans was engaged to complete regarding recommendation 17 from the Sixth Casino Review. Contrary to that suggestion, the evidence demonstrates that Crown accurately conveyed to the VCGLR the scope of the external assistance it had obtained from Initialism, as well as the materials and information Crown provided to Initialism for the purposes of the review.[748] Mr Jeans confirmed that, on the letters Crown sent to the VCGLR on 13 June 2019 and 1 July 2019, Crown accurately conveyed the substance of the report Initialism had prepared and the review it had conducted for the purposes of recommendation 17.

D.209. It was also suggested by Counsel Assisting, this time in the examination of Ms Shamai, that Crown's letter to the VCGLR on 20 November 2020 was inaccurate in what it said about a forensic review being undertaken on Crown Melbourne and Crown Perth's patron accounts (ie, beyond the Riverbank and

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744 Jeans T818.01-819.46.

745 Jeans T819.26-30.

746 Exhibit RC077 INI.0001.0001.2717 Draft Initialism Transaction Monitoring Review (2019); Jeans T849.13-850.26.

747 Exhibit RC0465 MGN.0001.0001.0001 McGrathNicol, Royal Commission into Casino Operator and Licence Forensic review – AML/CTF (5 July 2021) at .0009.

748 Jeans T850.28-.855.35. See: CRW.510.029.8711 Letter from Crown to VCGLR (13 June 2019); Exhibit RC071 CRW.514.001.0001 Letter from Louise Lane to Neil Jeans; Exhibit RC078 CRW.510.029.8076 Letter from Crown to VCGLR (1 July 2019).

Southbank accounts).[749] This followed evidence from Ms Shamai that, as at 20 November 2020, she was not aware that Grant Thornton had been engaged to undertake an equivalent analysis to that done on the Riverbank and Southbank accounts, on the Burswood Nominees and Crown Melbourne accounts,[750] as Mr Jeans did not contact her in relation to that work until early December 2020.[751]

D.210. The confusion appears to have arisen because Mr Jeans did not inform Ms Shamai that Crown had instructed Initialism (with assistance from Grant Thornton) to conduct the broader patron account review. It is to be recalled that Grant Thornton were, in substance, providing forensic analytical support to Initialism.[752]

D.211. On 8 December 2020, Mr Jeans telephoned Ms Shamai to enquire about the progress of that work, which took Ms Shamai by surprise because she wasn't aware of a specific instruction to commence that work.[753] Mr Jeans' oral evidence was that he understood it was always Crown's intention to investigate the Crown Melbourne and Burswood Nominees accounts, but the Riverbank and Southbank accounts were priorities because of their direct relevance to the Bergin Inquiry.[754]

D.212. The contemporaneous documents show that, prior to sending the letter to the VCGLR on 20 November 2020, it was Crown's understanding that Initialism and Grant Thornton had been engaged to undertake the broader patron account review:

(a) An email from Nick Stokes to Mr Jeans dated 28 September 2020 set forth a proposed scope for the Initialism review, which included the Burswood Nominees and Crown Melbourne accounts, as well as the Riverbank and Southbank accounts.[755]

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749 Exhibit RC0047 VCG.0001.0002.2001 Letter from Crown to VCGLR (20 November 2020).

750 Shamai T640.17-25.

751 Shamai T.637.30-34.

752 Grant Thornton was supporting Initialism with data analysis in Initialism's review of bank accounts (P701.16-19 and 38-44; Engagement letter INI.002.0001.0809). Mr Jeans introduced Ms Shamai to Crown (Exhibit RC0064 INI.0001.0001.1680), and Minter Ellison relied on Mr Jeans to communicate with Ms Shamai (See eg Exhibit RC0063 INI.0002.0001.0809).

753 Shamai T638.21-36; Exhibit RC0046 INI.0001.0001.2545 Email from Katherine Shamai to Nick Stokes (11 December 2020); Exhibit RC0047 VCG.0001.0002.2001 Letter from Crown to VCGLR (20 November 2020). As a consequence of being taken by surprise by Mr Jeans' phone call, Ms Shamai emailed Claude Marais on 9 December 2020 (P638.44-47; Exhibit RC0048 INI.0001.0001.1621) and Nick Stokes of Crown on 11 December 2020 (T-639.2-6; Exhibit RC0046 INI.0001.0001.2545) to clarify the situation. On 11 December 2020, Claude Marais uploaded the Crown Melbourne and Burswood Nominees account statements into Collaborate for access by Ms Shamai (T-643.6-10; Exhibit RC0048 INI.0001.0001.1621).

754 Jeans T740.37-47.

755 Exhibit RC0052 INI.0001.0001.2464 Email from Nick Stokes to Neil Jeans (28 September 2020).

(b) An email from Mr Jeans to Crown dated 20 November 2020 set out a list of items for completion. In respect of the broader patron account review, Mr Jeans noted the following: "Replicate GT Analysis and Initialism Review for each account."[756]

D.213. In any event Crown had, through MinterEllison, informed Grant Thornton at the very outset of its engagement that a review of the Crown Melbourne and Crown Perth accounts was to be conducted once the prioritised review of Riverbank and Southbank accounts had been completed. Indeed, Ms Shamai's own evidence was to the effect that she was aware, from her very first briefing meeting with MinterEllison and Initialism that a review over the Crown Melbourne and Burswood Nominees accounts was to be undertaken, but Ms Shamai understood that the review of Southbank and Riverbank accounts was to be prioritised and the other accounts "were to be reviewed at a later point".[757]

D.10.4 Riverbank and Southbank root-cause analysis

D.214. Counsel Assisting has identified, as an area of concern, Crown's "failure to conduct a root cause analysis in respect of the Southbank and Riverbank accounts.[758]

D.215. In October 2020, Crown's Internal Audit team completed a root cause analysis of the control breakdowns in relation to transaction monitoring associated with the Southbank and Riverbank accounts and assessed the adequacy of the patron account controls in place in 2020 to mitigate the risk of such breakdowns occurring in the future. The assessment specifically targeted Crown's practice of aggregating deposits, and identified two causes of the control breakdown:

(a) a lack of designated responsibility/accountability in Crown's AML/CTF framework for identifying and monitoring all bank account transactions and subsequent aggregation in SYCO; and

(b) insufficient knowledge and understanding amongst relevant staff to recognise structuring as suspicious activity and the potential money laundering implications.[759]

D.216. The Internal Audit team also made a number of recommendations following the conclusion of their root cause analysis. These included:

(a) implementing a process requiring the Financial Crime team to independently review patron bank account transactions entered into

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756 Exhibit RC0065 INI.0001.0001.2424 Email from Neil Jeans to Claude Marais et al (20 November 2020).

757 Shamai T636.38-40.

758 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 8 at [5.2]-[5.7].

759 CRW.510.047.0675 Internal Audit Assessment – Southbank & Riverbank Account Transaction Monitoring (October 2020) at .0676.

SYCO to ensure Crown's Patron Account Controls were being adhered to;

(b) implementing a process requiring the Financial Crime team to review and approve outgoing telegraphic transfers before the Credit Control team remitted funds to a customer;

(c) revising Crown's SOPs to include the above controls enhancements; and

(d) continuing to enhance additional training for relevant staff in relation to transaction monitoring practices and AML implications.[760]

D.217. The above recommendations were implemented by Crown by way of the Manual Bank Statement Monitoring Rule described at paragraph D.52 above and the additional checks by the VIP and Cage teams noted at paragraphs D.50 to D.51 above. Additional training was also rolled out and SOP revisions made.[761]

D.218. Questions regarding whether Crown ought to have conducted a 'root cause' analysis of the Riverbank and Southbank accounts were put to Mr Jeans. The foregoing matters were not drawn to Mr Jeans' attention by Counsel Assisting. In any event, under cross-examination Mr Jeans accepted that in circumstances where Crown has now:

(a) put a stop to aggregation at the cage;[762]

(b) banned cash deposits into its bank accounts; and

(c) stopped accepting third party payments,

Crown has put in place the measures necessary to "attempt to stop" the activity identified in the Riverbank and Southbank accounts from reoccurring.[763] Mr Jeans use of the qualifier "attempt to stop" was based on him wanting to ensure that those controls had been correctly implemented. As noted, the Deloitte patron account control review has concluded that those controls have been implemented, are presently operating effectively, and Crown has proposed the steps necessary to ensure the controls are effective on a sustainable basis.

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760 CRW.510.047.0675 Internal Audit Assessment – Southbank & Riverbank Account Transaction Monitoring (October 2020) at .0676.

761 Exhibit RC0023a CRL.742.001.0009 AML/CTF Manual Rule - Bank Statement Monitoring, (16 November 2020).

762 The Riverbank and Southbank problem was an aggregation problem. "[4] It appears that, in each of those instances, the multiple deposits were aggregated when details of them were entered into SYCO …. This meant that they were identified as individual deposits when they were reviewed by the AML team in accordance with our transaction monitoring program". (Exhibit RC0042 GTA.0001.0001.1012 Memorandum from Claude Marais to Ken Barton (29 September 2020)). This is consistent with Mr Jeans' evidence (see, eg, Jeans T750.22-33).

763 Jeans T843.28-844.08.

D.11. Alleged Breaches of Sections 123 and 124 of the CCA

D.219. Counsel Assisting contend that Crown Melbourne may have technically breached s 123 of the CCA because Crown Melbourne "did not operate the bank [account] itself", but rather through a wholly owned subsidiary.[764] This matter was not explored in evidence before the Commission. Crown submits that the better view is that the operation of a bank account by a subsidiary did not constitute a breach of s 123. Section 123 of the CCA is concerned with the maintenance of *separate* accounts for banking transactions in relation to the CCA and the powers of inspection in respect of those accounts. On its terms, s 123 requires the casino operator to "keep and maintain separate accounts" for banking transactions at an authorised deposit taking institution (which Crown Melbourne did). The Southbank accounts were approved by the VCGLR pursuant to s 123 of the Act.[765] It does not require the accounts to be held in the name of Crown Melbourne, and there is nothing in the extraneous materials that supports a wider interpretation of the section.[766]

D.220. In respect of the historical aggregation of transactions in the Southbank and Riverbank accounts, Crown accepts that on a very broad interpretation of "accounting records" it is possible that a finding of breach of s 124(1) of the CCA is open.[767] However, the aggregation practice did not impact Crown's financial records or result in inaccurate accounting practices. Transactions were aggregated in Crown's casino management system, SYCO, which is separate from Crown's internal accounting records. The aggregation practice did not lead to the transactions being incorrectly explained in Crown's accounting records, or lead to those accounting records incorrectly recording the financial position of the casino. Therefore, in Crown's respectful submission, the better view is that no breach of s 124(1) occurred in connection with the aggregation practice. As described at D.49 above, Crown has prohibited aggregation of patron telegraphic transfers and now reviews its patron bank accounts on a daily basis to verify that no aggregation has occurred.

D.12. Conclusion on AML suitability

D.221. Having regard to submissions set out in this Part of Crown's submissions, Crown respectfully submits that the significant reforms already implemented mean that Crown has the systems, controls and capability to be suitable, and is

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764 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 18 at 3.8-3.9. Although the submissions state that Crown Melbourne "did not operate the *bank*", this is assumed to be a typographical error.

765 See for example, CRL.605.015.8187 Letter from VCGLR to Crown Melbourne (30 May 2017) at .8188.

766 See Explanatory Memorandum to the Casino Control Bill 1991, Part 9.

767 See COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0332 [18.3.14].

suitable, from an AML/CTF perspective now. While still at an early stage of maturity, the evidence (not apparently contested by Counsel Assisting), is that Crown's Program is compliant and adequately resourced.[768]

D.222. This is not to downplay the seriousness of Crown's past failings on AML, which were unacceptable. However, it is this recognition of past failings on AML which has driven the very substantial investment and commitment towards turning Crown's AML response around and has made the significant progress achieved in a relatively short period of time possible. The Commission can and should have confidence that this progress will continue under the stewardship of Mr Blackburn and his expanded financial crime and compliance team, and that Crown is striving to become a leader in fighting financial crime across the Australian casino sector.

768 McKern T3934.19-3935.14.

E. OTHER MEASURES TO COMBAT CRIMINAL INFLUENCE AND CONDUCT AT CROWN MELBOURNE

E.1. This part of the submissions addresses other issues relating to Crown's measures to remain free of criminal influence and exploitation (beyond AML/terrorist financing). [769] Those issues fall broadly into two categories: Crown's management of junkets and premium players; and Crown's measures to ensure its premises are not used for criminal activity more generally. While this section of Crown's submissions address a number of matters that were raised during oral hearings, Crown notes that, in their written closing submissions, Counsel Assisting has not advanced any criticisms of Crown's approach to combatting crime on its premises outside of the context of financial crime and the involvement of organised crime in junkets. Nevertheless, for completeness (and lest the Commissioner should have any concerns), Crown addresses matters raised during the course of hearings.

E.2. Before addressing the substance of those matters, it is important to put the topic of seeking to ensure that casinos remain free from criminal influence or exploitation in its proper legislative context. The CCA establishes a system for the licensing and control of casinos with several aims, one of which is ensuring that the management and operation of casinos remains free from criminal influence or exploitation.[770] The CCA also makes provision for actions that may be taken by the Chief Commissioner of Police with the aim of ensuring that the casino complex remains free from criminal influence or exploitation. [771] Similarly, the statutory object of the VCGLR is to maintain and administer systems for the licensing, supervision and control of casinos, for purposes of, *inter alia*, ensuring that the management and operation of casinos remains free from criminal influence or exploitation.[772]

E.3. Crown accepts (as it has always done) that it has a responsibility to take measures to ensure its operations remain free of criminal influence and exploitation, and that its suitability to hold a casino licence must properly take account of its conduct and systems in this regard;[773] that is so, notwithstanding that the statutory framework referred to above does not impose a free-standing obligation on casino operators to ensure that their operations remain free from criminal influence or exploitation. This responsibility is reflected, by way of example, in the charter of the POI committee, which provides that the role of

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769 The issue of the historical CUP process is dealt with in Part H.1 below. That Part includes consideration of whether that process could have, in the past, been exploited by criminals.

770 CCA s 1(a)(i).

771 CCA s 1(b).

772 CCA s 140(a).

773 As has been the approach of the VCGLR in assessing Crown's suitability through its periodic reviews: eg Exhibit RC0002 COM.0005.0001.0776 Sixth Review at .0829.

the Committee is to ensure that Crown's casinos "remain free from criminal influence or exploitation".[774]

E.1. Junkets

E.1.1 Crown has ceased dealing with junkets

E.4. In November 2020, Crown announced that it would permanently cease dealing with all junket operators, subject to consultation with gaming regulators in Victoria, Western Australia and New South Wales.[775] Crown has no intention of recommencing junket operations.[776]

E.5. There is no risk of that occurring.

E.6. As the Commission is aware, the Bergin Inquiry recommended that the NSW CCA be amended to prevent casino operators in NSW from dealing with junket operators,[777] and the Western Australian regulator has issued directions to Crown Perth preventing it from participating in the conduct of junkets, premium player activity or privileged player activity.[778]

E.7. Further, as of 27 April 2021, Crown is prohibited by the VCGLR from recommencing junket operations until such time as Crown applies for and receives permission from the VCGLR to recommence junket operations. [779]

E.8. Crown accepts that, in the past, it did not do enough to scrutinise the probity of junket operators, agents, participants and associates. Crown maintains, however, that this is now a historical issue. Moreover, it is a historical issue that has been extensively examined by the Bergin Inquiry and the VCGLR.

E.9. Given Crown is no longer dealing with junkets, in addition to the consideration of Crown's past approach to junkets and the risk posed by them from a cultural viewpoint, the only relevance of those issues to Crown's current suitability to retain a licence is in relation to its processes for determining which individual players it deals with. That is the focus of these submissions. However, it is appropriate to first briefly address some particular issues that arose during the hearings regarding this topic.

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774 Exhibit RC0310d CRW.510.004.0129 POI Committee Charter at 0131.

775 See eg, Exhibit RC0354 CRW.998.001.0232 X Walsh III at [182]; Exhibit RC0310 CRW.998.001.0177 Blackburn II at [54]; Exhibit RC0437f CRW.507.005.5423 Crown Resorts Board Minutes 11 November 2020 at .5425.

776 Exhibit RC0310 CRW.998.001.0177 Blackburn II at [57]; RC0354 CRW.998.001.0232 X Walsh III at [134].

777 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at .0009.

778 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [133].

779 Exhibit RC0354t CRW.512.048.0039 VCGLR Media Release (27 April 2021).

E.1.2 Past scrutiny of junket operators

E.10. In accepting that its historical junket due diligence processes were inadequate, Crown accepts that:

(a) as discussed at Part C, Crown had a deficient risk management framework, and the business failed to properly engage with it;[780]

(b) due diligence processes were too heavily focussed on creditworthiness and too narrow in scope.[781] For example, the fact that most of the due diligence was performed by Crown's Credit Control team was not appropriate, and suggested a bias towards creditworthiness over probity.[782] There was also insufficient involvement by the AML team and other parts of the business in the due diligence process;[783]

(c) probity checks were inappropriately focussed on the junket operator, with minimal checks on junket representatives, participants or associates (other than a daily World Check/Dow Jones screen) and minimal probity due diligence on beneficial owners or financiers;[784]

(d) Crown ought to have engaged additional support for its due diligence processes. For example, in appropriate cases it should have obtained reports similar to the Berkeley Research Group report, including having people on the ground making direct enquiries;[785]

(e) Crown gave inadequate weight to credible, but unproven, allegations of wrongdoing and was unduly focussed on whether formal charges had been laid or a conviction recorded;[786] and

(f) Crown historically accepted risks that it should not have. In particular, its continued relationships with certain junket operators after instances of unacceptable behaviour or credible allegations were known, the prevalence of third party funds transfers, and the failure to escalate

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780 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [163].

781 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [163].

782 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [169]. Mr Stokes agreed that this arrangement was problematic: T370.27-38.

783 Lawson T286.8-17; Stokes T370.7-38.

784 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [170]. See also Stokes T374.4-375.27. In this regard, the criticism by Counsel Assisting that Mr Walsh did not accept that decentralized record keeping was "representative of a systemic problem" is overstated: COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0280 [16.4.24]. A fair reading of the transcript shows Mr Walsh was simply making the point that information *about a particular junket operator* was already stored in one place, so to that extent there was no systemic problem: X Walsh T3312.12-3314.17. As Mr Walsh observed at the time, he and Counsel Assisting appeared to be "at cross purposes" during this line of questioning: T3314.9.

785 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [58]; X Walsh T3309.23-3310.5.

786 X Walsh T3319.30-40.

matters of concern were examples of Crown's misaligned risk culture.[787] That risk culture was inconsistent with the expectations of the regulator and the general community.[788]

E.11. Crown also accepts that it should not have responded to the VCGLR show cause notice in the way it did. That approach was set by Crown's previous executives and legal advisers.[789] The forthright evidence of Xavier Walsh was that he fell in with the strategy that had been set in addressing the VCGLR and that:

(a) Crown had taken a "narrow" approach to the hearing and adopted some overly technical legal positions that it should not have;[790]

(b) Crown should have adopted a "completely different attitude", and Crown has made changes because it does not want to take that approach in future;[791]

(c) he had read the VCGLR's decision several times,[792] and although it "stung"[793] he thought that the points made by the VCGLR in its decision were "fair";[794] and

(d) he had changed his view since the VCGLR hearing, and now agreed that the previous junkets process was not robust.[795]

E.12. The suggestion that Mr Walsh merely regretted upsetting the regulator is not fair to Crown or Mr Walsh.[796] It relies on a single answer given by Mr Walsh — in which he referred in passing to the (with respect, obvious) fact that Crown's approach had "raised the ire" of the VCGLR.[797] As set out above, his evidence was that he has reflected seriously on the approach he and Crown took to come to the conclusion that the approach taken was wrong. That evidence should be accepted.

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787 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [172].

788 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [163].

789 X Walsh T3349.41-3350.3; Weeks T3428.25-31; Coonan T3767.7-3768.21; Halton T3637.22-27.

790 X Walsh T3318.43; T3332.13-26; T3349.23-28.

791 X Walsh T3320.9-16, T3349.41-3350.3.

792 X Walsh T3320.11-12.

793 X Walsh T3320.11-12.

794 X Walsh T3318.40-43.

795 X Walsh T3318.24-31. It should also be observed that Mr Walsh cannot be criticised for acting as he did "notwithstanding the contents of the Draft FTI Report" — cf COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0080 [4.3.272] — given Mr Walsh did not know about the report at the time: X Walsh T3302.44-46.

796 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0281 [6.4.28]-[6.4.29].

797 X Walsh T3333.9-14.

E.13. The evidence of Ms Coonan, Ms Halton and Ms Korsanos was to similar effect. Ms Halton described Crown's conduct in this regard as "deeply regrettable";[798] Ms Coonan and Ms Korsanos gave evidence to similar effect.[799]

E.14. Crown's interactions with the VCGLR in respect of Recommendation 17 are addressed in Part I.

E.15. Although Crown has ceased dealing with junkets, it is applying the lessons learned from past deficiencies to its current approach to premium players. Those lessons, and the steps Crown has and continues to take, are discussed further in the following sections below.

E.16. Before turning to that, however, it is necessary to make some brief observations about certain criticisms made of those past processes. This is not to detract from the concessions made above. It is simply to note that Crown considers some criticism unwarranted, for the reasons that follow.

E.17. *First*, the suggestion that Crown did "the bare minimum" or that there was an "issue … of mindset, attitude and commitment" should not be accepted.[800] Dr Lawson of Deloitte identified (and Crown accepts) that, at the time of the Deloitte review, there were significant inadequacies in Crown's processes. But he disagreed with Counsel Assisting's suggestion that this evidenced a broader cultural issue. Rather, his evidence was:[801]

> There was certainly a lot of checking in place, there were a lot of searches being done, but they weren't necessarily the right approach or the right searches to be done. There was a lot of work being done to try and collect information, but I think that it wasn't necessarily the effort placed in the right areas.
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> …
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> I didn't, in my conversations, get the impression that people didn't care about the process, or that there was a lack of willingness, and I think Crown's own assessment of these relationships as high risk, which were certainly what was then expressed to me, but I think there were deficiencies within the process itself in terms of how searches were conducted, information was compiled and analysed and ultimately decided upon that needed to be fixed.
>
> (emphasis added)

E.18. In this regard, it is worth noting that while Commissioner Bergin (whose Inquiry examined in detail Crown's relationship with junkets) identified many shortcomings in Crown's junket processes, the allegation that Crown was recklessly indifferent or wilfully blind to junket operators' links with organised

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798 Halton T3586.28, T3636.1-16.

799 Coonan T3766.42-44; Korsanos T3663.6-18. Mr McCann agreed with the proposition that it was "a very serious matter that is quite concerning": T3458.15-20.

800 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0205 [10.6.23].

801 Lawson T316.38—317.

crime was rejected.[802] In particular, the Bergin Inquiry found that Crown's approach to considering its relationships with particular junket operators was "flawed but it was earnest".[803]

E.19. *Second*, Crown's junket due diligence processes have been enhanced over time (albeit that certain inadequacies remained until recently):[804]

(a) before November 2016, a prospective junket operator completed an application form, a background check against the database World Check was conducted, the operator was required to obtain an Australian visa and travel into Australia, and information was obtained from additional external databases on an ad hoc basis;

(b) from November 2016, Crown required additional information in respect of junkets recording more than $10 million turnover in the previous three years, such as a copy of the DICJ junket licence , gaming history at other casinos and information from external subscription services as deemed appropriate. It also terminated relationships with all junket operators in mainland China;

(c) from early 2017, Crown required additional information (including a police check from the patron's country of residence) and performed searches of external subscription services, along with company searches and property searches. Once accepted, the junket operator was included in the Dow Jones daily screen and annual probity reviews were conducted; and

(d) from 2020, Crown has implemented enhanced due diligence processes following the receipt of Deloitte's 'Junket Due Diligence and Persons of Interest Process Review',[805] and as set out in further detail below.

E.20. *Third*, in relation to the Suncity junket and Alvin Chau, Counsel Assisting suggested in oral opening on the junkets topic that a "very clear request" for information from AUSTRAC in June 2017 was "ignored by Crown", and that Mr Preston granted approval to continue its relationship with Mr Chau without engaging with AUSTRAC.[806] That criticism was (rightly) not repeated in Counsel Assisting's closing submissions as it was, on the facts, unwarranted. In fact, on 22 June 2017, Mr Preston met with AUSTRAC officers to discuss that request, including due diligence measures undertaken and cash transactions at

802 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at .0331-3.

803 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at .0332.

804 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [4]-[16].

805 Exhibit R0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review.

806 Counsel Assisting AML Opening Submissions T268.28-37.

the Suncity desk.[807] AUSTRAC took no further step with Crown in relation to Suncity and Mr Chau following that meeting. Crown has no further knowledge of what other steps AUSTRAC may have taken.

E.1.3 The Deloitte review and VCGLR show cause notice

E.21. In August 2020, Crown received Deloitte's 'Junket Due Diligence and Persons of Interest Process Review'.[808] That report was prepared and received before Crown determined to cease all dealings with junkets.

E.22. Crown has adopted every Deloitte recommendation relating to the POI process.[809] Further, despite the cessation of junkets, Deloitte's other recommendations that were relevant to Crown's premium player processes have also been implemented.[810]

E.23. Deloitte's key recommendations in respect of the POI process were:

(a) to clearly document the information sources and events that trigger the POI process;[811]

(b) to ensure the POI Committee has appropriate seniority and membership, and clearly document escalation processes for executive approval;[812] and

(c) to record all decisions made through the POI process, with the rationale behind each decision documented.[813]

E.24. In respect of junkets, Deloitte also recommended that Crown embed an annual review of the business relationship, rather than simply updating the currency of information held,[814] and that the AML, Compliance and Security and Surveillance teams play a greater role in due diligence.[815]

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807 CRW.008.033.7131 AUSTRAC engagement timeline; CRW.008.032.2318 Preston notes of meeting with AUSTRAC.

808 Exhibit RC0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review.

809 Siegers T2009.3-8.

810 Siegers T2008.41-44.

811 Exhibit RC0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review at _0029.

812 Exhibit RC0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review at _0032.

813 Exhibit RC0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review at _0030.

814 Exhibit RC0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review at _0023 .

815 Exhibit RC0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review at _0025.

E.25. The VCGLR's Reasons for Decision dated 27 April 2021[816] identified similar issues in respect of Crown's junket processes.[817] In particular, the VCGLR considered that:

(a) the information gathered by Crown was limited and superficial;[818]

(b) there was a lack of clarity around who was responsible for assessing that information and making decisions;[819] and

(c) there was no evidence of recording the reasons for probity decisions or the basis upon which they were made.[820]

E.26. The VCGLR took disciplinary action in the form of a letter of censure and a $1 million fine, which Crown has paid. Crown accepts that its approach at the hearing of the show cause notice was wrong, and accepts the validity of the VCGLR's criticisms.

E.27. Like Deloitte's recommendations, the substance of those criticisms has been addressed in Crown's current processes, explained in the section below.

E.1.4 Crown's current processes

E.28. As described in Part D above, Crown has a range of processes to assess the risk posed by customers, including:

(a) the Joint Program adopted by the Crown Resorts Board, including **ECDD**;[821]

(b) screening through Dow Jones for all new customers, any existing customers that update their KYC information, and any existing customers with recent activity at a Crown property;[822]

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816 Exhibit RC0292 VCG.0001.0002.6984 Decision and Confidential Reasons For Decision.

817 Note that the VCGLR did not consider Crown's processes in respect of premium players.

818 Exhibit RC0292 VCG.0001.0002.6984 Decision and Confidential Reasons For Decision at_0013-15.

819 Exhibit RC0292 VCG.0001.0002.6984 Decision and Confidential Reasons For Decision at 0015-16.

820 Exhibit RC0292 VCG.0001.0002.6984 Decision and Confidential Reasons For Decision at 0017.

821 RC0309a CRW.514.002.0110 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part A; Exhibit RC0309b CRW.514.002.0145 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Program Part B; CRW.514.002.0001 Crown Resorts Limited Joint Anti-Money Laundering and Counter-Terrorism Financing Policy and Procedures.

822 CRW.514.002.0001 at .0037 Part A cl 7.3.

(c) additional due diligence of politically exposed persons, including open source searches, external due diligence reports, Source of Wealth declarations and Dow Jones screening;[823]

(d) conducting ECDD for customers identified as high risk or above, which may include requiring a Source of Wealth declaration, obtaining information from the Security and Surveillance teams within Crown, analysis of the customers' gaming and transaction history and/or obtaining information from external open and closed sources;[824]

(e) the UAR process, which involves the Financial Crime team conducting a comprehensive investigation. That investigation may include external due diligence reports, title and company searches and other steps;[825]

(f) conducting a range of due diligence on customers applying for a credit or Cheque Cashing Facility, including Dow Jones screening, probity and Source of Wealth checks;[826] and

(g) the requirement for customers to complete a Source of Funds declaration form when making a cash deposit above $25,000. If the customer refuses to complete that form, or it is not approved, the customer will be asked to leave the premises and added to Crown's facial recognition system.[827]

E.29. These processes are not only relevant to preventing money laundering. They are also relevant to preventing criminal influence in the Melbourne casino more broadly.

E.30. Now that Crown no longer deals with junkets, the key processes by which it now determines whether to engage with potentially significant individual players are the SPR process and the POI Committee. Both were referred to in Part D above in connection with AML.

E.31. Again, however, those processes also serve the broader objective of ensuring Crown Melbourne is free from any criminal influence or exploitation.

E.32. Those processes address the recommendations made by Deloitte and the criticisms made by the VCGLR in the following manners:

(a) *Clear thresholds and triggers:* The Significant Player Due Diligence Policy (**DD Policy**) provides specific thresholds for when the SPR

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823 Exhibit RC0309b CRW.514.002.0145 at 0155-6 Part B cl 10.

824 CRW.514.002.0001 at 0046-7 Joint Program Policy & Procedures cl 8.1.2.

825 Stokes T430.2-17.

826 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [100].

827 CRW.512.102.0003 Crown Resorts Limited – Significant Cash Transactions (Source of Funds) at .0007, 4.4.

process is triggered.[828] In addition, the DD Policy and PDA tool provide a consistent methodology for indicating whether a decision is required from the POI Committee, and if so whether an urgent out-of-meeting decision is required.[829] The PDA tool and DD Policy clearly identify how different information is weighted to assign the risk rating of a POI.[830]

(b) *Documenting information sources:* The DD Policy sets out the information sources required to be checked by each of the Gaming Operations, Credit, Security and Surveillance and Financial Crime teams as part of the SPR process.[831] The POI Committee will review any information presented to it, from sources including media articles, staff, law enforcement agencies, third party providers and UARs, to decide whether the POI should be permitted to continue to transact with Crown.[832] Further KYC checks may also be performed to collect additional information, including information about their source of funds, income or assets available to them, the beneficial ownership of funds used by the customer, and beneficiaries of the transactions including the destination of funds.[833] Crown will also conduct due diligence in specific circumstances in the language(s) of the patron,[834] and use external investigation support to gain insight into patrons beyond what could be obtained from open source searching.[835]

(c) *Membership of the POI Committee:* The POI Committee now comprises CEOs of each Crown property, the Head of Security and Surveillance at each property, the Group Chief Compliance and Financial Crime Officer, the Group General Manager of AML, the Group Chief Risk Officer, the Group Executive General Manager – Regulatory and Compliance and the Group General Manager – Responsible Gaming.[836] Typically a number of other managers attend as invitees from the Financial Crime, Gaming Operations and Security or Surveillance departments.[837] The Committee is governed by a formal charter, which

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828 Exhibit RC0354g CRW.700.008.0137 Significant Player Due Diligence Policy at .0140-1, cl 3.2.

829 Exhibit RC0354a CRW.520.003.8590 POI Process document at .8593.

830 Exhibit RC0354g CRW.700.008.0137 Significant Player Due Diligence Policy at .0143-5, cl 6 Risk Assessment; Exhibit RC0352n CRW.512.048.0060 Decision tool. This was also a recommendation by Deloitte: Exhibit RC0021k DTT.001.0002.0170 Junket Due Diligence and Persons of Interest Process Review at _0030.

831 Exhibit RC0354g CRW.700.008.0137 Significant Player Due Diligence Policy at .0141-2, cl 5.

832 Exhibit RC0354a CRW.520.003.8590 POI Process document at .8592 .

833 Exhibit RC0309b CRW.514.002.0145 at 0154-5 Part B cl 9.2.

834 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [48].

835 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [58].

836 Exhibit RC0310d CRW.510.004.0129 POI Committee Charter at 0131.

837 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [34].

provides that the role of the Committee is to ensure that Crown's casinos "remain free from criminal influence or exploitation".[838]

(d) *Clarity around decision making authority and escalation processes*: As noted above, the DD Policy and PDA tool identify when escalation to the POI Committee is required. The POI Committee Charter provides for escalation to an "Executive Sub-group" where the Committee cannot reach a decision.[839] In addition, both the Crown Resorts Risk Management Committee and the Crown Melbourne Compliance Committee are notified of every person reviewed by the POI Committee.[840]

(e) *Recording of decision making:* Decisions of the POI Committee are now recorded in a standardised format requiring the allegations, relevant information and rationale for the decision to be recorded.[841] Every final decision is recorded and circulated to the Committee.[842]

(f) *Embedding regular reviews:* Customers who had previously been assigned a "green" rating under the SPR process must be re-assessed at least every 24 months if their activity remains above the threshold.[843] Customers who have previously been assigned an "amber" rating must be reviewed every 12 months if their gaming activity remains above the thresholds.[844] Where a customer has been assigned a "black" rating, but the POI Committee has determined to continue the relationship, the customer must be re-assessed at least every 12 months regardless of their gaming activity.[845] However, this has never happened.

E.33. Importantly, under the current SPR/POI process, allegations, unconfirmed media reports or law enforcement requests for information may by themselves be sufficient to issue a WOL.[846] That is a significant change from the historical approach noted above, where Crown took note of allegations but relied more heavily on whether charges had been laid or a conviction recorded.

E.34. These processes are being actively used. In particular:[847]

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838 Exhibit RC0310d CRW.510.004.0129 POI Committee Charter at 0131 .

839 Exhibit RC0310d CRW.510.004.0129 POI Committee Charter at 0132 .

840 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [32].

841 Exhibit RC0354p CRW.512.048.0035 POI Committee Record of Decision.

842 Exhibit RC0354a CRW.520.003.8590 POI Process document at .8594.

843 Exhibit RC0354g CRW.700.008.0137 Significant Player Due Diligence Policy at .0145, cl 7.1.

844 Exhibit RC0354g CRW.700.008.0137 Significant Player Due Diligence Policy at .0145, cl 7.2.

845 Exhibit RC0354g CRW.700.008.0137 Significant Player Due Diligence Policy at .0146, cl 7.4.

846 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [39]; X Walsh T3308.46-7.

847 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [40]-[41].

(a) more than 2,200 customers have already been subject to the SPR process, with over 300 being issued a WOL; and

(b) approximately 500 international premium players, identified as most likely to visit when international border restrictions are lifted, are currently being assessed under the SPR process.

E.35. It is submitted that this is tangible evidence of Crown's commitment to higher standards, and a significantly lower risk tolerance.

E.36. It is also important to note that Crown's ordinary risk assessment processes, as well as the SPR and POI processes, are undertaken in the context of Crown having a "risk appetite [that] is substantially lower than was previously the case".[848] This approach is woven throughout those processes. For example:

(a) Under the SPR process, customers are given a default risk rating of "amber". Unless their risk rating is positively downgraded to "green", such a customer will be subject to a monthly screening process and full re-assessment at least every 12 months.[849] Similarly, where a customer's risk rating (following application of the PDA tool) is initially "red", unless further enquiries reveal other information which results in the risk rating being downgraded (or appropriate mitigation measures are identified) the customer's risk rating is in fact upgraded to "black",[850] resulting in a referral to Crown's Security Investigation Unit for a KYC Subject Profile to be completed.[851] The KYC Subject Profile, a completed PDA tool and supporting background information is then provided to the POI Committee for their consideration.[852]

(b) The default position is that customers rated as a "critical risk" under the Program (including those with an implausible source of wealth) should be exited as customers. That will occur unless there is a clear, documented rationale for retaining them.[853] This has never occurred to date. Xavier Walsh's evidence was that, in light of Crown's low risk appetite, "the prospect of this occurring is unlikely".[854]

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848 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [185].

849 Exhibit RC0354g CRW.700.008.0137 Significant Player Due Diligence Policy at .0143, .0145, cls 6.1, 7.2.

850 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [80].

851 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [79].

852 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [79].

853 CRW.514.002.0001 Joint Program Policy & Procedures at 0011, cl 3.1.4.See also Exhibit RC0354f CRW.510.004.0703 Escalation of Critical Risk Customers Policy.

854 Exhibit RC0354 CRW.998.001.0232 X Walsh III at [105].

E.1.5 The draft FTI Consulting report

E.37. Before leaving the topic of junket due diligence, it is necessary to briefly address the topic of the draft FTI Consulting (**FTI**) report.[855]

E.38. The draft report made observations and recommendations that were, in many respects, similar to those made by Deloitte in 2020.[856] That said,[857] the draft FTI report also noted that "the due diligence process undertaken by the Credit Control Team appears to be compliant with the ICS".[858]

E.39. The evidence about the distribution of the draft FTI report was as follows:

(a) the draft report was obtained by, and provided to, MinterEllison. Mr Murphy did not discuss the report with anyone other than Mr Preston, and never presented it to the board of Crown Resorts or Crown Melbourne (or any committees);[859]

(b) Xavier Walsh did not know about the report until it was referred to during the VCGLR hearings, at which point there was a "scramble internally to see who had it".[860] Ultimately Crown had to obtain a copy from MinterEllison;[861]

(c) Ms Halton did not recall reading the report (and indeed, did not recall that there had been anything other than a reference to a proposal to engage FTI);[862]

(d) Ms Siegers had never seen the draft report until it was shown to her during her evidence and she did not know who at Crown had received it;[863]

(e) the report was never provided to, or considered by, the Risk Management Committee.[864] In fact, the only evidence of the FTI engagement being raised with any director of Crown was at the Brand Committee meeting on 22 August 2019, the minutes of which recorded

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855 Exhibit RC0192 FTI.0001.0001.3087 Draft Review of Due Diligence Procedures.

856 Crown notes in passing that the wholly unsubstantiated suggestion by Counsel Assisting that the instructions to Deloitte were narrowed because of "the results of the draft FTI report" has no foundation in the evidence, was not put to any witnesses, and must be rejected: COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0203 [10.6.12].

857 cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0201-2 [10.6.2]-[10.6.6], .0205 [10.6.24].

858 Exhibit RC0192 FTI.0001.0001.3087 Draft Review of Due Diligence Procedures at 3104.

859 Murphy T2896.42-T2897.15.

860 X Walsh T3302.40-41.

861 X Walsh T3302.38-42.

862 Halton T3575.37-3576.12, T3582.3-6.

863 Siegers T2027.40-42.

864 Siegers T2048.41-T2049.4, Halton T3576.29-38.

that Mr Preston advised the committee that FTI had been engaged by MinterEllison to review junket due diligence procedures.[865] There is no evidence that the draft FTI report itself was ever shared with the Brand Committee; [866] and

(f) there is no evidence that the existence of the draft report was ever disclosed to any director or senior executive of Crown, other than Mr Preston.

E.40. As a result, to say that "the draft FTI report does not appear to have made its way to relevant stakeholders at Crown" is an understatement.[867] There is no evidence that *anybody* at Crown, other than Mr Preston, knew it even existed.[868]

E.41. It is accepted (as Ms Halton accepted[869]) that the failure to provide the draft FTI report to the Risk Management Committee, or indeed the Brand Committee, was a missed opportunity. Plainly, Mr Preston ought to have brought it to the attention of directors (and others) and the Brand Committee should have followed up.[870] But beyond that, it is submitted that the matter of the draft FTI report is of little relevance to the Commission's enquiry as to Crown's current suitability.

E.42. In particular, it does not establish a failing in Crown's risk management process *per se* or anything about Crown's risk management processes today. As Ms Siegers observed, [871] in circumstances where the Board had no detailed information — just a brief mention that FTI had been engaged — it would be unfair to describe the episode as a Board failing. It is also worth noting that the past failure to escalate and circulate the draft report is consistent with the historical issue, identified by Commissioner Bergin, that the VIP business operated in a silo with blurred reporting lines and failures to engage appropriate reporting or risk mechanisms.[872] It does not reflect Crown's present approach to escalating information and risks. That approach is discussed in detail in Part C.

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865 CRW.510.068.0624 Brand Committee minutes of meeting held on 22 August 2019 at .0625.

866 cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0203, [10.6.9].

867 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0202 [10.6.8].

868 As a result, it is unsurprising that no changes were made to the Junkets ICS: cf COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0203 [10.6.10].

869 Halton T3584.25-3585.32.

870 As Ms Halton acknowledged and took responsibility for: T3586.30-46.

871 Siegers T2048.3-19.

872 See, eg, Exhibit RC0970 COM.0005.0001.0334 Bergin Inquiry Report Volume 2 at 0574-6, [76]-[96]. These failings have been acknowledged by Crown: see, eg, Exhibit RC0434 CRW.998.001.0104 Korsanos (27 April 2021) at [108]-[113]; Exhibit RC0427 CRW.998.001.0152 Halton (28 April 2021) at [186]-[190].

E.2. Crown Melbourne's measures to prevent criminal exploitation

E.2.1 Crown's security and surveillance arrangements

E.43. Crown Melbourne has over 600 staff across its security and surveillance departments. Each department has a director in charge reporting to Craig Walsh, Executive Director, Security and Surveillance.[873] The security department includes a security investigation unit, the manager of which also reports directly to Craig Walsh.[874]

E.44. Crown Melbourne's security and surveillance systems are closely integrated and governed by comprehensive SOPs and Internal Control Statements (**ICSs**).[875] The Commission has had the benefit of an on-site visit to see how those systems operate in practice and to observe Crown's powerful and sophisticated camera surveillance systems.

E.45. In summary:

(a) a central communications centre manages responsive tasks, such as security incidents, while a separate surveillance monitor room manages gaming integrity, cash movement and similar issues;[876]

(b) both surveillance operations are supported by an analyst section, comprising analysts who conduct proactive investigations;[877] and

(c) in addition to specific investigations, the surveillance team has a structured monitoring schedule across different areas and functions in the casino, with high risk activities the subject of more monitoring than low risk activities.[878]

E.46. Crown's surveillance capacity is of exceptionally high quality. Craig Walsh described it as "better than anything else you would see around this state or country perhaps",[879] and a senior Victoria Police officer described it as "state of the art" and "elite".[880]

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873 C Walsh T2565.29-2566.9.

874 C Walsh T2566.1-9.

875 Exhibit RC1110 CRW.006.001.1258 Security Operations SOP; CRL.604.001.0236 Security Operations ICS; Exhibit RC1130 CRW.512.085.1256 Surveillance SOP; CRW.510.045.8990 Surveillance ICS.

876 C Walsh T2573.1-13.

877 C Walsh T2573.1-13.

878 C Walsh T2591.42-2592.3.

879 C Walsh T2580.1-3.

880 COM.0004.9990.2503 Private session transcript at .2528.

E.47. For example, Crown's security and surveillance arrangements are highly effective at ensuring that persons who have self-excluded, or are subject to a WOL or exclusion order, do not enter. At a high level, that process is as follows:

(a) Crown has over 80 cameras equipped with facial recognition technology, covering every entrance to the casino;[881]

(b) where the facial recognition system detects a match, security officers on the gaming floor and the surveillance monitor room simultaneously receive a notification. The Crown surveillance monitors will maintain coverage of the person and ensure security is attending;[882] and

(c) the security officers then stop that person, confirm their identity, and ask them to leave (or escort them off the property). The entire process is monitored by the surveillance monitor room.[883]

E.48. The effectiveness of those arrangements was confirmed by the people who were subject to it: for example, Mr Ahmed Hasna (who at various times was self-excluded or subject to a WOL) agreed that there was "no way you can get around" a ban, and said every time he tried to "test the water by sneaking in… [it] doesn't last. Not more than 10 minutes".[884] Similarly, Security Officer 1 gave evidence that when Tom Zhou (who had self-excluded) attempted to enter the gaming floors "he got stopped".[885]

E.2.2 Rollout of facial recognition technology

E.49. Counsel Assisting submit that there was a "delay" in rolling out facial recognition technology, and even that it could have been "comprehensively implemented" in 2014.[886] That criticism is not warranted. In fact, the evidence was as follows.

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881 C Walsh T2579.32-39.

882 Exhibit RC0258 CRW.998.001.0297 C Walsh at [10]; Exhibit RC1130 CRW.512.085.1256 Surveillance Operations SOP at .1317.

883 Exhibit RC0258 CRW.998.001.0297 C Walsh at [10]; Exhibit RC1130 CRW.512.085.1256 Surveillance SOP at .1317. Under the Security Operations SOP, security staff attending an incident must confirm that it is under surveillance: Exhibit RC1110 CRW.006.001.1258 at .1275.

884 COM.0004.9990.0001 Hasna at .0025 and .0026 .

885 Security Officer 1 T2550.4-21.

886 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0134 [6.4.35], .0346 [20.1.25]. Crown also notes that Counsel Assisting cite a passage of Ms Coonan's evidence in support of this proposition. Yet her evidence was as follows: "I didn't follow that piece of evidence, but if you tell me that --- I don't disagree with it, I just don't recall having absorbed that piece of information": T3795.4-6. Quite apart from her evidence not supporting the proposition advanced by Counsel Assisting, it is unsurprising that Ms Coonan had not absorbed evidence that was never given.

E.50. Until 2017, facial recognition technology was not widely deployed in casinos. In 2015 the Melco Casino in Macau trialled a system, and deployed it in 2016.[887] Craig Walsh gave evidence that this was the first time that facial recognition systems had been successfully deployed in the casino environment, and that "there still wasn't a wide belief in the efficacy of facial recognition in a casino environment" at that time.[888]

E.51. As Craig Walsh explained, facial recognition technology in the context of a casino entry point is very different from other contexts. For example, matching a person's face to their passport photo at the airport requires only a one-to-one match. By contrast, at the Melbourne casino the system has to constantly match a database of tens of thousands of people against a "river of people" entering the premises.[889]

E.52. Crown had conducted small scale trials of facial recognition technology in 2012 and 2014.[890] In January 2017, Crown conducted a proof of concept at the entry of the Teak Room, and in December 2017 12 cameras were installed at gaming floor entrances.[891] In 2018 and 2019 the system was significantly expanded, [892] and it now covers every entry to the casino and areas where patrons walk through the main gaming areas.[893] Crown continues to expand the system. [894]

E.53. In light of that evidence, criticism of the speed of Crown's rollout of facial recognition technology is not fair.

E.54. Within a year of facial recognition technology first being successfully implemented at a casino internationally, Crown conducted proof of concept trials and began rolling out its own system. Although self-evidently, as with most commercial initiatives, with additional resourcing Crown *could* have expanded the technology faster,[895] the effect of Craig Walsh's evidence (which was not contradicted) is that Crown was moving at an international pace.

E.55. During questioning of Craig Walsh, Counsel Assisting advanced criticisms of the rollout of facial recognition technology in the main gaming areas, rather than high action areas. While those criticisms have (rightly) not been advanced in Counsel Assisting's closing submissions, Crown considers it important that the Commission is aware that the pace and manner of Crown's rollout of facial recognition in no way reflects a lack of interest in monitoring premium or junket

887 C Walsh T2596.28-39.

888 C Walsh T2594.36-2595.5.

889 C Walsh T2596.16-26.

890 Exhibit RC0258 CRW.998.001.0297 C Walsh at [8].

891 Exhibit RC0258 CRW.998.001.0297 C Walsh at [8].

892 Exhibit RC0258 CRW.998.001.0297 C Walsh at [8].

893 C Walsh T2579.32-39.

894 Exhibit RC0258 CRW.998.001.0297 C Walsh at [10].

895 C Walsh T2582.2-17, T2598.9-28.

players. Rather, the order in which different areas of the casino were fitted with that technology is a function of the ways in which Crown was already identifying and observing the activities of all persons in its VIP rooms and salons, in contrast to the vast numbers of members of the public attending the main gaming floor.

E.56. Craig Walsh's evidence was that he and his technical team set the priorities for rolling out facial recognition technologies, and those priorities were agreed to by Xavier Walsh and others.[896] Xavier Walsh gave evidence that the roll-out of facial recognition technology was "agreed with the VCGLR" to be, at a minimum, "at all the casino entrances."[897] Crown's implementation of facial recognition technology in other places was in addition to any regulatory response to the VCGLR's recommendations.

E.57. Whilst it is correct that the premium areas received facial recognition technology later than other areas,[898] this is because the main goal of the facial recognition system is to solve the problem of identifying large numbers of people (particularly where Crown does not have a personal relationship).[899] As the patrons in a salon or premium gaming room are already known to Crown,[900] facial recognition systems are of less value: that is, VIP areas of the casino present the lowest risk from the perspective of customer identification.[901] In addition, it is important to note that, even though facial recognition technology was installed last in the salons, they were still subject to camera surveillance (as further detailed below).

E.2.3 Crown's treatment of junket participants

E.58. When it comes to security matters, Crown did not and does not provide any special or more lenient treatment to junkets or premium players; Counsel Assisting's closing submissions do not suggest otherwise. The Commission received relevant evidence that:

(a) Crown has, on many occasions, directly assisted law enforcement in investigations relating to junkets. For example, Crown had multiple meetings with the AFP to assist them in understanding junkets and how they operated. [902] Crown also provided very material and direct assistance to law enforcement in respect of persons related to the Suncity

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896 C Walsh T2603.20-42.

897 X Walsh T-3330.41-43.

898 C Walsh T2603.11-18.

899 X Walsh T3330.38-3331.5.

900 Because every person entering a membership room or salon must provide their Crown rewards card or primary ID: X Walsh T3362.9-28.

901 X Walsh T3331.1-11.

902 C Walsh T2612.42-2613.7, T2616.44-2617.44.

junket,[903] and assisted in attaching tracking devices to vehicles.[904] In fact, Crown was asked by law enforcement not to cease its dealings with the Suncity junket, but to continue to deal with the Suncity junket as normal, so as to avoid tipping relevant persons off as to the investigation;[905]

(b) Craig Walsh was asked about a historical incident (that pre-dated his time in charge of surveillance) involving an allegation by a staff member of being sexually assaulted by a high roller in an elevator. His evidence was that Crown supported the staff member to report to police and would have assisted the police investigation.[906] The relevant lift surveillance camera had malfunctioned and had not captured the incident due to maintenance issues at the time; Crown has, since Craig Walsh assumed responsibility for Crown's security and surveillance operations, had a camera maintenance program that maintains every camera in the complex;[907] and

(c) although there is no permanent security guard presence in VIP areas, other than security walking through on their rounds, that does not indicate less rigorous treatment.[908] Crown's security and surveillance systems are used differently in different environments. The measures adopted in VIP areas recognise that, given the higher ratio of staff to patrons in these areas, and the fact that these rooms are not frequented by the large and potentially rowdy crowds found on the main gaming floor, an ongoing, static security guard presence is not necessary.[909] As Craig Walsh explained, all patrons must go through security to enter those areas. Such patrons must also pass through heavily surveilled general entrances. Craig Walsh also explained that from a surveillance perspective, junket rooms were treated the same way as any high action room.[910]As Xavier Walsh put it, "if you are doing something untoward, it is going to be monitored,"[911] and security staff can be deployed very quickly if necessary.[912]

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903 C Walsh T2622.26-29.

904 X Walsh T3365.7-22.

905 X Walsh T3367.7-17.

906 C Walsh T2605.11.-2606.44.

907 C Walsh T2606.10-16.

908 C Walsh T2602.37-47.

909 X Walsh T3330.23-25.

910 C Walsh T2614.2-5.

911 X Walsh T3330.12-33.

912 X Walsh T3330.2-25. By way of example, Mr Zhou was issued a WOL in February 2019 following poor behavior as recorded in Exhibit RC0307 CRW.510.001.1298 MinterEllison memorandum (30 December 2020) at .1307.

E.2.4 Assistance to law enforcement

E.59. In addition to the specific matters discussed above, Crown regularly provides assistance to law enforcement bodies and agencies including the AFP and state police services, ASIO, ACIC, AUSTRAC, the ATO and ASIC. Indeed, Crown is able to assist law enforcement in quite unique ways, including because of the sophistication of its camera technology at the Melbourne premises. For example, shortly before the closure for COVID-19, outlaw motorcycle gang members were seen on cameras using BlackBerry phones at Crown Melbourne, and Crown surveillance cameras were able to zoom in to get the password for the Blackberry and pass that on.[913]

E.60. Each year between 2015 and 2019 (that is, before COVID-19), Crown Melbourne alone received well over 1,500 requests for assistance from law enforcement agencies. Crown's response to these requests typically involved the provision of records, surveillance footage or intelligence,[914] although in some cases extended further. For example, Crown might perform targeted surveillance on a particular person and pass that surveillance on to authorities.[915] Both Ms Williamson and Xavier Walsh noted that the flow of information between Crown and such agencies is asymmetrical, in that Crown provides whatever is requested and then has little vision of how it is used by law enforcement unless a Crown employee is required to appear as a witness in any criminal trial,[916] and, absent MOUs, law enforcement agencies are typically constrained in providing information to Crown which would otherwise assist it in investigating the probity of patrons and in determining whether allegations are to be regarded as credible, notwithstanding that charges have not been laid.

E.61. In November 2020, Crown engaged Nick Kaldas to improve its communication and relationships with law enforcement agencies. Mr Kaldas is a former Deputy Commissioner of NSW Police, Chief of Investigations for the UN Special Tribunal for Lebanon, Chief of Investigations leading the 2016 UN investigation into the use of chemical weapons in the Syrian Conflict[917]. Among other things, Mr Kaldas' remit has been to assist Crown to develop and strengthen relationships and partnerships with law enforcement and regulatory bodies, and provide independent advice on issues related to integrity and transnational crime.[918]

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913 Exhibit RC0021h DTT.001.0002.0382_0002 Junkets due diligence and persons of interest review.

914 Exhibit RC0327 CRW.998.001.0433 Williamson at [9].

915 C Walsh T2620.17-2621.43.

916 Exhibit RC0327 CRW.998.001.0433 Williamson at [9]; X Walsh T3364, T3367.19-24.

917 CRW.512.030.0001 Kaldas CV.

918 CRW.998.001.0028 Kaldas at [2].

E.62. In particular, Mr Kaldas has been assisting Crown to develop structured intelligence sharing protocols with law enforcement agencies.[919] Despite delays caused by COVID-19, Crown has in-principle agreements to enter into Memoranda of Understanding with the Victorian and New South Wales police services, and is discussing an update to the existing MOU with the West Australian police service. A draft agreement with the Australian Crime and Intelligence Commission was ready for signing, but is now on hold pending resolution of inquiries relating to Crown.[920] The Commission will be aware that Mr Kaldas was recently appointed to lead the Commonwealth Royal Commission into Defence and Veteran Suicide. Crown is considering a suitable replacement.

E.2.5 Evidence of Security Officers 1 and 2

E.63. During the hearings, the Commission heard evidence from Security Officers 1 and 2 which involved the suggestion of the surveillance of a journalist. While nothing is made of the matter in Counsel Assisting's closing submissions, and Craig Walsh's evidence was cut short, which would otherwise have clarified the matter, Crown nevertheless wishes to note a number of matters concerning that evidence. Security Officer 1's evidence about apparently arranging surveillance of a journalist, but then ceasing it because he was a "really good bloke", was at best unclear.[921] His evidence that he had passed on schedule information *to* Craig Walsh was inconsistent with the fact that, as was clear on the face of the document, the schedule was sent *by* Craig Walsh.[922] Moreover, other documents show that it was in fact Ishan Ratnam who was forwarding his own schedule to Mr Walsh for onforwarding to the security officers; it was not the journalist's schedule at all.[923] The reasons for Mr Ratnam doing that could not be exposed in evidence due to Craig Walsh's evidence not being completed.

E.2.6 Other criminality

E.64. The Commission also heard broad, unparticularised allegations of other criminal activity occurring at Crown's premises, generally of either unlawful prostitution or low level drug dealing.[924] Crown has zero tolerance for such

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919 CRW.998.001.0028 Kaldas at [9]-[11].

920 CRW.998.001.0028 Kaldas at [20].

921 Security Officer 1 T2519.1-2522.28, T2531.9-10.

922 Security Officer 1 T2518.45-2520.28; Exhibit RC0254 CRW.510.071.1637 Email (18 May 2016).

923 CRW.512.182.0001 Email Craig Walsh to Ishan Ratnam (18 May 2016).

924 The Commission also heard some evidence from anonymous witnesses and Ms Guy about alleged loan sharking in relation to the Melbourne casino. The only Crown witness who was asked about loan sharking confirmed that Crown viewed it as unacceptable and illegal, and made every effort to obtain information that can be provided to law enforcement agencies. Her evidence was that "absolutely, in my experience, it is not tolerated": Bauer T1302.20-25. The Commission did not hear any further or more specific evidence on the topic.

behaviour and specific procedures to eject and issue a WOL to anyone engaging in it.[925]

E.65. Whilst ideally Crown would ensure zero criminal conduct (including illegal prostitution and drug dealing) ever took place in or around Crown's premises, this is not reasonably practicable. Suffice to say that there is no evidence before the Commission suggesting illegal prostitution and drug dealing regularly take place or that Crown in any way tolerates such activities on its premises.

E.66. In respect of prostitution:

(a) sex work in Victoria is legal where it is provided by a licensed brothel or escort agency. In the case of the latter, this would include licenced sex workers from an escort agency visiting Crown's hotels for designated patrons.[926] What is illegal is solicitation in public places,[927] or otherwise carrying on sex work other than in accordance with the *Sex Work Act 1994* (Vic) (**SWA**);

(b) Crown is not aware of any specific evidence of breaches of the SWA occurring on its premises.[928] Indeed, the evidence of the confidential police witness was that he had "no intelligence to suggest that the prostitutes that might have been working in Crown, and I would suggest probably without the knowledge of Crown, whether they were, if I can put it, ticketed prostitutes or illegal prostitutes";[929] and

(c) Peter Lawrence, the General Manager of VIP Customer Service, gave evidence that since he returned to work with Crown in 2012 he had never observed a sex worker touting for business in the Mahogany Room.[930] When he was previously employed by Crown in the 1990s, he had on occasion observed sex workers entering the Mahogany Room; they were immediately asked to leave.[931]

E.67. In respect of illicit drug dealing or drug use:

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925 See, eg, Exhibit RC1110 CRW.006.001.1258 Security Operations SOP at .1295, .1303 and .1306, cl 4.2, 4.6 and 5.4.

926 As the confidential Victoria Police witness acknowledged: COM.0004.9990.2503 Confidential police witness transcript at .2534.

927 SWA s 13(2).

928 It is difficult for Crown to investigate or otherwise respond to unsubstantiated, global assertions such as "certain people are always in Mahogany" to assist with prostitution or drugs: see, eg, COM.0004.9990.0001 Hasna at .0034.

929 COM.0004.9990.2503 Confidential police witness transcript at .2533 .

930 Exhibit RC0171 CRW.998.001.0401 Lawrence at [33].

931 Exhibit RC0171 CRW.998.001.0401 Lawrence at [33]. Today, the Security Operations SOP cl 4.6 provides a specific procedure for the reporting to law enforcement, ejection and issuing of a WOL to any person suspected of soliciting: Exhibit RC1110 CRW.006.001.1258 Crown Melbourne Standard Operating Procedures – Security Operations Version 8 at .1303-4.

(a) when asked about this topic, the confidential police witness gave evidence that he did not have data and it would be "unfair" for him to answer the question.[932] When pressed, he said that when it came to "lower level drug dealing or other petty crime we really had no observations over that crime base", but that "from what I've seen [Crown] would hit that behaviour pretty hard I would have thought";[933]

(b) although Assistant Commissioner Gilbert gave evidence at a high level about an unnamed VIP host who had potentially been involved in trafficking drugs, there was no suggestion that this had occurred with Crown's knowledge or on Crown's premises.[934] That information had only come to light after the person was dismissed by Crown for misconduct;[935]

(c) the only frontline employee to give evidence on the topic, Employee 6, had never seen anybody taking drugs or dealing drugs at the casino. He had heard of others finding a bag of illegal substance on the floor, though they did not know what the substance was. When asked how often they heard of this occurring, he said "not often";[936]

(d) Peter Lawrence gave evidence that he had never personally observed anyone taking illicit drugs. However, there had been several occasions where he had become aware of small clear plastic bags being found in the Mahogany Room containing a suspicious substance. His evidence was that when an incident like this occurs, security collects the bag and its contents. If surveillance can identify the owner, Crown will call the police and issue a WOL. If the owner cannot be identified, the bag and its contents are securely stored until removed by police;[937] and

(e) Peter Lawrence also gave evidence of terminating the employment of an identified VIP host (potentially the same unnamed VIP host referred to by Assistant Commissioner Gilbert) who took "unusually high number of visits to the bathroom during his shifts" as well as being intoxicated during his shift on one occasion.[938]

E.68. It is submitted that the evidence does not support a finding that unlawful prostitution or illicit drug dealing is common at Crown and Counsel Assisting does not invite the Commission to draw such a conclusion.

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932 COM.0004.9990.2503 Confidential police witness transcript at .2530.

933 COM.0004.9990.2503 Confidential police witness transcript at .2530.

934 COM.0004.0003.0001 Gilbert transcript at .0017-0018.

935 COM.0004.0003.0001 Gilbert transcript at .0017-0018.

936 Employee 6 T580.16-581.11.

937 Exhibit RC0171 CRW.998.001.0401 Lawrence at [33].

938 Exhibit RC0171 CRW.998.001.0401 Lawrence at [35].

E.3. Implications for assessment of suitability

E.69. Given the sheer size and attractiveness of Crown's Melbourne premises, it is unsurprising that it attracts not only law-abiding citizens as customers, but also some undesirable persons that may engage in anti-social or criminal conduct – whether at Crown's premises, nearby or otherwise.

E.70. Crown, like the rest of the community, is unable to prevent this entirely.

E.71. What the above demonstrates, however, is that Crown is pro-active in taking steps to prevent, detect and report such conduct.

E.72. The issue of money laundering is dealt with in Part D above and the issue of the CUP practice is dealt with in Part H below. It is submitted that Crown's systems, process and commitment to deterring, detecting and reporting criminal activity and assisting law enforcement agencies stands to its credit in this Commission's assessment of its present suitability.

F. RESPONSIBLE GAMBLING

F.1. Introduction and overview

F.1. Crown recognises that the responsible service of gambling is both a legal obligation[939] and a condition of its social licence to operate.[940] The gambling products and services that Crown provides have the potential to cause serious harm, not only to its patrons but also to their family, friends and communities.[941] Confronting examples of some of those serious harms have emerged from evidence and submissions before this Commission. Crown hastens to accept that it has a (legal and moral) obligation to work towards minimising the potential harm from gambling.

F.2. Crown takes that obligation seriously. It has for some time been seeking to improve its responsible gambling services to ensure that they are consistent with industry best practice. In 2019, Crown appointed a Responsible Gaming Advisory Panel (**RGAP**) precisely for that purpose.[942] The RGAP comprises three distinguished Responsible Gambling experts.[943] Crown tasked them with:

(a) comprehensively reviewing its Responsible Gambling practices, policies and procedures;

(b) identifying any gaps or weaknesses that required attention; and

(c) making recommendations that would allow Crown to build upon and extend its Responsible Gambling framework to achieve evidence-based best practice benchmark standards.[944]

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939 See, in particular, CCA s 69.

940 See, e.g., Blackburn T3032.45-46; T3034.36-39.

941 Exhibit RC0109 CRW.998.001.0301 Bauer at [35]. However, it may be noted that the rates of problem gambling are, according to the data, relatively low. The RGAP's 2020 report noted that around 1% of gamblers can be described as problem gamblers: Exhibit RC0109d CRW.526.007.7005 at p 13. The *Victorian Population Gambling and Health Study 2018-2019*, published by the VRGF in March 2020, found that the prevalence of problem gambling amongst the adult population in Victoria was 0.7% (Exhibit RC0322yy CRW.510.073.3152 at p 2); see also Exhibit RC0181 VRGF.0002.0001.0001 Billi at [34].

942 Crown had begun seeking to appoint the RGAP by October 2018 (CRW.510.025.9385) but the process did not conclude until 2019 (Exhibit RC0109d CRW.526.007.7005 at .7015). Crown's objective was to establish a RG framework to position itself as a leader in the delivery of effective RG services, and to integrate a culture of RG that was embedded in all aspects of its processes, strategy initiatives and operational decisions: Coonan T3858.6-21.

943 Its members are Emeritus Professor Alexander Blaszczynski, Professor Lia Nower, and Professor Paul Delfabbro. See [F.35] below.

944 Exhibit RC0109d CRW.526.007.7005 Annexure d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services, August 2020 at .7006.

F.3. The RGAP concluded its review and reported to Crown in August 2020 (**2020 RGAP Report**).[945] It made 17 recommendations for improvements. Crown accepted all but one of them (and that recommendation was only not accepted because of security concerns). Crown has implemented, or is in the process of implementing, all of the others.[946]

F.4. Crown accepts that, despite these efforts, aspects of its Responsible Gambling systems and practices need to be improved. The evidence that has emerged in this Commission has identified a number of weaknesses in them. To their credit, the Interim Executive Chair,[947] Mr Blackburn[948] and Ms Bauer[949] all readily accepted this. Crown acknowledges that it can and must do more with respect to the responsible service of gambling so as to ensure that its detection and minimisation of problem gambling improves.

F.5. However, Crown respectfully submits that some of the criticisms by Counsel Assisting of Crown in relation to Responsible Gambling are overstated. The fact that Crown's Responsible Gambling systems and practices are imperfect and require improvement does not mean that Crown does not take its Responsible Gambling obligations seriously; less still that Crown is irredeemably unsuitable to hold a casino licence.

F.6. The VCGLR devoted substantial attention to Crown's Responsible Gambling processes and practices when assessing Crown's suitability as part of the Sixth Review. It found, *inter alia*, that Crown generally complied with the requirements of the Responsible Gambling Code of Conduct (**RG Code**) during the Review Period[950] and substantially complied with its Responsible Gambling obligations.[951] Noting that Crown sought "to maintain a world leader reputation for its Responsible Gambling program", the VCGLR considered that there were various actions that Crown could take to minimise the risk of harm to persons gambling at the casino.[952] It made 11 recommendations in that regard. Crown has implemented nine, one more will be implemented next year, and the VCGLR has agreed to revisit the other (as a result of practical difficulties in its implementation).[953] Crown commissioned the RGAP, and is in the process of

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945 Exhibit RC0109d CRW.526.007.7005 Annexure d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services, August 2020 at .7006.

946 See Annexure F1 for the status of the implementation of each recommendation.

947 Coonan T3792.21.

948 Blackburn T3050.24-27.

949 Bauer T1119.12-15.

950 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 118. The Review Period was the five-year period prior to mid-2018.

951 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 119.

952 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 121.

953 See Annexure F1.

implementing its recommended improvements, in addition to having implemented those recommendations by the VCGLR.

F.7. Crown will soon have done everything that the regulator required of it with respect to Responsible Gambling, and more. However, community standards and expectations in this area are (rightly) evolving to require more harm-minimisation responsibility to be exercised by the providers of gambling services. Crown recognises, and indeed embraces, that responsibility.

F.8. The Commission can have confidence that Crown will continue to improve its Responsible Gambling services. Mr Blackburn, Crown's new head of Responsible Gambling, has already made some initial, common-sense improvements.[954] He is now in the process of developing a program of reform (similar to his FCCCP) that will include a comprehensive review of Crown's Responsible Gambling services (informed by expert advice[955]) and the implementation of any necessary reforms.[956] Mr Blackburn is a highly capable executive with extensive experience in integrity functions;[957] he has a record of successfully advocating for and implementing significant reform to parts of businesses that add cost (and no revenue);[958] he reports directly to the Board;[959] and he has the full support of the Board for a reform program.[960]

F.9. Some of Counsel Assisting's criticism of Crown's Responsible Gambling systems and processes has also overlooked the complexity of minimising problem gambling. Three matters bear emphasis in that regard.

F.10. *First*, gambling is a legal form of entertainment that the vast majority of Crown's patrons enjoy safely and responsibly (according to the RGAP, around 1% of people that gamble can be described as problem gamblers[961]). And Crown has a statutory and contractual obligation (which applies "at all times") to "advertise and promote the Melbourne Casino Complex so as to endeavour to

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954 Exhibit RC0652b CRW.510.073.4540 Annexure b, Memorandum regarding Responsible Gaming Enhancements, 24 May 2021; Exhibit RC0642a CRW.510.073.1673 Annexure a, Appendix A Responsible Gaming Organisational Chart, May 2021.

955 Blackburn T3058.41-46.

956 Blackburn T3034.43-44; T3050.24-28; T3058.41-46.

957 Blackburn T3034.35-36, T3036.11-13.

958 Blackburn T3036.15-19, T3065.18-22.

959 Blackburn T3036.11.

960 Blackburn T3072.23-29.

961 Exhibit RC0109d CRW.526.007.7005 Annexure d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services, August 2020 at p 13. The *Victorian Population Gambling and Health Study 2018-2019*, published by the VRGF in March 2020, found that the prevalence of problem gambling amongst the adult population in Victoria was 0.7%: Exhibit RC0322yy CRW.510.073.3152 at p 2); see also Exhibit RC0181 VRGF.0002.0001.0001 Billi at [34]. Further, the data do not suggest that RG practices should be approached on the *a priori* assumption that each patron is likely to have a gambling problem.

ensure that the Melbourne Casino Complex is fully and regularly patronised".[962] It is therefore incumbent on Crown not to place undue restrictions or impediments on patrons' ability to gamble at the casino, while at all times complying with its obligations in relation to Responsible Gambling. This is a very difficult balance to strike, and Crown does not pretend that it has by any means yet struck upon the appropriate balance. But it does suggest that addressing the important challenges in the Responsible Gambling context may not be as black and white as might on first blush be assumed.

F.11. *Second*, there is no pre-determinable "safe" or "unsafe" amount of gambling (in terms of time and/or money spent) that can be applied universally or generically to all of Crown's patrons. What constitutes "safe" gambling varies from one person to the next, according to his or her individual circumstances. It is not even possible clearly to identify when gambling becomes unsafe or harmful for any particular individual; there are only "signs" or "indicators" of potential problem gambling. And in a casino environment, where thousands of people may gamble on any particular day, there are practical challenges to how many of those signs can be observed.

F.12. *Third*, Counsel Assisting's approach to the issue of Responsible Gambling has not directed any attention to the Responsible Gambling practices and processes in comparable casinos. Crown's operations (including with respect to Responsible Gambling) are to be assessed having regard to the best operating practices of casinos of a similar size and nature to Crown.[963] Yet there was (and is) no evidence before the Commission to suggest that there is any casino, in Australia or anywhere else in the world, with systems and processes that currently address problem gambling more effectively than Crown's, or that provide a model that would be appropriate for Crown to emulate. There have been only passing comparisons with aspects of the Responsible Gambling services in pubs and clubs. In circumstances where Crown is required to conduct its operations in a manner that has regard to the best operating practices in other casinos[964] and must endeavour to maintain the Melbourne casino as the "dominant" commission-based player casino in Australia, those comparisons with pubs and clubs are not apt to assist the Commissioner in the assessment of

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962 Exhibit RC0502 COM.0005.0001.1056 Management Agreement for the Melbourne Casino at cl 20.2, which is given statutory force by s 6(1) of the *Casino (Management Agreement) Act 1993*. Under another agreement with the VCLGR, the Casino Agreement, Crown must also endeavour "to maintain the Melbourne Casino as the dominant Commission Based Player casino in Australia": Exhibit RC0435 COM.0005.0001.0985 at cl 22.1(ra). A commission-based player is a player who participates in a premium-player arrangement or a junket: see clause 2 (chapeau) of the Casino Agreement and s 64(3) of the CCA.

963 Exhibit RC0435 COM.0005.0001.0985 Casino Agreement at cl 28

964 Indeed, as already noted, cl 28 of the Casino Agreement directs attention to "casinos of a similar size and nature to Crown".

Crown's Responsible Gambling practices or in recommending any new operating model for Crown to emulate.[965]

F.13. The balance of these submissions on Responsible Gambling is structured as follows. First, we provide an overview of Crown's existing Responsible Gambling systems (**Part F.2**). We then address the appointment and work of the RGAP (**Part F.3**), followed by the VCGLR's consideration of Crown's Responsible Gambling services and practices as part of the Sixth Review (**Part F.4**), Crown's engagement with the Victorian Responsible Gambling Foundation (**VRGF**) (**Part F.5**) and Crown's obligations under s 69 of the CCA (**Part F.6**). We then address the various matters raised during the hearings and in Counsel Assisting's submissions concerning Crown's Responsible Gambling services (**Part F.7**).

F.14. Finally, we address Counsel Assisting's submission that it is open to the Commission to find that, having regard to Crown's conduct related to Responsible Gambling, Crown is unsuitable and that it is not in the public interest for it to hold the casino licence (**Part F.8**). In short, Crown accepts that the evidence has revealed some serious deficiencies in aspects of its Responsible Gambling services. But, in Crown's respectful submission, those deficiencies do not warrant a finding that Crown is unsuitable or that it cannot become suitable; Crown can be relied upon to make the necessary changes to improve its Responsible Gambling services.

F.2. Crown's Responsible Gambling facilities, systems and processes

F.15. Crown's facilities, systems and processes for the responsible service of gambling include the following.

F.16. *The Responsible Gaming Centre*. In 2002, Crown established the Responsible Gaming Centre (**RGC**).[966] At that time, it was a world first.[967] The RGC is located away from, but close to, the gaming floor[968] and offers the services of Responsible Gaming Advisors (**RGAs**) and Responsible Gaming Psychologists (**RGPs**), as well as a Chaplaincy Support Service.[969]

F.17. *Play Safe Limits*. In 2003, Crown introduced its Play Safe Limits program.[970] It is a time and spend setting program.[971] When it was first introduced, it applied to Electronic Gaming Machines (**EGMs**) and was later extended to fully

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965 Noting, again, that, under cl 22.1(ra) of the Casino Agreement, Crown must endeavour "to maintain the Melbourne Casino as the dominant Commission Based Player casino in Australia".

966 Exhibit RC0109 CRW.998.001.0301 Bauer at [62].

967 Exhibit RC0109 CRW.998.001.0301 Bauer at [84].

968 Exhibit RC0109 CRW.998.001.0301 Bauer at [90].

969 Exhibit RC0109 CRW.998.001.0301 Bauer at [62].

970 Exhibit RC0109 CRW.998.001.0301 Bauer at [86].

971 Exhibit RC0109 CRW.998.001.0301 Bauer at [91(h)]; [127] to [129].

automated table games.[972] When YourPlay was introduced by the Victorian Government, Play Safe was no longer permitted to be used for EGMs.[973] It remains in place for fully automated table games,[974] to which YourPlay does not extend.

F.18. *YourPlay*. YourPlay is a system by which gaming machine players can set time and spend limits.[975] It is provided to the State under licence by Intralot Gaming Services Pty Ltd.

F.19. *Facial-recognition technology*. Crown currently has 80 facial-recognition cameras operating at the casino.[976] Ten more are to be installed in the next financial year.[977] Crown's facial-recognition technology was described by the RGA who gave evidence as "tremendously effective" at picking up patrons excluded on Responsible Gambling grounds.[978]

F.20. *The Crown Model*. The Crown Model is a predictive data modelling tool[979] that was developed using data from the carded play of patrons who had self-excluded.[980] It uses that data to attempt to identify play by carded players indicative of problem gambling.[981] Where a patron is flagged by the Crown Model, and that patron inserts his or her card into a gaming device, an RGA will receive an alert and will attempt an interaction with the patron.[982]

F.21. *Self-exclusion program (also known as voluntary exclusion)*. Crown operates a self-exclusion program by which customers may voluntarily apply to exclude themselves (as contemplated by s 72(2A) of the *Casino Control Act*). Self-exclusions can be effected in person or via an online portal.[983] Crown also has a self-exclusion revocation committee that considers applications by those wishing to revoke self-exclusions[984] (revocation being contemplated by s 75 of the *Casino Control Act*). The revocation committee is made up of, among others, two RGPs.[985]

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972 Exhibit RC0002 COM.0005.0001.0776 at p 72.

973 Exhibit RC0002 COM.0005.0001.0776 at p 72.

974 Exhibit RC0109 CRW.998.001.0301 Bauer at [127].

975 Exhibit RC0109 CRW.998.001.0301 Bauer at [130] to [132].

976 Exhibit RC0258 CRW.998.001.0297 C Walsh at [8].

977 Exhibit RC0258 CRW.998.001.0297 C Walsh at [12].

978 Employee 7 T1052.33-44.

979 Exhibit RC0109 CRW.998.001.0301 Bauer at [71].

980 Exhibit RC0109 CRW.998.001.0301 Bauer at [71].

981 Exhibit RC0109 CRW.998.001.0301 Bauer at [71].

982 Exhibit RC0109 CRW.998.001.0301 Bauer at [72] to [76].

983 Exhibit RC0109 CRW.998.001.0301 Bauer at [124].

984 Exhibit RC0109 CRW.998.001.0301 Bauer at [27] to [28].

985 Exhibit RC0109 CRW.998.001.0301 Bauer at Annexure 1.

F.22. *Third-party exclusion program*. Crown operates a third-party exclusion program under which a family member, friend or other person can apply to have Crown review a customer's gaming behaviour following which Crown may exclude the customer.[986]

F.23. *Time-out program*. The time-out program is an alternative to self-exclusion under which a customer can enter into an agreement excluding himself or herself from the gaming floor for a three or six month period.[987]

F.24. *Internal and external counselling services*. Crown's RGPs and its Chaplaincy Support Service both offer counselling services.[988] Customers are also referred to external counselling services.[989]

F.25. *Responsible gambling review of marketing material*. Marketing material is reviewed by Responsible Gambling staff prior to release.[990] That review process has from time to time resulted in changes being made to marketing material.[991]

F.26. *Limits on the distribution of marketing material.* Customers must opt in to receive marketing material when signing up to the Crown Rewards program.[992] Where they have opted in, customers are given subsequent opportunities to opt out, and may be encouraged to do so by an RGA. Customers with Responsible Gambling stop codes applied to their accounts are removed from marketing material distribution lists.[993]

F.27. *Responsible gambling checks upon proposed loyalty member upgrades*. All proposed loyalty membership upgrades from Silver or higher tiers are referred to the Responsible Gambling department, which checks whether there is any information regarding gambling harm in relation to the relevant member.[994]

F.28. *The Responsible Gaming Register*. The Responsible Gaming Register (**RG Register**) is an electronic database used by Responsible Gambling staff to log matters relating to the responsible service of gambling.[995] Daily operations reports are generated from the RG Register.[996] Responsible Gambling staff

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986 Exhibit RC0109 CRW.998.001.0301 Bauer at [80] and [125].

987 Exhibit RC0109 CRW.998.001.0301 Bauer at [79].

988 Exhibit RC0109 CRW.998.001.0301 Bauer at [82].

989 Exhibit RC0109 CRW.998.001.0301 Bauer at [99].

990 Exhibit RC0133 CRW.998.001.0271 Emery at [49].

991 Emery T1488.36-T1489.6.

992 Exhibit RC0146 CRW.998.001.0287 Mackay at [21].

993 Exhibit RC0133 CRW.998.001.0271 Emery at [42] to [45].

994 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 100.

995 Exhibit RC0109 CRW.998.001.0301 Bauer at [67].

996 Exhibit RC0109 CRW.998.001.0301 Bauer at [67].

review those reports and identify any action required.[997] The RG Register is regularly audited by the VCGLR.

F.29. *The Crown Melbourne Responsible Gaming Management Committee*. The functions of this Committee, which was established in 2009, [998] include consideration of statistics, data and trends concerning Responsible Gambling; consideration of changes to Responsible Gambling practices; the activities of external stakeholders such as the VRGF; and reviewing relevant articles and developments in relation to Responsible Gambling.[999] Its members include two RGPs, the CEO of Crown Melbourne, Mr Blackburn, Ms Bauer, the executive general managers of gaming machines and table games, representatives from the VIP business unit, and various others.[1000]

F.30. *Crown Melbourne VIP/operational management meetings*. The purpose of these meetings is to update gaming managers, including those working in VIP, on matters relating to Responsible Gambling initiatives and to discuss customers who have come to notice in relation to potential problem gambling concerns.[1001] Its membership includes two RGPs, RGAs, the general manager of Responsible Gambling, and various managers from the gaming machines, table games and VIP business units.[1002]

F.31. *The Crown Resorts Responsible Gaming Committee*. This is a Board Committee, membership of which includes the interim Executive Chairman.[1003] Its charter [1004] provides that the Committee is to: monitor and review the operation and effectiveness of Responsible Gambling programs at each of the company's properties; recommend policies and procedures and consider recommendations from management that may enhance the effectiveness of Responsible Gambling programs; promote and support continuous improvement in the company's Responsible Gambling performance; and promote awareness of Responsible Gambling and related welfare issues.[1005]

F.32. *Staff training*. All employees complete the Responsible Service of Gambling (**RSG**) Induction Program at the commencement of their employment.[1006] All employees also complete refresher training online.[1007] All gaming machines

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997 Exhibit RC0109 CRW.998.001.0301 Bauer at [67].

998 Exhibit RC0109 CRW.998.001.0301 Bauer at [9].

999 Exhibit RC0109 CRW.998.001.0301 Bauer at [10].

1000 Exhibit RC0109 CRW.998.001.0301 Bauer at Annexure 1.

1001 Exhibit RC0109 CRW.998.001.0301 Bauer at [14].

1002 Exhibit RC0109 CRW.998.001.0301 Bauer at [17].

1003 Exhibit RC0109 CRW.998.001.0301 Bauer at Annexure 3.

1004 Exhibit RC0109b CRW.512.049.0271 9 Annexure b, Crown Resorts Limited Responsible Gaming Committee Charter (n.d)..

1005 Exhibit RC0109 CRW.998.001.0301 Bauer at [29].

1006 Exhibit RC0109 CRW.998.001.0301 Bauer at [146].

1007 Exhibit RC0109 CRW.998.001.0301 Bauer at [147].

staff complete an additional RSG focus training program[1008] and an additional refresher program every two years. Managers receive further RSG training.[1009] In addition, RGAs conduct quarterly musters with gaming machine attendants, security officers, table games staff, and VIP staff to discuss Responsible Gambling matters.[1010]

F.33. *Play Periods Policy*. Crown has a policy under which time limits on play are monitored and enforced. The topic of play periods is dealt with at paragraphs F.81 to F.95 below.

F.34. *Play periods alerts*. Crown uses technology to send alerts to RGAs and gaming managers at intervals in carded play set out in Crown's Play Periods Policy. Crown is trialling a system that will allow for similar tracking of uncarded play (see paragraph F.94 below).

F.3. The RGAP

F.35. As noted above, the RGAP was established in 2019. Its members are Emeritus Professor Alexander Blaszczynski, Professor Lia Nower and Professor Paul Delfabbro.[1011] All are distinguished experts and provide broad expertise in the Responsible Gambling field:

(a) Alexander Blaszczynski was appointed Emeritus Professor at the University of Sydney in January of this year. For twenty years prior to that, he was Professor of Clinical Psychology at that same institution. He was also a director of the University of Sydney's Gambling Treatment Clinic and the Chair of the Responsible Gambling Research Group. He has a PhD in psychology. The head of the VRGF, Mr Lucas, described Emeritus Professor Blaszczynski as "a very well-regarded researcher [who] has done an exceptional body of work".[1012]

(b) Paul Delfabbro has been a Professor and Deputy Head at the School of Psychology at the University of Adelaide for twenty years. He has a PhD in psychology. Between 2014 and 2016, Professor Delfabbro was the President of the National Association for Gambling Studies and served on editorial boards for a number of international journals, including the International Gambling Studies and Addition. He co-authored the study

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1008 Exhibit RC0109 CRW.998.001.0301 Bauer at [149].

1009 Exhibit RC0109 CRW.998.001.0301 Bauer at [151].

1010 Exhibit RC0109 CRW.998.001.0301 Bauer at [153].

1011 Exhibit RC0109 CRW.998.001.0301 Bauer at [96].

1012 Lucas T1580.40-41.

upon which the VRGF, and Counsel Assisting, suggest greatest weight should be placed in relation to observable signs and play periods.[1013]

(c) Lia Nower is Professor at Rutgers University in New Jersey. She is Director of the Centre for Gambling Studies & Addiction and Director for the Addiction Counselor Training Certificate Program at Rutgers University. She has a PhD in social work and a Juris Doctor. Dr Nower is also a member of the legislative board of and a clinical supervisor for the National Council on Problem Gambling in Washington DC. A former criminal prosecutor, she is a member of the Thomson-Reuters Expert Witness Services network and is a forensic consultant in state and federal court cases involving gambling-related crimes. Dr Nower has also co-authored several policy initiatives, including a model for self-exclusion programs and an industry framework promoting informed choice in gambling venues. She co-edited the book, *The Wiley-Blackwell Handbook of Disordered Gambling*.

F.36. Crown sought expert advice from the RGAP about the effectiveness of its Responsible Gambling systems and processes, and what if any improvements should be made to ensure that they are appropriate and effective. As the RGAP noted:[1014]

> Crown Resorts Ltd. ("Crown") has requested the independent advisory panel to provide an assessment of Crown's RG Framework. The terms of reference included a review of current responsible gaming practices, policies and procedures, identification of existing strengths, and, importantly, the identification of gaps or weakness that required attention. Crown has requested that the Panel consider the recommendations contained in the 2018 Sixth Review of the Casino Operator and Licence and build upon and extend Crown's RG framework to achieve evidence-based best practice benchmark standards. The objectives of Crown are to establish a RG framework that (a) positions Crown as a leader in the delivery of effective RG services, and (b) integrates a culture of RG that is embedded in all aspects of processes, strategic initiatives and operational decisions.

F.37. The RGAP spent over eight months[1015] performing this assessment, which included spending several days at Crown conducting interviews and inspecting the premises.[1016] In August 2020, it produced a detailed report containing 17 recommendations.[1017] Crown accepted all but one of the 17 recommendations,

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1013 Exhibit RC0121 COM.0013.0001.0403 Thomas, Delfabrro and Armstrong, *Validation Study of In-Venue Problem Gambling Indicators*, Report prepared for Gambling Research Australia (February 2014).

1014 Exhibit RC0109d CRW.526.007.7005 Annexure d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services (August 2020) at .7006.

1015 The RGAP was engaged to perform its work on 14 January 2020: CRW.709.042.3832 Engagement letter to the RGAP re expert review of Crown's responsible gaming practices (14 January 2020).

1016 Bauer T1433.32-40.

1017 Exhibit RC0109d CRW.526.007.7005 Annexure d, Responsible Gaming Advisory Panel Review of Crown Resort's Responsible Gaming Programs and Services (August 2020).

and that recommendation was not accepted only because it raised security issues. Crown has implemented several of the recommendations already, and is in the process of implementing the others. The recommendations and the status of their implementation are set out in the table at Annexure F1.

F.38. Crown does not suggest that its instructions to the RGAP, and acceptance of the RGAP's recommendations, absolve it of responsibility for the weaknesses in its Responsible Gambling services that have been identified in this Commission. But those matters do show that Crown's current focus on the responsible service of gambling and its commitment to achieve best industry practice began well before the establishment of this Commission; and that Crown had a genuine desire, and took positive steps in an attempt to ensure, that its Responsible Gambling services were appropriate and effective (and, indeed, best practice).

F.39. Crown's instructions to the RGAP and acceptance of its recommendations also suggest that Counsel Assisting's submission that Crown has not sought to assess the effectiveness of its Responsible Gambling systems (said to be a "major failing, reflective of [Crown's] character and integrity"[1018]) is somewhat overstated. Identifying gaps and weaknesses in Crown's Responsible Gambling services was the very purpose for which the RGAP was appointed. In Crown's submission it cannot fairly be said that Crown was or is unwilling to identify and implement changes that are required to deliver its gambling products and services responsibly and to minimise the harm that they can cause.

F.40. It was suggested during the hearing that the RGAP's advice is unlikely to be objective because Crown pays for the services of the RGAP.[1019] With respect, experts in most (if not all) fields routinely receive payment for their advice from the party that requests and receives that advice. That does not, of itself, make the advice any less objective or reliable. For example, Crown pays for the services of lawyers, accountants, and risk and culture experts. It cannot fairly be suggested that their services are, by receipt of payment, compromised.

F.41. It should also be noted that Crown does not seek, and has not in the past sought, in any way, to limit the RGAP's access to information or visibility over Crown's practices.[1020] Nor has Crown in any way sought to direct the experts to a conclusion that Crown's Responsible Gambling services are incapable of improvement (or even acceptable).[1021] Further, the three members of the RGAP are distinguished in their field (see paragraph F.35 above). They have authored

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1018 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.16]-[6.4.17].

1019 Blackburn T3059.5-28, T1370.36-T1371.1-28, T1580.45-47, T3060.13-37.

1020 Coonan T3860.14-19.

1021 To the contrary, as noted above, Crown commissioned the RGAP explicitly for the purpose of identifying gaps or weakness that required Crown's attention.

many of the papers routinely cited in the literature.[1022] There is no evidence before this Commission to suggest that they would provide advice that is not objective.

F.4. Crown's implementation of the Sixth Review Responsible Gambling recommendations

F.42. A substantial portion of the Sixth Review was devoted to Responsible Gambling.[1023] The VCGLR Review Team investigated Crown's compliance with its Responsible Gambling obligations with some rigour, including by considering oral and written submissions from public stakeholders and academic research.[1024] Statistics and other data from the VRGF were also considered.[1025] Information was sought from and provided by the Victorian Coroner's Court.[1026]

F.43. The VCGLR began by noting the following progress that Crown had made since 2013 with respect to Responsible Gambling:[1027]

(a) the recruitment of additional Responsible Gaming Liaison Officers, as RGAs were then known, and an additional psychologist;

(b) the implementation of the YourPlay pre-commitment system;

(c) the addition of Responsible Gambling as a standing agenda item at Crown Melbourne Board meetings;

(d) the development of a trial model for play-data analysis;

(e) the introduction of identification procedures for the Teak and Mahogany Rooms;

(f) the introduction of procedures requesting prospective loyalty members to disclose that they had been the subject of an exclusion order in any Australian jurisdiction;

1022 RGAP members have published hundreds of papers in their careers in relation to RG and gambling harm. For their full catalogue of works see the following websites:
https://www.researchgate.net/profile/Alex-Blaszczynski
https://researchers.adelaide.edu.au/profile/paul.delfabbro#publications
https://www.researchgate.net/profile/Lia-Nower

1023 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at pp 84 to 125.

1024 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 84.

1025 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at, e.g., pp 84 to 85.

1026 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 85.

1027 Exhibit RC0002 COM.0005.0001.0776 at pp 87 to 88.

(g) the trialling of facial-recognition technology at the entries to the Teak Room and the Riverside Lounge;

(h) the introduction of procedures: (1) to ensure that persons who had voluntarily excluded were not sent advertising or other promotional material; and (2) to formalise the process of checking in with such persons approximately three months after their exclusion had been revoked;

(i) the establishment of a process whereby a person could be excluded from both the Melbourne Casino and the Perth Casino;

(j) the amending of the Responsible Gambling Code of Conduct;

(k) the introduction of a trial of the time-out scheme; and

(l) the introduction of the option of remotely seeking a voluntary exclusion order, that is, without attending the casino.

F.44. The VCGLR proceeded to assess Crown's Responsible Gambling measures in some detail. In the course of that assessment, the VCGLR:

(a) found that RSG training arrangements implemented by Crown Melbourne complied with the requirements under relevant legislation;[1028]

(b) found that there had been no non-compliance in relation to the YourPlay scheme;[1029]

(c) noted Crown's efforts in establishing the Responsible Gaming VIP meetings (see the discussion of VIP/operational meetings at paragraph F.30 above);[1030]

(d) found that Crown Melbourne has generally complied with the requirements of the RG Code during the Review Period (that is, the five-year period prior to mid-2018);[1031]

1028 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence, June 2018 at p 93.

1029 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 98.

1030 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 102.

1031 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 118.

(e) acknowledged Crown Melbourne's efforts in investing resources in engagement with external agencies and in participating in and promoting various Responsible Gambling forums and conferences;[1032]

(f) found that Crown Melbourne effectively monitors its compliance with its various Responsible Gambling obligations, including by undertaking internal audits, which audits identified only minor breaches and demonstrated, in the VCGLR's view, that Crown took a programmed approach to compliance;[1033]

(g) detected only minor breaches from its own audits of Crown's compliance with its various Responsible Gambling obligations and found that all such minor breaches had been rectified;[1034] and

(h) found that Crown Melbourne had substantially complied with the various regulatory requirements in relation to Responsible Gambling.[1035]

F.45. The VCGLR also found numerous respects in which Crown could improve its responsible service of gambling. It made 11 recommendations directed to that end.

F.46. All of those recommendations that have fallen due (all but two) have been implemented on time. Details of the recommendations, the dates by which they were required to be implemented, and the dates by which they were implemented are in the table at Annexure 2.

F.5. Crown's engagement with the VRGF and external Responsible Gambling initiatives

F.47. As the VCGLR stated in the Sixth Review:[1036]

> Crown Melbourne's Responsible Gaming Department is active in engaging with external agencies in relation to RG. … The VCGLR noted in the 2017 RG Code of Conduct Review that Crown Melbourne continues to undertake substantial interaction with third parties in relation to RG. Crown Melbourne has detailed the substantial and extensive interaction of RGSC staff with public, private and community agencies, and attendances and participation in various forums and conferences on gambling harm. Crown Melbourne also actively supports and promotes RG Awareness Week each year

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1032 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 119.

1033 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 119.

1034 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 119.

1035 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 119.

1036 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence (June 2018) at p 119.

> as well as hosting YourPlay weeks to raise awareness of the Victorian Government pre-commitment system. … The VCGLR acknowledges Crown Melbourne's efforts in investing resources and undertaking engagement with third parties and promotions in relation to RG.

F.48. Consistently with that assessment by the VCGLR, the Commission heard evidence from the head of the VRGF, Mr Shane Lucas, that:

(a) the VRGF regularly seeks assistance from Crown and receives the assistance sought;[1037] and

(b) Crown is generally cooperative and constructive in its dealings with the VRGF.[1038]

F.49. In his statement, Mr Lucas also noted that Crown engages with the VRGF in relation to a range of matters, including Responsible Gambling best practices,[1039] self-exclusion[1040] and Responsible Gambling training.[1041] He noted Crown's engagement with the VRGF in implementing the Sixth Review recommendations,[1042] including six meetings with the VRGF and VCGLR[1043] and a further meeting with the VRGF alone.[1044]

F.50. Mr Lucas clarified in his oral evidence, in relation to that part of his statement that says that Crown should make its data on gambling activity more readily available to researchers, that the VRGF has not actually asked Crown for that data.[1045] Crown, by its counsel, confirmed during the hearing that it is very much open to discussing with the VRGF the kinds of data that would be of assistance to it, with a view to advancing the objectives of the VRGF and facilitating its work.[1046]

F.51. It should also be noted that:

1037 Lucas T1581.31-41; see also Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [30].

1038 Lucas T1581.47-T1582.1-3.

1039 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [40.1.1].

1040 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [40.1.4]; [46.3].

1041 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [46.2].

1042 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [46.1].

1043 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [55].

1044 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [57].

1045 Lucas T1582.11-13.

1046 Lucas T1582.13-20.

(a) Crown has worked with the VRGF to integrate Crown's Responsible Gambling services with the VRGF's Gambler's Help service.[1047] Crown shares data in relation to referrals to that service with the VRGF.[1048]

(b) Crown is on the Steering Committee of Gambling Harm Awareness Week.[1049] Crown helps organise that initiative, which takes considerable time, including regular meetings and communications.[1050] Crown hosts events for Gambling Harm Awareness Week.[1051]

(c) Crown participates in and contributes to the Gambling Industry Leaders' Forum established by the VRGF.[1052] Through that forum, the VRGF has access to senior members of the gambling industry, including of Crown, so that it can obtain information from those leaders to help it to discharge its functions.[1053]

(d) Crown also participates in and contributes to the Gambling Industry Forum, which is attended by staff at the operational level and is chaired by the VRGF.[1054]

(e) Crown supports and promotes the VRGF's "100 Day Challenge" initiative, which offers participants 100 alternative recreational activities to gambling over 100 days, supporting them to take a break from or cut back on their gambling.[1055]

F.6. Section 69 of the Casino Control Act

F.52. Counsel Assisting's written submissions address the statutory requirement to implement an RG Code.[1056] Crown agrees with those submissions, save for one matter.

F.53. Counsel Assisting submit that the obligation to "implement" the RG Code imposed by s 69 of the CCA requires Crown to "ensure" that the obligations

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1047 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [30.2], [40.1.3], [40.1.5].

1048 Exhibit RC0145w VRGF.0001.0001.0043 Annexure w, Gambling Industry Issues Forum meeting notes (4 September 2019); see also Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [70].

1049 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [30.1].

1050 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [44].

1051 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [30.1].

1052 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [34].

1053 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [33.3].

1054 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [39].

1055 Exhibit RC0145w VRGF.0001.0001.0043 Annexure w, Gambling Industry Issues Forum meeting notes (4 September 2019).

1056 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.1]-[6.3.8].

contained in the RG Code are complied with on the casino floor.[1057] In Crown's submission, that is not correct.

F.54. According to the Full Federal Court in *Commissioner of Taxation v Ludekens*,[1058] the ordinary meaning of "implement" is "to put into effect". There is nothing to indicate that "implement" as used in s 69 should not be given its ordinary meaning.

F.55. Crown accepts that the obligation to "implement" – to put into effect – the RG Code:

(a) means more than just having an RG Code;

(b) requires Crown to take reasonable steps to procure that what the RG Code says will occur in fact occurs – for example, when the RG Code says that customers displaying observable signs will be referred to RGAs,[1059] s 69 requires Crown to take reasonable steps to procure that this in fact occurs; and

(c) requires Crown to take reasonable steps to monitor compliance by staff with the procedures set out in the RG Code and, where non-compliance is detected, to take reasonable steps to prevent a repeat of the non-compliance.

F.56. If the implementation obligation were to be construed as requiring Crown to "ensure" compliance with the RG Code, Crown would contravene that obligation on every occasion a staff member failed to comply with the RG Code, irrespective of the efforts Crown had made to prevent the contravention from occurring. In Crown's submission, the statutory language in s 69 – "implement" – is not apt to create such an onerous requirement (amounting in substance to a strict liability).

F.57. Further, there are numerous obligations in the CCA to "ensure" various things – see, for example, s 28(2)(a), s 58A(2), s 67, s 115, s 121(4) and s 126. Had the intention been to create an obligation to "ensure" compliance with the RG Code, that language would have been used in s 69. The potential legislative reforms floated by Counsel Assisting in their submissions[1060] – in opposition to which Crown does not seek to be heard – tend to underscore that the legislative regime does not currently require strict compliance with all Responsible Gambling requirements.

1057 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.7(b)].

1058 [2013] FCAFC 100 at [311].

1059 Exhibit RC0110 COM.0005.0005.0001 Crown RG Code (Version 6) (July 2019) at p 16.

1060 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [20.1.27]-[20.1.35].

F.7. Matters raised during the hearings and in Counsel Assisting's submissions

F.58. We address below criticisms that have been made of Crown's Responsible Gambling services in Counsel Assisting's submissions and in the course of the hearings.

F.7.1 The Responsible Gambling enhancements

F.59. The Responsible Gambling enhancements that the Board of Crown Resorts approved in May 2021[1061] were criticised in Counsel Assisting's submissions and in the hearings as, variously, a "knee-jerk" reaction to this Commission,[1062] and not based on research[1063] and/or not based on consideration of the relevant literature.[1064] None of those criticisms was warranted.

F.60. The enhancements were proposed to the Crown Resorts Board by Mr Blackburn. He made clear, on numerous occasions when giving evidence, that they were not prompted by this Commission's focus on Responsible Gambling.[1065] No one asked him to put together the enhancements.[1066] He did so of his own volition, based on the fact that he had inherited and was "keen to lean into" the function, and in the light of comments from Emeritus Professor Blaszczynski about the function being under-funded and under-resourced.[1067]

F.61. They were not intended to be a comprehensive set of reforms to address all issues that he perceived did or may exist with respect to Crown's Responsible Gambling services. They were intended to be some common sense steps that Crown could and should take immediately. As he explained:[1068]

> … the enhancements that I put forward were not a comprehensive uplift program like the Financial Crime and Compliance Change Program. What I put forward were items that I thought frankly were common sense.

F.62. That, it is submitted, was entirely appropriate. One does not need academic research to know that, pending a comprehensive review by the RGAP, adding further resourcing to the Responsible Gambling department, and reducing the time before which an RGA will attempt an interaction with a customer from 12 hours to 8 hours, is likely to enhance the responsible service of gaming. Mr Blackburn, and Crown, should in this regard be commended for applying

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1061 Exhibit RC0323 CRW.512.081.1748 Memorandum from Mr Blackburn regarding Responsible Gaming Enhancements (24 May 2021); Exhibit RC0126 VCG.0001.0002.8318 Letter from Xavier Walsh to Catherine Myers (26 May 2021).

1062 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.5.3].

1063 Blackburn T3051.16-21.

1064 Blackburn T3033.18-22, T3034.29-32.

1065 Blackburn T3027.4-21, T3025.3-27.

1066 Blackburn T3027.4-21.

1067 Blackburn T3027.4-7.

1068 Blackburn T3033.26-29.

common sense, not criticised. The head of the VRGF, when taken through the enhancements, said that almost all of them were improvements.[1069]

F.63. Further, as Mr Blackburn explained, he is planning a separate transformation program, similar to the FCCCP, which will involve a comprehensive review of Crown's Responsible Gambling services. As he said:[1070]

> This is a first step. This is not a transformation program. I intend to launch a transformation program in the context of responsible gaming, just as I have in financial crime and compliance. What this was a number of enhancements that I proposed to uplift our practices.

F.64. It is that program (which will be informed by expert advice as appropriate[1071]) that will involve the detailed and comprehensive consideration and development of further reforms.

F.7.2 Mr Blackburn as head of responsible gambling

F.65. Counsel Assisting also criticised, both in submissions and during the hearings, Mr Blackburn's qualifications to lead Crown's Responsible Gambling function.[1072] It was suggested that if Crown were serious about Responsible Gambling, it would have appointed someone else as head of that department.[1073] Those suggestions should not be accepted.

F.66. *First*, Mr Blackburn is, plainly, highly capable. As the Commissioner acknowledged, he will quickly be on top of the subject as well as anybody.[1074] He has already spent substantial time and energy on the function, and is getting up to speed as quickly as possible.[1075]

F.67. *Second*, Mr Blackburn has experts at his disposal. He can rely on the team that reports to him (adjusted and/or enlarged as he and they see fit)[1076] and he also has the expert RGAP available to provide further advice. He has already had multiple conversations with Emeritus Professor Blaszczynski.[1077] Like any good senior executive, he will draw upon the expertise that is available to him in discharging his responsibilities.[1078]

1069 Lucas T1574.17-T1580.10.

1070 Blackburn T3050.24-28.

1071 Blackburn T3058.41-46, T3058.41-46.

1072 See, e.g. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.5.9].

1073 Blackburn T3055.39-41.

1074 Blackburn T3065.24-26.

1075 Blackburn T3027.4-26.

1076 Cf. Blackburn T3048.28-34.

1077 Blackburn T3030.29-33.

1078 Blackburn T3036.5-9, T3044.4-18.

F.68. *Third*, Mr Blackburn also has substantial experience advocating for and implementing significant reform to parts of businesses that add cost (and no revenue).[1079] As he said:[1080]

> I'm positioned well to advocate for Responsible Gaming in that I am an advocate for cost centres, I am an advocate for social licence, I am an advocate for doing the right thing by way of our customers … I think of myself as potentially the best positioned individual in the organisation to do so.

F.69. *Fourth*, Mr Blackburn reports directly to both the CEO of Crown Resorts and the board of Crown Resorts,[1081] and has the full support of the Board for a reform program.[1082] He has taken the significant step of redirecting the reporting line of the group general manager of Responsible Gambling so that, instead of reporting into compliance, that position now reports directly to him.[1083] As he said: "I felt that she should report to me so that we could focus on responsible gambling not as a simple matter of tick-box compliance".[1084]

F.70. During the hearings (but not in their submissions) Counsel Assisting also suggested that Mr Blackburn is not capable of dealing appropriately with Responsible Gambling given his other responsibilities.[1085] That suggestion was speculative. No matter was identified to which Mr Blackburn should have, but failed to, devote attention. And Mr Blackburn did not agree with the proposition.[1086] He said that he has been able to devote substantial and sufficient time to Responsible Gambling, notwithstanding his other responsibilities (and the burdens imposed on him by this Commission, which will soon reduce).[1087]

F.71. Notably, since starting as head of Responsible Gambling, Mr Blackburn: was able quickly to get on top of the briefing materials he received that he considered to be pertinent;[1088] has already improved the Responsible Gambling reporting structure; [1089] has introduced a series of Responsible Gambling

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1079 Blackburn T2978.4-12, T3036.15-19,T3065.18-22.

1080 Blackburn T3065.17-22.

1081 Blackburn T3032.42-43, T3036.9-11.

1082 Blackburn T3072.23-29.

1083 Blackburn T3037.42-T3038.4.

1084 Blackburn T3038.2-4.

1085 BlackburnT3032.35-36.

1086 Blackburn T3032.38. See also Blackburn T3065.39

1087 Blackburn T3032.38, T3033.44 – T3034.13.

1088 Blackburn T3033.24-25, T3037.42-45.

1089 Blackburn T3037.42-T3038.4.

enhancements;[1090] and has begun planning for a more comprehensive program of reform.[1091]

F.72. Moreover, Mr Blackburn can (and does) rely upon the team that supports him,[1092] which can (and will) be expanded.[1093] As he said, his ability to discharge his functions as head of Responsible Gambling appropriately and effectively will be "dependent on [his] ability to run an effective team and build an effective team", and he is "really well-positioned" to do that.[1094]

F.7.3 Alleged continuous breaches of the RG Code

F.73. One of the Responsible Gambling enhancements that the Crown Resorts Board approved on 24 May 2021 was to amend Crown's Play Periods Policy to provide as follows:[1095]

> Domestic Players – 12 hours in a 24-hour period with observation/intervention at eight and 10 hours. Customers will not be able to play for more than 48 hours in a week.

F.74. Counsel Assisting make a number of criticisms of this policy. The most significant criticism is that it is "contrary" to, and will result in Crown being in "breach" of, the RG Code,[1096] because "[u]nder the policy, no action is taken if a customer often gambles for long periods (three to six hours)", whereas the RG Code requires that patrons who gamble for three to six hours be approached by staff or referred to an RGA.[1097]

F.75. As a result, Counsel Assisting submit, the terms of the policy "countermand" the requirements of the RG Code,[1098] with the effect that Crown has "continuously failed to comply with the obligations under the [RG] Code, in breach of section 69 of the CCA and Crown Melbourne's casino licence

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1090 Exhibit RC0323 CRW.512.081.1748 Memorandum from Mr Blackburn regarding Responsible Gaming Enhancements (24 May 2021); Exhibit RC0126 VCG.0001.0002.8318 Letter from Xavier Walsh to Catherine Myers (26 May 2021).

1091 Blackburn T3050.24-28.

1092 Blackburn T3034.41-42, T3036.5-9, T3044.4-18.

1093 Blackburn T3036.19-23; Exhibit RC0323 CRW.512.081.1748 Memorandum from Mr Blackburn regarding Responsible Gaming Enhancements (24 May 2021); Exhibit RC0126 VCG.0001.0002.8318 Letter from Xavier Walsh to Catherine Myers (26 May 2021).

1094 Blackburn T3065.42-45.

1095 Counsel assisting say that the reference to "domestic players" is unclear: COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.48(c)]. The evidence was in fact that the reference to "domestic" players is a reference to all Australian players, including Victorians: Bauer T1287.2-8; Emery T1485.2-4.

1096 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.47]-[6.3.50].

1097 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.50].

1098 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.51].

condition".[1099] Counsel Assisting submit that this is, of itself, a sufficient ground for finding that Crown is unsuitable.[1100]

F.76. With respect, that submission should not be accepted. The relevant observable sign in the RG Code (the fifth observable sign) is expressed as follows:

> Often gambles for long periods without a break.

F.77. The reference in this observable sign to "long periods without a break" is a reference to the periods without a break set out in the Play Periods Policy.

F.78. This was recognised by Counsel Assisting during the examination of Ms Bauer.[1101] Ms Bauer was taken to the fifth observable sign in the RG Code.[1102] She agreed that it was "concerned with the period of play".[1103] It was then put to Ms Bauer that, to supervise this aspect of the RG Code, staff needed to know when to take appropriate steps, with which Ms Bauer agreed.[1104] Counsel Assisting then put to Ms Bauer: "For that purpose, Crown has a Play Periods Policy".[1105] Ms Bauer agreed.

F.79. It is unsurprising that the fifth observable sign in the RG Code (relating to length of play) is to be read together with Crown's policy on length of play, the Play Periods Policy, especially given the RG Code and the Play Periods Policy are both approved by the responsible gambling department.[1106]

F.80. It follows that there is no conflict between the fifth observable sign in the RG Code and the Play Periods Policy. The latter does not countermand the former.

F.7.4 Maximum play period under the Play Periods Policy

F.81. Crown's former and new Play Periods Policy have also been criticised for being inappropriate,[1107] including for not being based "on the academic literature".[1108]

F.82. Under the former policy, customers with continuous ratings of 18 hours without appropriate breaks were directed to leave the gaming floor and take a 24-hour

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1099 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.61]-[6.3.63].

1100 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.61].

1101 Bauer T1225.13-36.

1102 Bauer T1225.13-20.

1103 Bauer T1225.22-25.

1104 Bauer T1225.27-31.

1105 Bauer T1225.33-36.

1106 Bauer T1272.19-23 (RG Code), T1225.43-46 (Play Periods Policy).

1107 See, e.g., COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.53], [6.3.54], [6.3.63], [6.5.11].

1108 E.g., T3051.16-19.

break.[1109] The policy stated that RGAs or gaming staff would either observe or interact with a patron (as appropriate) at the 12, 15 and 17-hour marks.

F.83. Crown accepts that that policy was inappropriate. That is why it was amended on 24 May 2021. But it is not correct, as Counsel Assisting have submitted, that under that policy the earliest point at which an RGA considered whether to approach a customer was "when they have been gambling for 12 hours" and that, even then, the RGA would only observe (and not interact with) the customer.[1110]

F.84. The policy did state that RGAs or gaming staff would observe or interact with a patron (as appropriate) at the 12-hour mark.[1111] But any break of less than two hours within that 12-hour period was to be ignored for the purposes of counting time.[1112] So, for example, if a player had a break for 1.5 hours in a 12-hour period, an alert would be sent to RGAs and gaming managers at the end of that 12-hour period prompting them to make an observation and, as appropriate, to interact with the patron. Observation or interaction could therefore occur well before the customer had been gambling for 12 hours.[1113]

F.85. As noted above, Crown's new Play Periods Policy, which was approved on 24 May 2021, provides that players may play for a maximum of 12 hours in a 24-hour period (with observation or intervention at eight and 10 hours) and for no more than 48 hours in a week. The same approach to counting time will be applied under the new policy (ie, any period within which players have not taken at least a two-hour break from gaming will be treated for the purposes of the 12-hour limit to have been a period of continuous gaming).

F.86. Crown accepts that further work is required to determine whether or not this policy is consistent with best industry practice and otherwise appropriate (and, if not, what the appropriate policy should be).[1114] That will occur as part of Mr Blackburn's uplift program for Responsible Gambling, with the benefit of expert advice.[1115] Notably, Crown is already looking at ensuring that an

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1109 Exhibit RC0322ccc CRW.510.073.4497 Play Periods Policy version 1.7.

1110 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.53].

1111 Exhibit RC0322ccc CRW.510.073.4497 Play Periods Policy version 1.7.

1112 Bauer at T2188.15-2189.11, T2191.10-T2192.29. See also Exhibit RC0208 CRW.510.029.3248 Letter from Barry Felstead to Catherine Myers (30 December 2019) at pp 7-8.

1113 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.53(a)].

1114 Mr Blackburn accepts that 12 hours of play on an *unrestricted* EGMs is unreasonable: Blackburn T3051.42-47. He also accepts that 12 hours of play on a restricted machine would be unreasonable *if* no staff were able to look out for observable signs because of their primary jobs: Blackburn T3052.2-T3053.3. For the reasons given at paragraphs F.116 to F.122, the evidence does not indicate staff are unable to monitor for observable signs because of their primary jobs.

1115 Blackburn T3050.3-28. Contrary to the submissions of Counsel Assisting (COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.63]), Mr Blackburn did not say that a policy that permits 12 hours of play is *necessarily* inapt. He accepted that that it

observation and/or interaction occurs after players have been gambling for three to four hours.[1116]

F.87. However, the criticism that the current Play Periods Policy is not based on (or supported by) the "academic literature" is overstated. It assumes that the literature identifies (or allows one readily to identify) a universally or generically appropriate play period. It does not. As far as Crown is aware, there is no literature that identifies a period of play that is "safe", beyond which all play should be prohibited. None was identified by Ms Billi.

F.88. The most relevant study that Crown is aware of is the Thomas, Delfabbro[1117] and Armstrong *Validation Study of In-Venue Problem Gambling Indicators*.[1118] It is the most recent,[1119] and is regarded as the most authoritative,[1120] work on in-venue gambling indicators or "observable signs". In addition to its own analysis, the study surveys all of the other work in the area.[1121]

F.89. Counsel Assisting's submission that the *Validation Study* "concluded that gambling 'for three hours or more without a proper break' was suggestive of problem gambling" is not correct.[1122] The references in the *Validation Study* to gambling for three hours or more, as distinct from "often" gambles for three hours or more, are in parts of the study where the learned authors are discussing behaviours exhibited by *both* problem and non-problem gamblers.[1123]

F.90. What the authors of the *Validation Study* concluded was a potential sign of problem gambling, and therefore included in their checklist of problem-gambling indicators for EGM staff in Victoria, was "<u>often</u> gambles for long periods (3+hours) without a proper break". The relevant indicator in the *Validation Study* thus involves a combination of duration *and* frequency of play. It is not concerned with duration of play alone. As a matter of common sense, the likelihood of a patron having a gambling problem where the patron gambles for 3+ hours once every six months is very different from the likelihood of a patron having a gambling problem where the patron gambles for 3+ hours five days a week.

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is unreasonable for play on gaming machines for that period of time when asked to assume that could not, by reason of their primary jobs, adequately monitor patrons for observable signs (T3051.42-47). As to that proposition, see paragraphs F.116 to F.122 above.

1116 Blackburn T3038.28-31; see also Blackburn T3053.29-33.

1117 Professor Delfabbro is a member of the RGAP.

1118 Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report (February 2014).

1119 Bauer T1273.23-24.

1120 Bauer T1280.18-20,T1274.20-22.

1121 Bauer T1280.35-39, T1398.10-14.

1122 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.42].

1123 Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014 at pp 30, 190, 192.

F.91. Importantly, the *Validation Study* does not state, or suggest, that play will necessarily be harmful if it extends beyond three hours, less still that play should for all patrons be prohibited for any period of play longer than three hours. Rather, it says that:

(a) where play "often" occurs for more than three hours, the patron should be "observed";[1124]

(b) *if* several other relevant signs are also observed, action should be "considered";[1125] and

(c) the action should be an "approach" – not an "intervention" or prevention from further play.

F.7.5 Other criticism relating to the Play Periods Policy

F.92. Counsel Assisting have made a number of other criticisms of Crown's Play Periods Policy.

F.93. *First*, they submit that the technology that Crown relies on is "deficient", because RGA alerts are sent using technology at points in time after the three to six hour mark, which makes compliance with the RG Code impossible.[1126] As submitted above, however, the RG Code does not require observation or intervention at three to six hours. It requires observation or intervention at 8 hours. That said, Crown accepts that alerts should be sent to RGAs before a player has been gambling for eight hours. As noted above, Crown is already looking to program the Splunk system so that alerts are sent at the three to four hour mark, and to require RGAs to check on patrons at that stage.[1127]

F.94. *Second*, Counsel Assisting submit that if an alert is not actioned it is not recorded in the RG Register, so there is no record of it.[1128] But the one RGA who gave evidence said that "very rarely" would an alert go unactioned.[1129] And the prospect of an alert going unactioned will soon decrease, because the number of Crown's RGAs will increase. Mr Blackburn is recruiting four new RGAs (as well as adding an RG Operations Manager and a Group Manager – Evaluation and Research).[1130] He can, and no doubt will, also consider the sufficiency of the number of RGAs as part of his Responsible Gambling reform

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1124 Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014 at .0604.

1125 Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report, February 2014 at .0604.

1126 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [3.52].

1127 Blackburn T3038.28-31, see also T3053.29-33.

1128 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.55].

1129 Employee 7 T1074.6-19.

1130 Exhibit RC0642a CRW.510.073.1673 Annexure a, Appendix A Responsible Gaming Organisational Chart (May 2021) at .1674.

program, including in the light of any recommendations made by this Commission.[1131]

F.95. *Third*, Counsel Assisting submit that the application of the Play Periods Policy in relation to uncarded play is difficult because the duration of uncarded play cannot be tracked in the same way that carded play can be tracked.[1132] That is currently true. But Crown is in the process of trialling a real-time monitoring system for uncarded play under which automated alerts will be sent to an RGA, flagging customers who are playing at higher intensity. [1133] The first alert under this system will occur after three to four hours of play, at which point an RGA will interact with the customer. The trial of this system commenced in May 2021, in accordance with recommendation 8(b) of the Sixth Review.[1134]

F.96. Further, as noted in Part D.6 subject to the approval of the respective State governments,[1135] Crown intends to move to cashless gaming over time.[1136] The main way patrons will be able to fund gaming activity will be through a digital wallet for all games.[1137] A digital payment committee at Crown is currently considering this.[1138] A digital wallet has the potential to include enhanced Responsible Gambling functionality, including enhanced data analytics (e.g., real-time information on player deposit activity), self-imposed "top up" limits and delayed payment timeframes to mirror existing ATM breaks in play. It would be a significant enhancement in relation to Responsible Gambling.[1139]

F.7.6 Crown's list of observable signs

F.97. Counsel Assisting criticises the "observable signs" Crown uses to identify potential problem gambling, because they are not the "40" signs referred to in

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1131 For the same reasons, the suggestion that interventions might not occur in response to alerts (and that there can be delays between receiving an alert and the alert being actioned by an RGA (cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.56])) is overstated.

1132 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [3.57]-[3.59].

1133 T1160.25-40.

1134 Additionally, Crown is currently in discussions with Focal Research in relation to a research project concerning uncarded play as contemplated by recommendation 8(b) of the Sixth Review.

1135 As noted in Part D.6, any cashless payment method will need to be subject to regulatory approval from gaming regulators in Victoria, New South Wales and Western Australia.

1136 Exhibit RC0126 VCG.0001.0002.8318 Letter from Xavier Walsh to Catherine Myers (26 May 2021) at _0003

1137 For casual gaming machine players may require the players to purchase a ticket at the cage or a ticket machine: Exhibit RC0126 VCG.0001.0002.8318 Letter from Xavier Walsh to Catherine Myers (26 May 2021) at _0003.

1138 Blackburn T.3014.12-20.

1139 Exhibit RC0126 VCG.0001.0002.8318 Letter from Xavier Walsh to Catherine Myers (26 May 2021) at _0003.

the *Validation Study*,[1140] but rather 13 signs that Crown has developed based on that study.

F.98. The *Validation Study* identifies 30 relevant observable signs, not 40.[1141] But regardless of the number, the notion that Crown's observable signs need be the same those in the *Validation Study* should not be accepted.

F.99. *First,* one of the authors of the *Validation Study*, Professor Delfabbro, is a member of the RGAP. He has advised Crown that it may be appropriate to "contract" the list of signs in the *Validation Study*, "to make it easier for … staff to remember and understand" the signs.[1142] That is precisely what Crown has done. Using observable signs as indicators of problem gambling is more difficult in larger venues with larger numbers of people,[1143] so Crown has sought to consolidate the list of signs in the *Validation Study* (many of which overlap substantially) into a more manageable list,[1144] comprising those which are most appropriate for the busier casino environment.[1145]

F.100. *Second*, Counsel Assisting do not identify which items in the *Validation Study* checklist should be reflected in Crown's list of 13 consolidated signs but are not reflected in that list. Notably, the VRGF suggested only four additional items needed to be included in Crown's list, namely:[1146]

(a) often gambles for 3+ hours without a proper break;

(b) 2+ ATM/EFTPOS withdrawals;

(c) >$3 per spin most of the time; and

(d) >$300 in a session.

F.101. We address the first of those at paragraphs F.88 to F.91 above. The second is already partially on Crown's list: "frequent visits to the ATM" (although Crown

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1140 Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report (February 2014).

1141 Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report (February 2014). As p 201 of the *Validation Study* explains, of the three checklists in the study, it is the list on p 203 headed "The Gambling Behaviour Checklist for EGM Staff in Victoria" that is the relevant list.

1142 Bauer T1203.42-45. Notably, the study itself also notes that "[i]f it is too onerous it is unlikely to be used effectively": Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report (February 2014) at p 155.

1143 Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report (February 2014) at p 155 ("there are barriers to using indicators in venues, which become more significant when venues are larger, there are more people, and the area of the gaming floor is larger").

1144 Bauer T1203.42-T1204.3, T1204.34.

1145 Bauer T1204.34-44.

1146 Exhibit RC0145 VRGF.0002.0001.0017 Lucas at [96.9].

accepts that this observable sign should explicitly extend to EFTPOS withdrawals).

F.102. As to third and fourth, while gambling more than $300 in one session might be an appropriate indicator to be used in a local pub or club, in Crown's submission, it is not necessarily an appropriate sign of problem gambling within a major casino accommodating commission-based players (indeed, a casino obliged to be the "dominant" casino in Australia for commission-based play[1147]) – likewise in relation to betting more than $3 per spin.[1148]

F.103. *Third*, in 2020, the VCGLR considered and approved Crown's list of observable signs for use in Crown's RSG training (and the entire RSG training suite). Before granting that approval, the VCGLR considered objections to the list from both the VRGF and the Department of Justice and Community Safety (**DJCS**). Crown explained to the VCGLR why it was not adopting the additional observable signs that the VRGF and DJCS proposed it adopt.[1149] The VCGLR considered the matter and concluded it was happy with Crown's approach. It approved Crown's proposed training with the observable signs that Crown currently uses in April 2020.[1150]

F.104. Crown recognises that community standards and expectations can and do evolve, and the fact that the VCGLR approved Crown's training by reference to Crown's current list of observable signs does not necessarily mean that the list is perfect or even appropriate. But, in Crown's submission, the fact of the approval must at least be relevant in contradiction of the proposition that any defect in the list of observable signs suggests that Crown is unsuitable to continue to hold the licence.

F.7.7 Staff training

F.105. Counsel Assisting submit that Crown's Responsible Gambling training is critical to Crown's success in minimising problem gambling (particularly since Crown relies not only on RGAs to identify observable signs, but all staff on the gaming floor[1151]), and that Crown's current training is inadequate.[1152]

1147 Exhibit RC0435 COM.0005.0001.0985 Casino Agreement at cl 22.1(ra).

1148 The *Validation Study* recognises that some indicators are more significant than others – some signs indicate that it is "highly probable" that the patron has gambling problems; others that problems are "probable"; and others that problems are "possible".[1148] The signs ">$3 per spin most of the time" and ">$300 in a session" are identified as indicating only "possible" problems: Exhibit RC0121 COM.0013.0001.0403 Gambling Research Australia Validation Study of In-Venue Problem Gambler Indicators Report (February 2014) at p 204.

1149 Exhibit RC0129 CRW.709.034.9074 Email chain between Sonja Bauer and Scott May et al (2 March 2020).

1150 Exhibit RC0130 CRW.512.096.0002 Letter from Ross Kennedy to Sonja Bauer (9 April 2020).

1151 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.27].

1152 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.29].

F.106. With respect, Crown agrees that providing effective Responsible Gambling training to staff is an essential element of the delivery of Crown's Responsible Gambling services. And Crown accepts that some of the employee witnesses' evidence – particularly in respect of their understanding of observable signs[1153] – is highly concerning and suggests that there are weaknesses in Crown's training.[1154]

F.107. However, the evidence of those witnesses must be treated with some caution. Crown has nearly 12,000 staff, only six[1155] of which were examined. The extent to which their evidence is representative of the knowledge and experience of Crown staff generally is unclear. Nevertheless, their evidence was concerning to Crown. It suggests that some staff, at least, do not understand their Responsible Gambling obligations and are not discharging them appropriately. Crown accepts that that is unacceptable (particularly in circumstances where Crown's approach to responsible service of gaming relies heavily on casino floor staff playing an important role in the identification of potential problem gambling behaviour) and must be addressed.

F.108. In Crown's submission, however, that is not a matter that warrants a finding of unsuitability. Two matters may be noted.

F.109. *First*, Crown not only intends to improve its training, but it has been planning to do so since before this Commission started. Crown tasked the RGAP with considering the adequacy of its training; having done so, the RGAP recommended that:[1156]

> Crown should increase and diversify staff training to include not only the basic training for all floor staff and managers but also "booster" trainings every six months, retraining every year to two years, and advanced training on topics like reading non-verbal cues, assessing high-risk behaviours and patron interactions for managers and employees on each shift who serve an ambassador function. All training materials and videos should also be available online, perhaps via an employee Intranet.

F.110. Crown accepted this recommendation. It is to be implemented by the end of December this year.[1157]

F.111. Assessment of the nature, frequency and effectiveness of Crown's training will also necessarily form part of Mr Blackburn's planned Responsible Gambling reform. Mr Blackburn has made clear that, as head of Responsible Gambling,

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1153 But also in respect of other matters, e.g., employees not knowing where the RGC is located.

1154 Crown notes, however, that Counsel Assisting's summary of Crown's training is incomplete. The training is explained at Exhibit 0109 CRW.998.001.0301 Bauer at [146]-[153].

1155 Excluding the RGA who gave evidence.

1156 Exhibit RC0109d CRW.526.007.7005 2020 RGAP Report, Recommendation 10.

1157 See Annexure 1.

he intends to ensure that not only RGAs, but all staff on the gaming floor, understand and discharge their Responsible Gambling obligations.[1158]

F.112. *Second*, the VCGLR has statutory responsibility to approve the Responsible Gambling training Crown delivers to its gaming machine staff. Crown submitted the training it currently provides to the VCGLR. As noted above (see [F.103]), the VCGLR approved it in 2020.

F.113. The relevant provisions of the CCA that confer this responsibility on the VCGLR are as follows:

(a) Section 58A deals with the completion of "approved training courses" and "approved refresher courses". These are defined to mean courses approved by the VCGLR under s 58B, which makes it clear that these courses are concerned with the "responsible provision of gaming".

(b) Section 58A relates to the completion of such courses by "licensees" who perform functions in relation to gaming machines. "Licensees" within the meaning of Part 4 of the CCA are the holders of a licence under that Part (s 37). Those who hold a licence under Part 4 are so-called "special employees" (see s 38). "Special employees" include anyone employed or working in the casino in any capacity relating to the conduct of gaming (s 37).

(c) Section 58A is only concerned with the completion of training by licensees who perform the functions of a special employee *in relation to gaming machines*. It does not extend to the training of staff working in relation to, for example, table games. Section 58A(1) in substance provides that gaming machine staff must complete:

(i) an approved RSG training course within a prescribed timeframe (namely, six months after commencing to perform any functions in relation to a gaming machine or within 12 months after approval of the relevant course by the VCGLR, whichever period expires later); and

(ii) an approved refresher RSG course every three years thereafter.

(d) The VCGLR is charged with approving the primary and refresher RSG training courses that special employee licensees performing functions in relation to gaming machines must complete pursuant to s 58A(1): s 58B.

(e) Crown does not permit any licensees performing the functions of special employees in relation to gaming machines to perform those functions without completing the VCGLR-approved primary and refresher

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1158 Blackburn T3052.11-33. Upon reconsidering and improving its training, Crown will need to seek under s 58B(5)(a) of the CCA the VCLGR's approval of the new training as it applies to gaming machine staff.

training courses. Crown thus complies with its obligations under s 58A(1). Indeed, Crown requires such licensees to undertake refresher training every two years, as distinct from the three years prescribed by the legislation.

F.114. Again, Crown accepts that the VCGLR's approval of its training does not mean that the training is adequate, or that Crown does not have a responsibility to improve it. But, in circumstances where the regulator has considered and approved its training, deficiencies in the training ought not be a ground for a finding of unsuitability.

F.7.8 Reliance on floor and gaming staff to identify observable signs

F.115. Counsel Assisting also submit that general floor staff cannot perform their "primary" job and also identify observable signs.[1159] That submission should not be accepted. In Crown's submission, while the evidence clearly shows that some staff have little knowledge of observable signs, it does not show that staff would be unable to identify observable signs if trained appropriately.

F.116. In response to questioning by Counsel Assisting that sought to elicit the proposition that a dealer could not look out for observable signs when concentrating on dealing, employee 4, a poker, blackjack and roulette dealer, said:[1160]

> But on my table, I still can. For example, my table have about five players. Even I concentrate on the game, I still because whenever I ask them I look at their face so I still be able to tell the behaviour of the player at my table.

F.117. Another dealer gave evidence that he can observe not just the people gambling at his table but also the people gambling around him.[1161] Another employee witness, a gaming machine service host, gave evidence that she does notice customers displaying observable signs in the course of her work.[1162]

F.118. A food and beverage attendant, employee 2, gave evidence that he is able to see people gambling.[1163] While that food and beverage attendant went on to say that he will not necessarily go out on to the gaming floor when times are busy because he will be detained behind the bar,[1164] there are gaming staff present on the floor, such as gaming machine attendants, who can and do monitor for

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1159 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.31]-[6.3.32].

1160 Employee 4 T514.8-12.

1161 Employee 3 T497.3-13.

1162 Employee 5 T520.41-44.

1163 Employee 2 T488.38-T489.1.

1164 Employee 2 T489.15-22.

observable signs. The same point applies to the other food and beverage attendant, employee 1, who said that she was often busy behind the bar.[1165]

F.119. Further, it is not the case that working behind the bar means that an employee cannot detect observable signs. An employee can, for example, detect repeated withdrawals of cash from EFTPOS machines, which is why the CCA permits EFTPOS withdrawals on the gaming floor but prohibits withdrawals from ATMs or alternative cash access facilities – unlike the latter two facilities, EFTPOS machines require a human interaction.[1166]

F.120. Nothing in the evidence of employee 6, a host in the Mahogany Room, indicates that VIP hosts are incapable of monitoring the gambling activity of the patrons they host. It was put to that host that, when having dinner with a patron at Rockpool, he cannot monitor what is going on in the Mahogany Room, with which he agreed.[1167] While that is obviously correct, it says nothing about the ability of the staff who are present in the Mahogany Room to monitor the gambling activity going on in that room. The evidence does not support the proposition that VIP hosts cannot look out for observable signs in the course of their work.

F.121. It follows that the evidence does not support Counsel Assisting's submission that an operating model under which all staff are charged with at least some responsibility for looking out for observable signs cannot work because staff are distracted by their primary tasks. That was not the effect of the evidence that was given by the staff or of any expert evidence considered by this Commission. Properly trained, staff in various roles are capable of looking out for observable signs.

F.122. Identification of those signs is not as difficult as Counsel Assisting suggest.[1168] Any person, with appropriate training, could identify the 13 observable signs Crown relies on. They are:

1. self-disclosure of a problem with gaming or a request to self-exclude;
2. requests for assistance from family and/or friends concerned about an individual's gaming behaviour;
3. children left unattended whilst parent/guardian gambles;
4. gets angry while gaming or shows signs of distress during or after gaming;

1165 Employee 1 T480.30-38.

1166 Explanatory memorandum to the Gambling Legislation Amendment (Transition) Bill 2012, p 2.

1167 Employee 6 T575.13-17.

1168 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.23]-[6.3.26].

5. often gambles for long periods without a break;
6. witnessed or heard that a customer was trying to borrow money for gaming;
7. significant decline in personal grooming or appearance;
8. observed conflict over gaming between family members or friends;
9. unrealistic remarks about gaming;
10. complains to staff about losing or blames the casino or gaming product for losing;
11. secretive or embarrassed about being at the casino or stays on to gamble when friends leave the venue;
12. gambles without reacting to what is going on around him/her and avoids contact or conversation with others;
13. frequent visits to the ATM.

F.123. Moreover, it is important that all staff have the capability to identify observable signs, given the number of patrons passing through the casino. RGA numbers have been increased over the years. They were increased from seven to 12 2018.[1169] They have been increased as part of the Responsible Gambling Enhancements by a further four RGAs, an RG Operations Manager, a Group Manager – Evaluation and Research, and an Administration Officer.[1170] Mr Blackburn has made clear that staff numbers may increase yet further.[1171] While RGA numbers can and have been increased, and may increase further, they are unlikely to reach a number sufficient to provide for the monitoring by them alone of every single patron at the casino for observable signs. Hence, it is very important that other staff are able to perform that role. And it was not the evidence of the employee witnesses that they are necessarily incapable of performing that role because of other tasks.

F.7.9 EGMs at the casino

F.124. There has also been significant criticism of Crown with respect to its operation of EGMs in unrestricted mode.[1172] Much of that criticism has overlooked the fact that the operation of EGMs in unrestricted mode is contemplated and indeed permitted under the *Casino Control Act*. Sections 62AB(4), 62AC(2) and 81AAB(2) provide for the operation of EGMs in unrestricted mode at the casino

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1169 Exhibit RC0109 CRW.98.001.0301 Bauer at [53].

1170 Exhibit RC0642a CRW.510.073.1673 Annexure a, Appendix A Responsible Gaming Organisational Chart (May 2021) at .1674.

1171 Blackburn T3072.23-29.

1172 See, e.g., COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.12].

in areas specified by notice of the VCGLR published in the Government Gazette, provided the casino operator complies with the conditions, if any, specified in the notice. It is a matter for the VCGLR whether (if at all) any such areas are to be specified by notice.

F.125. The criteria to be applied by the VCGLR in determining whether to specify any such areas are subject to the control of the Minister. The Minister may, under s 3.2.3(1)(g) of the *Gambling Regulation Act*, direct the VCGLR as to those criteria. The Minister has exercised that power of direction. The Minister has directed that, in a notice issued by the VCGLR under ss 62AB(4), 62AC(2), or 81AAB(2), the conditions specified in the notice must include that the total number of machines calculated in a particular way must not exceed 1,000.[1173]

F.126. In these circumstances, Crown could not fairly be criticised or said to be unsuitable for operating EGMs in unrestricted mode: the Act imposing the suitability requirement also authorises the operation of unrestricted EGMs at Crown. Moreover, as noted above, the State also expects and requires Crown to, "at all times … advertise and promote the Melbourne Casino Complex so as to endeavour to ensure that the Melbourne Casino Complex is fully and regularly patronised promote the casino to interstate and overseas patrons".[1174] And Crown's operations (including with respect to Responsible Gambling) are to be assessed having regard to the best operating practices of casinos of a similar size and nature to Crown.[1175] Crown is expected and required to compete with major casinos around the world where EGMs are offered in unrestricted mode

F.127. Having said that, Crown acknowledges and accepts the heightened risk of gambling harm that unrestricted EGMs present. Mr Blackburn has already determined that the current Play Periods Policy with respect to unrestricted EGMs must change.[1176] Additional restrictions on the use of unrestricted EGMs – including (but not limited to) further restricting their use to premium playing areas[1177] – is something that will be given careful consideration as part of his reform program, with expert guidance.

F.128. The following matters should also be noted:

1173 Exhibit RC0164 COM.0013.0001.0030 Victorian Government Gazette No G 43 (29 October 2015) at .0071.

1174 Exhibit RC0502 COM.0005.0001.1056 Management Agreement for the Melbourne Casino at cl 20.2.

1175 Exhibit RC0435 COM.0005.0001.0985 Casino Agreement at cl 28

1176 Blackburn T3051.42-47.

1177 Currently, over 700 of the 1,000 EGMs operating in unrestricted mode are in premium rooms: Mackay T1676.15-23.

(a) Unless a customer is playing carded and has a set a time and loss limit, the customer cannot play in unrestricted mode.[1178]

(b) The use of "picks" (ie, holding down the play button on EGMs to enable continuous gambling) is not "common", as Counsel Assisting submit.[1179] The evidence was that it "sometimes" occurs;[1180] that Crown discourages the use of picks;[1181] and that Crown has a policy, issued in March 2019, under which staff are to monitor for the use of button picks, request that a patron using a pick hand it over, and escalate the matter to their manager should the patron refuse.[1182]

(c) There is no general "practice" of patrons playing multiple EGMs at the same time, as Counsel Assisting suggest.[1183] The evidence was that gaming machine staff are required to ensure that patrons do not play more than one gaming machine in all areas of the casino except the Teak and Mahogany Rooms.[1184] Further, in those premium rooms: what constitutes "safe" gambling may be very different from other areas of the casino (by reason of players' wealth);[1185] players are still monitored from a Responsible Gambling perspective;[1186] and, if there is any indication that a player has lost control of his or her gambling, there will be an intervention.[1187]

F.7.10 Marketing

F.129. Counsel Assisting make various criticisms of Crown's marketing activities. The criticism is overstated. It does not suggest that Crown might be unsuitable.

F.130. It is important to bear in mind that Crown has a statutory and contractual obligation to advertise and promote the Melbourne casino at all times so as to endeavour to ensure that the casino is fully and regularly patronised.[1188] It is also required under the Casino Agreement to endeavour to maintain the

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1178 Exhibit RC0146 CRW.998.001.0287 Mackay at [27].

1179 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.13].

1180 Mackay T1686.21-23.

1181 Mackay T1688.1-3.

1182 CRW.512.131.0256 Crown Policy on Reclaiming Button Picks v.1 (7 March 2019).

1183 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.15].

1184 CRW.512.144.0001 Email from Brett McCallum to Crown gaming machines staff (4 December 2020).

1185 Mackay T1691.35-T1692.15.

1186 CRW.512.144.0001 Email from Brett McCallum to Crown gaming machines staff (4 December 2020).

1187 Mackay T1691.35-T1692.15.

1188 Exhibit RC0502 COM.0005.0001.1056 Management Agreement for the Melbourne Casino at cl 20.2; *Casino (Management Agreement) Act 1993* s 6(1) .

Melbourne Casino as the "dominant" commission-based player casino in Australia.[1189] Crown is therefore required to market its products and services.

F.131. Further, the marketing of gambling products is something that Parliament has considered and debated; decided to regulate in various respects (such as by banning the advertising of EGMs outside the casino); but otherwise determined to permit. Provided Crown continues to operate within the legislative restrictions on the advertising of gambling services, in Crown's submission, the lawful marketing of its of its core business should not be a matter that goes to suitability.

F.132. Crown accepts that it can and should take reasonable steps to minimise the extent to which its marketing may cause harm to problem gamblers. It takes several such steps:

(a) Loyalty members have to opt in to receive marketing material as opposed to having to opt out;[1190] and, if they do opt in, customers are given opportunities subsequently to opt out and may be advised to do so by an RGA.

(b) Customers who have opted in but who have Responsible Gambling stop codes applied to their accounts are removed from marketing material distribution lists.[1191]

(c) Crown uses technology to exclude such patrons even from non-gambling marketing on digital platforms such as Google and Facebook.[1192]

(d) Marketing material is reviewed by Responsible Gambling staff prior to release.[1193] That review process has from time to time resulted in changes being made to marketing material.[1194]

F.133. Crown also accepts that those steps may be imperfect; that some of its marketing material may well, despite those steps, inadvertently reach some problem gamblers;[1195] and that further measures may be appropriate. But such room for improvement is not a matter that goes to suitability. It is a matter that will be considered as part of Mr Blackburn's planned Responsible Gambling reforms, in the light of any recommendations made by this Commission.

1189 Exhibit RC0435 COM.0005.0001.0985 Casino Agreement at cl 22.1(ra).

1190 Exhibit RC0146 CRW.998.001.0287 Mackay at [21].

1191 Exhibit RC0133 CRW.998.001.0271 Emery at [42] to [45].

1192 Exhibit RC0133 CRW.998.001.0271 Emery at [46].

1193 Exhibit RC0133 CRW.998.001.0271 Emery at [49].

1194 Emery T1488.36-T1489.6.

1195 Cf. Emery T1470.44-11.

F.134. Finally, Counsel Assisting's observation that Crown's marketing budget is substantially greater than the amount it spends on Responsible Gambling[1196] is of limited assistance to the Commission; it says nothing about whether or not the size of its Responsible Gambling budget is sufficient to ensure that its Responsible Gambling services are appropriate and effective.

F.7.11 Loyalty program

F.135. During the hearings, Crown was also criticised for maintaining a loyalty program, on the basis that it may cause or exacerbate harm from problem gambling. That criticism was unwarranted.

F.136. *First,* no research has found a causal link between loyalty schemes and increased rates of problem gambling.[1197] Indeed, the one study that has directly confronted the question, by Prentice & Wong, [1198] found that "[l]oyalty programs and customer loyalty have very little to do with problem gambling" and that "loyalty programs have no significant impact on problem gambling".[1199] Ms Billi's suggestion that the authors of that study might lack the expertise to comment[1200] should not be accepted. The article was published in a peer-reviewed journal[1201] and the lead author, Associate Professor Prentice, PhD, of Griffith University, is the director of the Asia Pacific Association for Gambling Studies and an editorial board member of the Journal of Gambling and Commercial Gaming Research.

F.137. *Second*, gambling loyalty schemes are permitted, subject to certain checks and balances, by the *Gambling Regulation Act*. Division 5 of Part 5 of Chapter 3 of the *Gambling Regulation Act* prescribes various requirements to be observed in the provision of a loyalty scheme and the *Gambling Regulation (Pre-commitment and Loyalty Scheme) Regulations 2014* prescribe further requirements. The Parliament could have decided to outlaw loyalty schemes in connection with gambling but judged it to be appropriate not to do so, subject to the checks and balances written into the legislation. Again, given gambling loyalty schemes are permitted by the legislative scheme, Crown cannot be fairly criticised, or said to be unsuitable, for operating such a scheme. That is of course not to gainsay the scope for this Commission to recommend legislative reform that might enhance the responsible service of gambling.

1196 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.24].

1197 Billi T1832.18-23.

1198 Exhibit RC0142 CRW.512.107.0001 Catherine Prentice and IpKin Anthony Wong Casino Marketing, Problem Gamblers or Loyal Customers? (1 March 2015).

1199 Exhibit RC0142 CRW.512.107.0001 Catherine Prentice and IpKin Anthony Wong Casino Marketing, Problem Gamblers or Loyal Customers? (1 March 2015) at p 8.

1200 Billi T1833.46-47.

1201 Emery T1525.26-27.

F.138. *Third*, loyalty programs in fact provide benefits from an Responsible Gambling and AML perspective through their ability to allow the spending of customers to be tracked.[1202]

F.7.12 Research

F.139. Counsel Assisting's criticism of the approach that Crown takes to research is overstated.[1203]

F.140. Their suggestion that Crown does not share data is not supported by the evidence. None of the transcript references cited in support of that proposition supports it. Ms Bauer's evidence was that there have not been any requests for de-identified data since she joined the Responsible Gambling department.[1204] And, as noted above (see paragraphs F.47 to F.51), Crown regularly provides data to the VRGF and has made a standing offer to provide any other data that might be requested.

F.141. Further, since 2012, Crown has received 18 requests to participate in research; only two were not accepted.[1205] Crown's track record shows that it has been (and is) willing to participate in research.

F.142. Mr Emery did not say that Crown is not serious about research into Responsible Gambling and problem gambling, as Counsel Assisting submit.[1206] He accepted that, before this Commission started, Crown had not seriously looked at undertaking research regarding the link between loyalty programs and problem gambling.[1207] Importantly, however, Crown has now determined to undertake such research.[1208]

F.7.13 Practices in the Mahogany Room

F.143. Counsel Assisting make a number of submissions about practices in the Mahogany Room.[1209]

F.144. Crown observes that the Commission received evidence on this topic from Mr Peter Lawrence, Crown's General Manager, VIP Customer Care.[1210] Mr

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1202 Exhibit RC0133 CRW.998.001.0271 Emery at [58].

1203 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.25]-[6.4.26]

1204 Bauer T1367.27-T1368.12.

1205 Exhibit RC0109jj CRW.510.052.8491 Annexure jj, Responses to Questions 38(a)-(d) table.

1206 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.26].

1207 Emery T1515.5-13.

1208 Exhibit RC0642a CRW.510.073.1673 Annexure a, Appendix A Responsible Gaming Organisational Chart (May 2021).

1209 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0128-9, [6.4.3].

1210 Mr Lawrence provided a statement (22 May 2021) in response to the Commission's RFS-Crown-013, and gave oral evidence on 8 August 2021, via video link.

Lawrence gave frank and honest evidence, including evidence adverse to himself that has been relied upon by Counsel Assisting.[1211]

F.145. Counsel Assisting nevertheless largely rely on the testimony of Mr Ahmed Hasna, a former black tier member who was permanently banned from Crown for threatening and abusive behaviour towards Crown staff,[1212] as well as relying upon high-level, assertions by anonymous witnesses.[1213] All that evidence was taken in private session without Crown having an opportunity to test it. Crown submits that such evidence is not a safe basis upon which to draw the broad conclusions advanced by Counsel Assisting. Further, where there is a conflict in the evidence, the Commission should prefer Mr Lawrence's evidence.

F.146. Against that backdrop, Crown makes the following observations.

F.147. *First*, Crown accepts that Mahogany Room hosts proactively contact clients to encourage them to attend the casino, and that clients (including Mr Hasna) received complimentary benefits including concert tickets and restaurant meals.[1214]

F.148. *Second*, the Commission should not accept Counsel Assisting's submission that Mahogany Room hosts "continue to contact clients even if they tell the host they need to take a break from gambling".[1215] When asked about this, Mr Lawrence's evidence was that the host would contact the customer "*after* they've taken the appropriate break".[1216] None of his subsequent answers suggested otherwise.[1217] As to the other evidence, the issue was not put to Employee 6, who said only that he would make contact with a regular client if that client had not visited the casino for a period of time.[1218] The only support for the proposition came from a single anonymous witness, who made a high-level assertion without identifying any manager who gave such an instruction or any specific occasion where this alleged behaviour occurred.[1219]

F.149. *Third*, Counsel Assisting's submissions that Mahogany Room hosts "do not engage with customers about their welfare" and "rarely ask customers to take a break from gambling" rely on high-level assertions by Mr Hasna and the

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1211 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0140, [6.25].

1212 Exhibit RC071 CRW.998.001.0401 Lawrence at [33].

1213 Note that Employee 6 did not give evidence that he had ever seen such conduct. He was responding to hypothetical scenarios posited by Counsel Assisting: T572.6-19.

1214 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0128, [6.4.3(a) and (b)]; COM.0004.9990.0001 Hasna at 0009.

1215 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0129, [6.4.3(f)].

1216 Lawrence T1769.6 (emphasis added).

1217 Lawrence T1769.8-26.

1218 Employee 6 T568.18-30.

1219 COM.0004.9990.0001 Anonymous Witness at .0144.

anonymous witness.[1220] Mr Lawrence gave evidence to the contrary.[1221] In those circumstances, the Commission should not accept these submissions.

F.150. *Fourth*, as to self-exclusion, Mr Lawrence's evidence was that he has never tried to talk a patron out of self-excluding[1222] and he does not instruct staff to discourage customers from self-excluding.[1223] For the reasons given below, Mr Hasna's evidence does not provide a sound basis for the Commission to conclude otherwise, whether in Mr Hasna's case or more broadly. Nor, in Crown's submission, does the other evidence relied upon by Counsel Assisting – high level, assertions by two anonymous witnesses[1224] – provide a sound basis for a finding that Crown encourages or condones such behaviour.[1225]

The Hasna case study

F.151. Given the reliance placed on Mr Hasna's evidence in the submissions of Counsel Assisting,[1226] it is necessary to say something further about it. Mr Hasna is a former black tier member who, during certain periods, frequently attended the Mahogany Room. He gave evidence in private session on 3 May 2021.

F.152. Mr Hasna's assigned host made a statutory declaration generally in support of Mr Hasna dated 10 April 2021. Mr Hasna's assigned host, formerly a VIP host working under Mr Lawrence, was terminated from Crown on the basis of serious (and illegal) misconduct, including fraud against Crown.[1227] .

F.153. Mr Hasna alleged that:

(a) in May 2016, he lost $100,000 in a single evening, and the bank cheque he had used to buy in for chips was subsequently dishonoured;[1228]

(b) Crown offered to "waive" the $100,000 debt, or permitted him to continue gambling despite incurring that debt;[1229]

1220 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0129, [6.4.3(d) and (e)].

1221 Lawrence T1766:14-T1767.29.

1222 Exhibit RC071 CRW.998.001.0401 Lawrence at [18].

1223 Lawrence T1770.35-38.

1224 Note that Employee 6 did not give evidence that they had ever seen, let alone engaged in, such conduct. They were simply responding to hypothetical scenarios posited by Counsel Assisting: T572.6-19.

1225 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0129, [6.4.3(g)].

1226 See COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0128-9 [6.4.3]; .0139-40 [6.19]-[6.26].

1227 Exhibit RC071 CRW.998.001.0401 Lawrence at [34] – [35].

1228 COM.0004.9990.0001 Hasna at 0035-7.

1229 COM.0004.9990.0001 Hasna at 0038.

(c) at that time he told his assigned host (referred to above), that he was in financial difficulty and was considering self-exclusion, but his assigned host discouraged him from self-excluding;[1230] and

(d) between 2016 and 2019 he continued to gamble at Crown, losing approximately $5 million. [1231]

F.154. While it is the case that, until recently, some patrons with gambling debts were permitted to continue gambling at the casino, and that Mr Hasna was such a patron, that practice has now ceased at Crown.[1232]

F.155. Crown submits that Mr Hasna's evidence is otherwise of little assistance to the Commission. It was unclear and unreliable in material respects.

F.156. *First,* Mr Hasna twice appeared to assert that Crown offered to "waive" the debt on condition that he continued gambling at Crown.[1233] This offer was said to have been conveyed to him by his assigned host, on behalf of Mr Lawrence.[1234]

F.157. Mr Hasna's assigned host's statutory declaration does not, however, mention this alleged offer.[1235]

F.158. Mr Lawrence's unchallenged evidence was that he has never received a request to waive a debt owed to Crown, he has never done so and, in fact, he has no authority to do so.[1236]

F.159. No document suggests any such offer was made and on Mr Hasna's own account he in fact paid back the $100,000.[1237] To the extent Mr Hasna made an allegation regarding the forgiveness of a debt, Crown submits that it should be rejected.

F.160. In fairness to Mr Hasna, at other points he appeared to claim that he was told he could continue to gamble provided that he paid back the debt over time.[1238] To the extent that was his evidence, Crown accepts it to be accurate: he was permitted to continue to gamble and subsequently repaid the debt.[1239] But it is problematic that the more sweeping claim was made.

1230 COM.0004.9990.0001 Hasna at 0038.

1231 COM.0004.9990.0001 Hasna at 0039.

1232 Exhibit RC071 CRW.998.001.0401 Lawrence at [31].

1233 COM.0004.9990.0001 Hasna at 0038 ("management at casino were happy to waive the $100,000"), 0040 ("you don't have to pay us").

1234 COM.0004.9990.0001 Hasna at 0038, 0040.

1235 Exhibit RC0179 WIT.0001.0001.0071 Freeman.

1236 Exhibit RC071 CRW.998.001.0401 Lawrence at [16].

1237 COM.0004.9990.0001 Hasna at 0038-39.

1238 COM.0004.9990.0001 Hasna at 0038, 0040 ("you just pay us back when you win").

1239 Exhibit RC071 CRW.998.001.0401 Lawrence at [20]-[21]; Lawrence T1781.43-1782.12.

F.161. *Second*, Mr Hasna repeatedly asserted that between May 2016 and the time of his ban in 2019, he had lost approximately $5 million gambling at Crown.[1240]

F.162. Crown's records indicate, however, that his net loss over that period was $526,810. Whilst that is undoubtedly a substantial sum, it is far less than what Mr Hasna claimed.[1241] Mr Lawrence's evidence was that the figures in Crown's records would be "close to accurate" given the level of supervision and scrutiny in the Mahogany Room, where Mr Hasna gambled.[1242]

F.163. Mr Hasna was asked about the apparent discrepancy, and was unable to offer any explanation except that Crown's records must be wrong.[1243] Further, to Crown's knowledge – despite Counsel Assisting and the Commissioner specifically raising the issue of evidence with him, and Mr Hasna asserting that "[t]he figures are not a problem, the figures we'll be able to justify and prove"[1244] – Mr Hasna has not produced any evidence to substantiate his alleged $5 million loss.

F.164. In those circumstances, Crown submits that his evidence in this regard should not be accepted.

F.165. *Third*, Mr Hasna asserted that he had self-excluded from Crown on two occasions: in 2012 and again in 2015.[1245]

F.166. It is true that he self-excluded in 2012.[1246]

F.167. It is not true that he self-excluded in 2015. In fact, he was subject to a WOL at this time due to his threatening and abusive behaviour towards Crown staff.[1247]

F.168. *Fourth*, Crown also notes that Counsel Assisting refer to two examples of Mr Hasna playing for 12 hours or more.[1248] Yet these were not truly representative, since they were the *only* such examples recorded during the entire period from December 2014 to December 2019.

F.169. In fact, Mr Hasna generally attended Crown for periods of less than 5 hours, as the records relied upon by Counsel Assisting during the hearing show.[1249] Those

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1240 COM.0004.9990.0001 Hasna at 0004, 0006, 0039, 0040.

1241 Exhibit RC071 CRW.998.001.0401 Lawrence at [22]; Exhibit RC0172d CRW.512.090.0096 Hasna Player Yearly Transaction Report; Exhibit RC0172c CRW.512.090.0047 Player Rating Transaction Report.

1242 Exhibit RC071; CRW.998.001.0401 Lawrence at [23].

1243 Hasna COM.0004.9990.0001 at 0043-0044.

1244 Hasna COM.0004.9990.0001 at 0056.

1245 Hasna COM.0004.9990.0001 at 0017.

1246 Exhibit RC071 CRW.998.001.0401 Lawrence at [33].

1247 Exhibit RC071 CRW.998.001.0401 Lawrence at [33].

1248 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0139, [6.6.20].

1249 Exhibit RC0180 WIT.0001.0001.0072 Patron Detail Report for Ahmed Hasna at .0078-.0088.

records undermine Mr Hasna's claim, relied upon by Counsel Assisting, that on "many occasions" he gambled "for 10 hours in a row, or 11, 12, 13".[1250]

F.170. It is against that backdrop that Mr Hasna's evidence touching on Crown's practices in the Mahogany Room must be considered (Crown's acceptance of a bank cheque made out to Mr Hasna is addressed in Part H.3below).

F.171. In particular, Counsel Assisting rely upon Mr Hasna's evidence to support the proposition that Mahogany Room hosts are instructed to discourage people from self-exclusion.[1251] In that regard, Mr Hasna claimed that:[1252]

(a) after the bank cheque was dishonoured, he told his assigned host he was "in a financial hole" and was considering permanent self-exclusion;

(b) Mr Freeman told him to "hold off" and then, on instruction from Mr Lawrence, sought to discourage him from self-excluding.

F.172. Crown does not know what Mr Hasna's assigned host said to Mr Hasna during private conversations, on this or any other topic. His employment has been terminated by Crown, and he was not called as a witness by the Commission.

F.173. Crown accepts that if Mr Lawrence had instructed Mr Freeman to discourage Mr Hasna from self-excluding that would be a serious matter. But there is no credible evidence that this occurred.

F.174. Mr Hasna's assigned host does not say in his statutory declaration that he told Mr Lawrence anything about Mr Hasna's financial circumstances or desire to self-exclude.[1253] Mr Lawrence's evidence was that he was not aware that Mr Hasna was considering self-exclusion (if he indeed was).[1254] Further, as noted above, he has never tried to talk a patron out of self-excluding[1255] and does not instruct staff to discourage customers from self-excluding.[1256] It follows that Mr Hasna's evidence does not provide any proper basis for the Commission to conclude that Crown attempted to discourage him from self-excluding, or for any broader conclusions about Crown's practices in the Mahogany Room.

1250 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0129, [6.4.3] (fn840); COM.0004.9990.0001 Hasna at 0033.

1251 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0140, [6.6.23] - [6.6.26].

1252 COM.0004.9990.0001 Hasna at 0038.

1253 Exhibit RC0179 WIT.0001.0001.0071_0001 Freeman at [8].

1254 Lawrence T1783.21-23.

1255 Exhibit RC071 CRW.998.001.0401 Lawrence at [18].

1256 Lawrence T1770.35-38.

Implications for suitability

F.175. As noted above, in the past, some patrons with gambling debts were permitted to continue to gamble at Crown. That practice has now ceased.[1257]

F.176. Mr Lawrence's evidence was that Crown's Executive General Manager, Table Games, Mr Barnett had a "firm" view that the former practice was inappropriate and had raised the issue internally before this Commission had even commenced. Contrary to Counsel Assisting's submission,[1258] Mr Lawrence gave evidence that he believed the practice would have ceased even if it had not been raised by the Commission.[1259]

F.177. Otherwise, for the reasons given above, Mr Hasna's evidence is not a sound basis for making any more general findings about Crown's Responsible Gambling systems or processes.

F.7.14 Other matters

F.178. Section 68 of the *Casino Control Act*: Counsel Assisting submit that Crown "continually contravened" s 68 of the *Casino Control Act*.[1260] In response to that submission, Crown refers to Part H.3. For the reasons there set out, Crown submits that it did not contravene s 68 in the ways contended for by Counsel Assisting. Accordingly, the alleged contraventions do not bear upon Crown's suitability.

F.179. Pre-commitment: Counsel Assisting criticise Crown for permitting patrons to continue playing after they have reached the gambling limits they set using YourPlay.[1261] But YourPlay is an initiative of the Victorian Government. The ability to continue playing after reaching time or loss limits and the ability to set unrealistic limits are features of that initiative, as established by the Victorian Government. Crown is not even able to find out when an individual player might reach his or her limit.[1262] Nor is it even permitted to allow gaming on a machine under an alternative pre-commitment system or scheme to YourPlay[1263] — that is why, when YourPlay was introduced, Crown was required to discontinue the application of its Play Safe Limits scheme to EGMs.

1257 Exhibit RC071 CRW.998.001.0401 Lawrence at [31].

1258 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0129, [6.4.3(d)].

1259 Lawrence T1778.3-6.

1260 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.1.4(b)], [6.6.1].

1261 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.3.4.7]-[6.4.10].

1262 Lucas T1591.33-40.

1263 *Gambling Regulation Act* s 3.8A.13. It should also be noted that the official YourPlay guidance instructs staff: "Do not suggest a limit but let the player choose for themselves" (CRW.512.096.0004 at .0007). Bauer T1354.20-24, T1354.36-45.

F.180. The RG Centre: Crown accepts that the number of interview rooms at the RGC needs to be expanded, as Counsel Assisting submits.[1264]But the RGAP has already recommended this,[1265] and Crown has accepted and is in the process of implementing that recommendation.[1266]

F.181. Psychologists: Counsel Assisting's suggestion that the psychologists (or RGPs) that Crown employs do not interact with patrons in an appropriate, professional manner is unfair (to them and Crown) and should be rejected.[1267] As Ms Bauer explained, RGPs perform a range of roles, including providing initial counselling sessions to patrons and providing advice to the business.[1268] The fact that they advise the business (and their position description refers to having a business perspective) [1269] does not mean that they will discard their professional ethics when providing counselling services to a customer. Ms Bauer firmly rejected such a proposition.[1270] Moreover, it would be unfair for the Commission to make a finding contrary to this evidence in the absence of putting such a serious proposition to any RGPs at Crown.

F.182. As to the relatively low number of counselling sessions with psychologists to which Counsel Assisting refer,[1271] Ms Bauer's evidence was that these numbers represented only formally recorded counselling sessions and that RGPs had various other interactions with customers that would not be recorded in that line item of the RG Register.[1272] Further, it should be recalled that patrons are referred for further sessions to external services, given, as Ms Bauer noted, that it is not appropriate for patrons to be returning to the casino environment for counselling.[1273]

F.183. The Mahogany Room: in response to [6.4.3] to [6.4.4] of Counsel Assisting's submissions, Crown refers to Part F.7.13 above.

F.184. Self-exclusion: as to Counsel Assisting's submissions concerning self-exclusion:

(a) The submission that Crown's self-exclusion process is "not made known to customers" should be rejected.[1274] None of the evidence cited for the

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1264 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [4.28(b)], though Crown does not accept that any interviews are being conducted "in public".

1265 Bauer T1216.47-T1218.11.

1266 Bauer T1217.45-T1218.24.

1267 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.27]-[4.29].

1268 Bauer T1211.15-26.

1269 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.29].

1270 Bauer T1208.45-T1209.7.

1271 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [4.30].

1272 Bauer T1212.34-41.

1273 Bauer T1328.24-41.

1274 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.32].

proposition supports it,[1275] and the number of Crown's interactions with patrons concerning self-exclusion (782 on average, excluding the CY2020 given the COVID pandemic[1276]) suggests that it is wrong.

(b) The submission that Crown only provides information about self-exclusion on request and that staff are directed not to prescribe self-exclusion[1277] is based on an unfair reading of a policy document[1278] and is inconsistent with evidence Ms Bauer gave when asked about that document.[1279] It is clear from the document that self-exclusion is something that can be freely raised with patrons and not only on request. As Ms Bauer explained, the reference in the policy document to not "prescribing" self-exclusion is intended to reflect that the decision to self-exclude must be voluntary (noting that s 72(2A) of the CCA uses the language of "voluntarily").[1280] It is not an injunction against raising self-exclusion as an option that might be suitable for a customer.[1281]

(c) Counsel Assisting's broad statement that "some Crown staff actively discourage patrons from self-exclusion"[1282] overstates the evidence. Employee 6, a host in the Mahogany Room, was asked by Counsel Assisting whether he had ever heard another host say something to the effect of "Cool your heels, take a few days to think about". He answered: "Not directly, no."[1283] He then went on to indicate, under prompting by Counsel Assisting, that he might have been told something to that effect in conversation with another host.[1284] He then agreed that he would not be surprised if that sort of thing happened "occasionally" in the Mahogany Room.[1285] That is not a sound basis on which to make any finding wider than that self-exclusion may have occasionally been discouraged in the Mahogany Room.

(d) As to Counsel Assisting's criticism of the delay in the introduction of facial recognition,[1286] Crown refers to Part E.2.2 above. In any event, the technology is now in place and, as Counsel Assisting note, is a

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1275 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at (fn898).

1276 Exhibit RC0109 CRW.998.001.0301 Bauer at [50]-[56].

1277 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.33].

1278 Exhibit RC0109ee CRW.510.030.1350 Annexure ee, Self-Exclusion from Crown Casinos policy (October 2019).

1279 Bauer T1336.26-46.

1280 Bauer T1336.26-46.

1281 Crown also offers the Time Out Program as an alternative to self-exclusion in circumstances where customers are intimidated by the self-exclusion process: see, e.g., Bauer at T1342.1-21.

1282 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.34].

1283 Employee 6 T571.32-45.

1284 Employee 6 T571.47-T572.4.

1285 Employee 6 T572.11-21.

1286 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [6.4.35].

comprehensive system. An RGA gave evidence that it is tremendously effective at picking up self-excluded patrons.[1287]

F.7.15 Claim that people who gamble at Crown three times more likely to experience harm

F.185. It is appropriate to address one final matter, which was not the subject of any criticism of Crown in Counsel Assisting's submissions, but arose from the evidence of Ms Billi.

F.186. Ms Billi said in her statement that data from the *Victorian Population Gambling and Health Study 2018-2019*[1288] (the **Population Study**) demonstrated that people who gamble at Crown are three times more likely to be experiencing problem gambling when compared with all Victorian adults who gamble.[1289]

F.187. The statistic is not actually in the Population Study, as Ms Billi confirmed at the hearing.[1290]

F.188. On 18 June 2021, Ms Billi, via solicitors assisting the Commission, provided Crown with a document outlining the methodology used to arrive at the following statistics:

(a) the percentage of problem gamblers amongst Victorians who have gambled in the past 12 months is 1.1% (this statistic is contained in the Study); and

(b) the percentage of problem gamblers amongst people who gambled at Crown in the past 12 months is 3.3% (this statistic, as mentioned, is not in the Population Study).

F.189. Before addressing the reliability of the latter statistic, it is necessary to make some observations about how the Population Study was conducted.

F.190. The Population Study conducted 10,638 telephone interviews with Victorians.[1291] As part of the interviews, the authors recorded the gambling venue or venues at which the participants gambled and generated a Problem Gambling Severity Index score for each individual. Scores fells into low risk, moderate risk, and problem gambling ranges.[1292]

1287 Witness number 7 T1052.33-44

1288 Exhibit RC0322yy CRW.510.073.3152 Annexure yy, Crown Melbourne Self Exclusion Program Policy (October 2019).

1289 Exhibit RC0181 VRGF.0002.0001.0001 Billi at [52.5].

1290 Billi T1841.10-17.

1291 Exhibit RC0322yy CRW.510.073.3152 Annexure yy, Crown Melbourne Self Exclusion Program Policy (October 2019) at p 1.

1292 Exhibit RC0322yy CRW.510.073.3152 Annexure yy, Crown Melbourne Self Exclusion Program Policy (October 2019) at p 5.

F.191. 7,651 Victorians who had gambled in the past 12 months were interviewed. Of that number, 1.1% (84) were problem gamblers.

F.192. Of the number of Victorians who had gambled in the past 12 months, 625 of the participants had gambled at Crown. 3.3% (~21) of those participants were problem gamblers.

F.193. There are at least three problems with the reliability of this 3.3% figure.

F.194. *First*, it is not statistically significant.

F.195. An indicator that conclusions drawn from statistical analysis are meaningful is that they are "statistically significant". Statistical significance means a determination that data are not explained by random chance. Statisticians determine if figures are statistically significant by performing various types of analyses – for instance, t-tests. In doing so, statisticians set a confidence interval which is generally 95%.

F.196. On page 172 of the Population Study (Appendix D), the authors tabulate the percentages of moderate and problem gamblers in Victoria and compare different sociodemographic characteristics with the population as a whole. The table includes the 1.1% prevalence rate of problem gamblers in Victoria, as well as other figures such as 1.4%* for Males, 0.7%* for Females, 1.1% for Melbourne itself, and 0.8% for the rest of Victoria.

F.197. Importantly, the Population Study notes which of these figures are statistically significant via the use of an asterisk (*).[1293] Page six of the Population Study notes the statistical significance of these figures was determined via the use of t-tests with a confidence interval of 95%. This means that the figures that are marked with an asterisk can more confidently be said to be reliable, and not merely produced by chance.

F.198. As noted above, Ms Billi's 3.3% figure is absent from the published results of the Population Study. Importantly, Ms Billi's methodology document explaining how this figure was derived fails to state whether the figure is statistically significant. If it is the case that a t-test was not undertaken on this figure, further statistical analysis of the data should be undertaken (a t-test or other relevant statistical test) to determine whether this conclusion is reliable and not simply a result of chance.

F.199. *Second*, the sample size is not sufficient to draw an accurate conclusion.

F.200. The sample size of individuals interviewed as part of the Study who indicated they had gambled at Crown over the relevant 12-month period was very small (only 625 of the 7631 total Victorian gamblers interviewed). Only 21 of these participants were found to be problem gamblers. The introduction to the

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[1293] Exhibit RC0322yy CRW.510.073.3152 Annexure yy, Crown Melbourne Self Exclusion Program Policy (October 2019) at p 6.

Population Study itself includes the following warning in relation to risks associated with reliance on figures based on small sample sizes: "Some sections and questions have a small sample size – these findings should be interpreted with caution."[1294]

F.201. Notably, the findings with respect to females and males (1.4% of male Victorian gamblers and 0.7% of female Victorian gamblers are problem gamblers) were both deemed statistically significant. It is likely that the large sample sizes of both subsets (4888 men and 5750 women) allowed the statistical significance analysis to be undertaken.

F.202. *Third*, as the 3.3% figure was not published in the Study, it has also not gone through the *traditional peer-review process* (vetting for reliability and enduring critiques). The peer-review process itself may also involve a test for statistical significance.

F.203. For these reasons, Crown submits that the unpublished 3.3% figure referred to in Ms Billi's statement should not be relied upon by the Commission.

F.8. Suitability and the public interest

F.204. Counsel Assisting submits that it is open to the Commission to find that Crown has:

(a) continually failed to implement the RG Code in contravention of s 69 of the *Casino Control Act*;

(b) continually contravened s 68 of the *Casino Control Act*; and

(c) contravening cl 28 of the Casino Agreement.

F.205. Counsel Assisting submit that these alleged contraventions, and the manner in which Crown has approached its Responsible Gambling obligations, leave it open for this Commission to find that Crown is not suitable to hold the casino licence, and that it is not in the public interest for Crown to hold a casino licence.

F.206. We addressed the alleged failure to implement the RG Code at paragraphs F.73-F.80 above and the alleged contraventions of s 68 of the CCA Act at Part H.3 below. For the reasons there submitted, those matters do not support a finding of unsuitability or that it is not in the public interest for Crown to hold the casino licence.

F.207. Nor does the alleged contravention of cl 28 of the Casino Agreement support such a finding. Clause 28 of the Casino Agreement requires Crown to conduct its operations in the casino in a manner that has regard to the best operating practices in casinos of a similar size and nature to the Melbourne casino. As

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1294 Exhibit RC0322y CRW.510.073.3152The *Victorian Population Gambling and Health Study 2018-2019*, published by the VRGF in March 2020 at p 6.

noted above, a striking feature of Counsel Assisting's approach to the issue of Responsible Gambling has been the absence of attention to the relevant practices and processes in comparable casinos. Counsel Assisting led no evidence to suggest that there is any casino (comparable to Crown or otherwise), anywhere else in the world, that has Responsible Gambling systems and processes that currently address problem gambling more effectively than Crown's. Nor was the extent to which Crown has sought to identify and benchmark itself against the Responsible Gambling systems of other casinos explored with Crown's witnesses.[1295] The alleged contravention of cl 28 is not supported by the evidence.[1296]

F.208. The manner in which Crown has approached its Responsible Gambling obligations also does not, in Crown's submission, warrant a finding that it is unsuitable or irredeemably unsuitable to hold the casino licence. or that it is not in the public interest for Crown to hold a casino licence.

F.209. As noted above, Crown accepts that the evidence has shown some serious deficiencies in aspects of its Responsible Gambling services. It accepts that substantial work is required to improve them. But, in Crown's respectful submission, they do not warrant a finding of unsuitability or irredeemable unsuitability. As the matters referred to above show, since well before this Commission started, Crown has had a genuine and demonstrated desire to improve its Responsible Gambling services. There is no lack of will, at any level of the organisation, to implement any and all changes that are required to deliver its gambling products and services more responsibly and to minimise further the harm that they can cause. For the reasons submitted above, Crown can, in its respectful submission, be relied upon to make the changes required to continue to improve its Responsible Gambling services, including by having regard to further changes that this Commission may recommend.

1295 For example, Ms Bauer was not taken to Exhibit RC0322eeee CRW.510.073.0723 Annexure eeee Email chain between Sonja Bauer and Mr Blackburn et al (7 April 2021), which sets out benchmarking undertaken by Crown, or to which Crown has had regard, over the last five years.

1296 See, for example, Exhibit RC0322eeee CRW.510.073.0723 Annexure eeee, Email chain between Sonja Bauer and Mr Blackburn et al (7 April 2021).

G. BONUS JACKPOTS

G.1. This section of Crown's submissions addresses Crown's approach to the payment of casino tax under the *Casino (Management Agreement) Act 1993* (Vic) (**Casino Management Act**) with respect to "Bonus Jackpot" promotions relating to EGMs.

G.2. Broadly speaking, two issues arose regarding these promotions during the hearings and in Counsel Assisting's submissions:

(a) the extent to which Crown's treatment of the relevant promotions has resulted in it underpaying casino tax; and

(b) the significance of the circumstances surrounding Crown's introduction of the food, parking and hotel deductions from 2012, and Crown's conduct in relation to the matter (including its disclosure of that approach to the VCGLR and this Commission) in the assessment of suitability of Crown and its associates.

G.3. We first set out facts and matters relevant to Crown's approach to the tax treatment of "Bonus Jackpots" promotions (Part **G.1**). We then address the extent to which, Crown has underpaid its casino tax (Part **G.2**). Finally, we address the significance of Crown's approach to the tax treatment of the relevant promotions to its current suitability (Part **G.3**).

G.1. Relevant facts and matters

G.1.1 Casino tax and the State Tax Credit

G.4. Clause 22.1(b) of the Management Agreement between Crown and the State (being Schedule 1 to the Casino Management Act[1297]) provides that Crown is to pay to the State, for each month that it conducts gaming, a percentage of the amount of Gross Gaming Revenue (**GGR**) attributable to the operation of EGMs, as part of casino tax. In 2009, the percentage was 22.97%; it then increased by 1.72% each year until 2014, such that the applicable percentage is now 31.57%.[1298]

G.5. GGR is defined in cl 2 of the Management Agreement as:

> The total of all sums, including cheques and other negotiable instruments whether collected or not, received in any period by [Crown] from the conduct or playing of games within the Temporary Casino or the Melbourne Casino (as the case may be) less

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1297 Sections 6A to 6J of the *Casino Management Act* provide that the Management Agreement (as varied) is ratified and takes effect as if it had been enacted in the Act.

1298 Exhibit RC0502 COM.0005.0001.1056 Consolidated Management Agreement (20 September 1993) at cl 22.1.

> the total of all sums paid out as winnings during that period in respect of such conduct or playing of games but excluding any Commission Based Players' Gaming Revenue

G.6. Clause 22C.2 of the Management Agreement provides that the amount of casino tax to be paid by Crown is to be reduced by the State Tax Credit. The State Tax Credit is defined in cl 2 as:

> an amount equivalent to the amount determined under Division 126 of the GST Act, declared by the Company to the Commissioner as the Global GST Amount with respect to gambling supplies to which clauses 22 and clause 22A apply.[1299]

G.7. Clause 22A concerns tax payable on Commission Based Players' Gaming Revenue. Commission Based Players are persons who participate in premium player arrangements or junkets that meet certain requirements.[1300]

G.1.2 Crown's reporting of GGR and Bonus Jackpot promotions

G.8. The VCGLR and Crown have agreed upon SOPs for Revenue, Audit and Reporting, which specify how Crown is to report its GGR to the VCGLR. The SOPs for Revenue, Audit and Reporting in force at all relevant times have provided that GGR:[1301]

> is calculated by the Electronic Monitoring System (**EMS**). Revenue will be Turnover less Game Wins less Jackpot Startouts less Variable Prize Jackpot Increments less Fixed Prize Jackpot Increments less Bonus Jackpots.

G.9. The EMS (also referred to as "DACOM"[1302]) is Crown's EGM management system. The EMS is configured such that any Pokie Credits (or "free bets") that Crown offers to patrons as part of a promotion are recorded as "Turnover".[1303] Accordingly, unless free bets are also classified as a "Game Wins" or one of the stated categories of "Jackpots", they form part of Crown's reported GGR. The inclusion of free bets in the calculation of "Turnover" is a function of the operation of the DACOM system, and does not reflect any requirement of the VCGLR.

G.10. Until recently, Crown had eight categories of promotions that it classified as "Bonus Jackpots" for the purpose the EMS. They were:[1304]

1299 The GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Global GST Amount has the same meaning as in the GST Act.

1300 See Exhibit RC0502 COM.0005.0001.1056 Consolidated Management Agreement (20 September 1993) at cl 2.

1301 Version 2.0 of the SOP (22 December 2011) is CRW.563.003.9092. Version 3.0 was introduced on 6 July 2012 and is CRW.563.003.8959.

1302 Exhibit RC1231 CRW.998.001.0551 Herring II at [7].

1303 Exhibit RC0424 CRW.998.001.0508 McGregor II at [11].

1304 See Exhibit RC0425 CRW.998.001.0502 Herring I at [5] and Exhibit RC0425c CRW.512.191.0036 Annexure c, List of loyalty program promotions in respect of which Crown makes deductions. The members' next visit must be within the stated offer period.

(a) Pokie Credit Rewards (Welcome Back / Free Credits), which involves awarding Pokie Credits to Crown Rewards members that are redeemable on the members' next visit;[1305]

(b) Mail Outs (Bonus Pokie Offers), which involve mailing or emailing offers of Pokie Credits to members that may be redeemed on the members' next visit;

(c) Pokie Credits (Matchplay), which involves the redemption of Crown Rewards points for Pokie Credits on gaming machines;

(d) Random Riches (Carded Lucky Rewards), which involve offers of Pokie Points to eligible groups based on certain data analytics;

(e) Jackpot Payments, which are time-based jackpots where patrons have the chance to win rewards randomly on participating gaming machines;

(f) Consolation, which is similar to Jackpot Payments, save that customers may receive double their wins for a specified time;

(g) Pokie Credit Tickets, which are tickets issued to customers for redemption (and conversion into Pokie Credits) at gaming machines; and

(h) Bonus Jackpots, which involve the provision of dining, accommodation and parking benefits that are generated based on the members' level of play on gaming machines and their membership tier/status.

G.11. Crown has very recently ceased treating the costs of the final category of promotions (ie, the promotions referred to in [G.10(h)]) as deductions.[1306] Crown has also determined that it will no longer run aspects of the Jackpot Payments promotion (referred to in [G.10(e)]). It continues to run the other Bonus Jackpot promotions and to treat the costs of them as deductions.

G.12. The expression "Bonus Jackpots" can be used to describe all eight categories of promotions together, as well as the final category of promotions only. In these submissions, we use the expression "Bonus Jackpots" to refer to all eight categories of promotions. We refer to the final category of promotions as the "Category 8 promotions".[1307]

1305 The next visit must be within 14 days. Crown Rewards Senior Members can receive additional bonuses.

1306 On 7 July 2021, Crown notified the VCGLR that it would cease claiming those costs as deductions with effect from 1 June 2021: CRW.512.242.0029 Email from Crown to the VCGLR.

1307 It is appropriate to note at this juncture, that although the use of the "bonus jackpots" terminology attracted comment and questioning during Commission proceedings, the terminology reflects the categorisation of amounts according to the industry terminology relating to the terms of the SOP referred to above. The use of that terminology, in circumstances where the term "jackpot" means something different in ordinary language, should take account of that context.

G.1.3 The decision to treat the costs of the Category 8 promotions as deductions

G.13. Crown has a longstanding "Gaming Machine Food Program" that involves patrons receiving free or discounted meals based on their level of play and Crown Rewards status.[1308] In October 2011, Crown began considering whether it could treat the program as a Bonus Jackpot, and claim costs of the program as a deductible expense for the purpose of calculating its GGR.[1309]

G.14. In about March 2012, Crown sought advice from its legal and finance departments in respect of this initiative. The head of Crown's legal department at the time, Debra Tegoni, advised that it was not clear whether or not it was permissible to claim the costs of the program as deductions. She identified various arguments for and against the deductions being permissible, although she concluded that the "better argument" is that they were permissible.[1310] Her advice also stated:

> This is of course only relevant if the change is picked up hence Finance and Revenue Audit's view on how likely it is that the change will be obvious and assessing this risk in making this decision is critical.[1311]

G.15. The Finance and Revenue Audit department advised, *inter alia*:[1312]

> Factoring in the refurbishment, economic environment, impacts from negative publicity and the increase in Gaming Machines Gaming Tax by 1.72%, we are of the opinion that the proposed change will not be noticed by the VCGLR.

G.16. Crown subsequently prepared a slide pack concerning the proposal that was dated 30 March 2012, and reproduced this statement from the Finance and Revenue Audit department. It also referred to the advice of Ms Tegoni as an attachment.[1313] It is unclear on the evidence who prepared the slide pack. It is also unclear on the evidence by and to whom it was presented (if anyone).[1314]

1308 Exhibit RC0801 CRW.512.156.1072 Crown Melbourne Gaming Machines Food Program Initiative Presentation (October 2011) at .1077 and 1078.

1309 Exhibit RC0801 CRW.512.156.1072 Crown Melbourne Gaming Machines Food Program Initiative Presentation (October 2011) at 1079.

1310 Exhibit RC0775 CRW.512.135.0061 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot (28 March 2012) at 0063.

1311 Exhibit RC0775 CRW.512.135.0061 Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot (28 March 2012) at 0064.

1312 Exhibit RC0818b CRW.540.010.5380 Annexure b, Memorandum regarding Proposal Classifying Gaming Machines F&B Promotional Program to be part of Bonus Jackpot (22 March 2012).

1313 Exhibit RC0224 RW.512.117.0019 Crown Melbourne Gaming Machines Food Program Initiative Presentation (March 2012) at 0030.

1314 At some point, however, the slide pack appears to have been received by the following persons: Rowen Craigie, Greg Hawkins, Justine Henwood, Richard Longhurst, Neil Spencer, Debra Tegoni, Barry Felstead, Ken Barton, Xavier Walsh, Alan McGregor, Joshua Preston, Mark Mackay and Michelle Fielding: Exhibit RC1231 CRW.998.001.0551 Herring II at [16]. When

G.17. Crown subsequently decided to proceed with treating the Gaming Machine Food Program as a Bonus Jackpot promotion (creating the Category 8 promotions), and to treat costs of the program as deductions for the purpose of calculating its GGR. The decision appears to have been made by Rowen Craigie (then CEO of Crown Resorts), Greg Hawkins (then CEO of Crown Melbourne), Richard Longhurst (then COO Gaming Crown Melbourne), Neil Spencer (then Executive General Manager Gaming Machines) and Debra Tegoni.[1315] None of those individuals is currently employed by Crown.

G.18. Crown accepts that the materials referred to in [13]-[15] above indicate that their decision was influenced by an expectation (or at least a hope) that the VCGLR would not notice the change in Crown's tax treatment of the Gaming Machine Food Program.

G.19. Implementing the initiative required modifications to be made to DACOM, which had to be approved by the VCGLR. The VCGLR approved the modifications to DACOM on about 2 July 2012.[1316] The VCGLR was informed that the proposed modifications concerned "additional bonus types", including in respect of "Bonus jackpots",[1317] but there is no evidence of it receiving details of the those "additional bonus types".

G.20. Crown started treating different aspects of the Gaming Machine Food Program as Category 8 promotions progressively, over the period 11 July 2012 to 12 September 2012.[1318] Counsel Assisting submits that the "only rational explanation" for the staged rollout was to "conceal the deductions from the regulator".[1319] That is not correct. The unchallenged evidence is that the staged roll-out occurred for "technical" reasons, "to ensure that the systems operated as designed".[1320]

G.21. At some point prior to 29 November 2012, a decision was made to expand the Category 8 promotion to include certain parking and accommodation benefits. When that decision was made is unclear on the evidence. The changes appear

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each of these individuals saw the slide pack is unclear on the evidence – Mr Herring did not say when they received it.

1315 Exhibit RC0224 CRW.512.117.0019 Crown Melbourne Gaming Machines Food Program Initiative Presentation (March 2012) at .0030.

1316 Exhibit RC0774 CRW.512.135.0055 Letter from Steve Thurston to Matt Asher (2 July 2012).

1317 Exhibit RC0774 CRW.512.135.0055 Letter from Steve Thurston to Matt Asher (2 July 2012) at .0058 and .0059.

1318 Different aspects of the Gaming Machine Food Program appear to have been treated as deductions in the period 11 July 2012 to 12 September 2012. See CRW.512.164.0583 RE: Bonus Jackpots.

1319 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.16].

1320 Exhibit RC1231 CRW.998.001.0551 Herring II at [10].

to have been implemented between 29 November 2012 and 25 September 2013.[1321]

G.1.4 VCGLR's awareness of the deductions

G.22. The VCGLR did, at some point, become aware that Crown was treating all of the Bonus Jackpots promotions as deductions for the purpose of calculating its GGR. It is unclear on the evidence when this occurred, but it was no later than May 2018.[1322]

G.23. In July 2017, Tracy Shen of the VCGLR requested certain information from Matthew Asher of Crown about Bonus Jackpots.[1323] She sent her request to an incorrect email address,[1324] which caused some delay in providing the requested information. In November 2017, Ms Shen and Mr Asher met, and he addressed her queries.[1325]

G.24. On 28 May 2018, the Department of Justice wrote to the VCGLR, expressed doubt about whether Crown was entitled to treat costs of certain Bonus Jackpots promotions as deductions, and said "this is worthy of investigating".[1326]

G.25. The VCGLR immediately started an investigation. On 29 May 2018, Mr Cremona wrote to Ms Fielding seeking details of Crown's treatment of Bonus Jackpots and said that he "need[s] to speak to an SME [subject matter expert] quite urgently".[1327]

G.26. Ms Fielding promptly organised this. By 31 May 2018, Mr Cremona had spoken with Peter Herring of Crown about various aspects of the promotions in

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1321 See CRW.512.164.0583 RE: Bonus Jackpots and Exhibit RC0329 CRW.512.156.1047 File Note regarding Gaming Machines Tax Initiatives – Round 2 (April 2013).

1322 See Exhibit RC0866 VCG.0001.0004.7414 Email from Jason Cremona to Tracy Shen (31 May 2018) and Exhibit RC0866a VCG.0001.0004.7415 Annexure a, Bonus Analysis Report (31 May 2018).

1323 Exhibit RC0759 CRW.008.015.1264 Email chain between Michelle Fielding, Joshua Preston and Jason Cremona (29 May 2018).

1324 X Walsh T3353.42-47; Exhibit RC0375 CRW.520.011.1337 Email chain between Michelle Fielding and Matt Asher et al (2 June 2018).

1325 Exhibit RC0375 CRW.520.011.1337 Email chain between Michelle Fielding and Matt Asher et al (2 June 2018).

1326 Exhibit RC0864 VCG.0001.0002.8488 Email chain between Tracy Shen and Jason Cremona et al (29 May 2018).

1327 CRW.520.024.8290 Urgent: Bonus Jackpots. Mr Cremona noted that Ms Shaw had been asking for similar information for some time, but it is unclear whether he knew that Ms Shaw's emails were incorrectly addressed, and that she had met with Mr Shaw in November 2017.

some detail.[1328] Mr Cremona also received a "DACOM Bonus Jackpot Analysis Report" (**Analysis Report**).[1329]

G.27. Analysis Reports provide a breakdown of the deductions that Crown claims for each category of Bonus Jackpots for a particular month.[1330] So by 31 May 2018 (if not before), the VCGLR was aware of the eight categories of Bonus Jackpots promotions, and that that Crown was deducting costs of each of them for the purpose of calculating its GGR.

G.28. On 31 May 2018, Mr Cremona asked Ms Fielding for further information to assist his investigation – to clarify his understanding of each of the Bonus Jackpot promotions, and form a view about whether or not the costs of them were properly deductible.[1331] Among other things, he asked:

> Can you please advise if I am correct in my interpretation
>
> - Bonus Jackpots deducted from Gaming Revenue are specific to amounts earned or awarded on a gaming machine. No amounts earned outside of the gaming machine, such as hotel rewards (if applicable) can be redeemed on a gaming machine and/or deducted from Gaming Revenue;
>
> - Crown do provide 'extra bonus promotions' to players (mail outs as an example) that a person can redeem when gaming on a gaming machine. These are not necessarily 'earned' but are paid out at the machine;
>
> - Bonus jackpots are only accumulated and deducted from gaming tax AFTER being redeemed/used and NOT when earned.
>
> - A patron cannot redeem 'loyalty points earned' for credits on a gaming machine. Bonuses must be earned or provided with a specific condition to earn the bonus, ie returning to Crown to earn bonus credits.

G.29. Mr Cremona also requested details of the operation of each of the eight categories of Bonus Jackpot promotions and sought that information by reference to the Analysis Report. He asked:[1332]

1328 Exhibit RC0816 CRW.520.024.8262 Email chain between Michelle Fielding and Peter Herring et al (31 May 2018). The first four dot points in that email are matters that Mr Cremona "noted" in or following his discussion with Mr Herring.

1329 Exhibit RC0866 VCG.0001.0004.7414 Email from Jason Cremona to Tracy Shen (31 May 2018) and Exhibit RC0866a VCG.0001.0004.7415 Annexure a, Bonus Analysis Report (31 May 2018). See also Exhibit RC0816 CRW.520.024.8262 Email chain between Michelle Fielding and Peter Herring et al (31 May 2018) (the final dot point at .8262 and the second dot point at .8263).

1330 An example of the reports is at CRW.563.007.4165 RE: and Exhibit RC0374 CRW.563.007.4174 Crown Southbank Bonus Jackpot Analysis Report (5 June 2018). See also X Walsh T3344.39-45.

1331 Exhibit RC0816 CRW.520.024.8262 Email chain between Michelle Fielding and Peter Herring et al (31 May 2018).

1332 Exhibit RC0816 CRW.520.024.8262 Email chain between Michelle Fielding and Peter Herring et al (31 May 2018).

> Can I also get an explanation of each of the 'Bonus Jackpots' outlined on the Bonus Jackpot Analysis Report. These include Free credits Program, Mail Outs, Matchplay, 'Jackpot Payments', Random Riches Promotion, Consolation BJ and each of the bonuses under the 'Bonus Jackpots' banner. Essentially with the explanation I am looking for information regarding a brief description of the bonus, how prize earned, how prize redeemed, etc.

G.30. Crown promptly responded to that request. On 5 June 2018, Ms Fielding provided all of the information that Mr Cremona sought,[1333] including details of each of the eight categories of Bonus Jackpots promotions.[1334] For the Category 8 promotions, she repeated that they were "[b]ased on Pokie Points earned on Gaming Machines", identified the benefits that were provided to patrons (ie, parking, accommodation and dining) and identified the number of Pokie Points that must be earned to receive those benefits. And she invited Mr Cremona to let her know if he had any further queries or concerns.[1335] Accordingly, from that time, it is clear that the VCGLR was aware of the nature of the deductions that were being made.

G.1.5 Advice from MinterEllison

G.31. In October 2018, Crown sought advice from MinterEllison about whether deductions it was claiming in respect of the Bonus Jackpots promotions were permissible.[1336]

G.32. In November 2018, MinterEllison provided written advice.[1337] That advice was not clear. It did not state whether or not Crown's approach to the tax treatment of the Bonus Jackpots promotions was permissible, nor whether it was likely to be permissible. Rather, it included statements which suggested that the deductions were impermissible, and referred to contrary arguments that the deductions may be permissible. For example, at [26] the advice stated:

> On a strict interpretation of Gross Gaming Revenue, to constitute a deductable, the amounts must be "won" by the player or otherwise paid out as winnings. On its terms, this definition would not seem to capture credits earned simply by repeat play, which is what the Gaming Machine Bonus Jackpot Program involves.

G.33. Then at [28], it stated:

1333 Exhibit RC0373 CRW.512.147.1181 Email chain between Michelle Fielding and Barry Felstead et al (5 June 2018).

1334 X Walsh T3249.42-46.

1335 On 6 June 2018, Mr Cremona asked two "follow up" questions (CRW.560.001.0785 Email from P Herring to M Fielding re URGENT Bonus Jackpots (6 June 2018) (with post-it note)) which Crown also answered (Exhibit RC0874 VCG.0001.0002.8491 Email chain between Tracy Shen, Jason Cremona and Michelle Fielding (8 June 2021)).

1336 CRW.560.001.0225 Email from J Preston to G Ward re Subject to Legal Professional Privilege - Bonus Jackpots.

1337 Exhibit RC0158 MEM.5000.0001.5440 Annexure a, Confidential memorandum (14 November 2018).

> On the other hand, paragraph 1.03 of the ICS [ie, Part II of Crown's Internal Control Manual[1338]] (sanctioned by the VCGLR) provides a helpful statement of intention in respect of the calculation of Gross Gaming Revenue. It provides that 'Crown will include as winnings to its patrons any prize paid out to its patrons on the level of play and in accordance with the rules of the game.' This appears to recognise that turnover based incentives, such as the Gaming Machine Bonus Jackpot Program may be able to be treated as 'winnings' for the purpose of the Gross Gaming Revenue.

G.34. On 16 April 2019, the VCGLR provided to Crown a draft of new Technical Requirements for Gaming Machines and Electronic Monitoring Systems in the Melbourne Casino (**TRD**), which specified various technical requirements for Crown's EGMs.[1339] Crown then sought further advice from MinterEllison about the Bonus Jackpots promotions, having regard to the proposed TRD.

G.35. MinterEllison gave that advice on 18 November 2019.[1340] Its advice was to the effect that whether the relevant items were deductible turns on the meaning of "sums paid out as winnings" in cl 2 of the Management Agreement, but that the proposed new TRD was nevertheless a helpful development.[1341] At [15], the advice stated:

> All of these are helpful developments for Crown and allow it to argue, with real force, that the Gaming Machine Bonus Jackpot Program:
>
> (a) is a form of bonusing system expressly contemplated in the New TRD; and
>
> (b) can be factored into the calculation of GGR in ways envisaged in the New TRD, including by deducting redeemed player loyalty points as amounts 'paid out as winnings'.

G.36. Further, at [16], the advice stated:

> In this respect, we note further that the New TRD also indicates that … the '*document will be used by the VCGLR to evaluate compliance by the licensee with the Casino licence and related agreement(s) …'*. Crown can in this way use the terms of the New TRD to argue that it is a relevant consideration in assessing Crown's compliance with legislative requirements, including in relation to payment of taxes by reference to the definition of GGR, that its operations are compliant with the New TRD.
>
> (emphasis in original)

1338 CRW.520.007.2230 Crown Internal Control Manual, Part II.

1339 Exhibit RC0814a CRW.520.011.4236 Annexure a, Letter from Jason Cremona to Michelle Fielding (16 April 2019).

1340 Exhibit RC0767 CRW.512.135.0028 Memorandum regarding Gaming Machines Food Program Initiative – GGR Treatment (18 November 2019).

1341 See, in particular, Exhibit RC0767 CRW.512.135.0028 Memorandum regarding Gaming Machines Food Program Initiative – GGR Treatment (18 November 2019) at [11]-[16].

G.1.6 Mr Barton's plan to resolve the uncertainty

G.37. During the period 2018 to 2021, Crown Melbourne had five directors, three of whom were executive directors: Mr Barton, Mr Felstead and Mr Alexander.[1342] Mr Barton was also CFO of Crown Resorts until 24 March 2020, and CEO and MD of Crown Resorts in the period 24 March 2020 to 15 February 2021.[1343]

G.38. Mr Barton and Mr Felstead were both aware of the issues relating to Crown's tax treatment of the Category 8 promotions.[1344] Neither of them is still employed by Crown. It is unclear on the evidence whether any other former director of a Crown entity was aware of the issue.[1345]

G.39. Save for Mr Walsh, no current director of Crown Melbourne (or Crown Resorts) was aware of the issues.[1346] Mr Walsh's role is addressed further below, but it should be recalled at the outset that he was not a director of Crown Melbourne until 15 February 2021, was subordinate to Mr Barton (who had carriage of the issue) even after he (Mr Walsh) became CEO in December 2020, and remained so until Mr Barton's departure in mid-February 2021.

G.40. Prior to September 2020, Mr Barton had been developing a plan for resolving the uncertainty surrounding the appropriate tax treatment of the Category 8 promotions. There were various tax matters that he wanted to discuss with the State, including this issue. He planned to "wrap them all up in one discussion"[1347] and resolve them by agreement with the State.[1348]

G.41. It appears that Mr Barton was looking to start that process in about September 2020, when judgment was handed down in a proceeding between Crown Melbourne and the Commissioner of Taxation concerning the payment of GST.[1349] However, there was an appeal from that judgment,[1350] and by the time

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1342 X Walsh T3204.12-15. Mr Alexander ceased being a director of the company on 24 January 2020.

1343 CRW.512.049.0237 Barry Felstead Deed of Separation (9 December 2020); CRW.513.005.7803 Media Release, Senior Executive Changes (15 February 2021). On 24 January 2020 Mr Barton was appointed CEO of Crown Resorts and MD of Crown Resorts (subject to the receipt of any necessary regulatory approvals). Mr Barton's appointment as a director of Crown Resorts became effective on 3 March 2020

1344 Exhibit RC1231 CRW.998.001.0551 Herring II at [8]; X Walsh T3242.38 - T3243.16.

1345 Mr Mackay understood that the directors of "Crown" were aware of this advice (T1663.44 – T16664.12); Mr X Walsh appears to have understood that only the executive directors of Crown Melbourne (ie, Mr Alexander, Mr Barton and Mr Felstead) were aware of it (T3243.12-16). See also Exhibit RC1231 CRW.998.001.0551 Herring II at [16].

1346 See, eg, Coonan T3810.18-41; Halton T3605.24 – T3607.2; Korsanos T3693.23 – T3694.24.

1347 X Walsh T3255.9-12, T3256.46-T3257.10.

1348 X Walsh T3255.9-12.

1349 Exhibit RC0333 CRW.512.147.1275 Email from Chris Reilly to Xavier Walsh et al (17 September 2020); X Walsh T3259.46 – T3257.8. The judgment is *Crown Melbourne Limited v Commissioner of Taxation* [2020] FCA 1295.

1350 Federal Court proceeding NSD217/2021.

Mr Barton left Crown, on 15 February 2021, it appears that little if any progress had been made.

G.1.7 Events following Ms Coonan's appointment as Executive Chairman

G.42. On the day that Mr Barton left Crown, Ms Coonan was appointed interim Executive Chairman of Crown Resorts.[1351] Upon her appointment to that role, she immediately made it clear to staff that the culture of Crown was to change.[1352] She spoke at length,[1353] and was "very strident", [1354] about the need for the culture of the organisation to change.

G.43. On 23 February 2021, Mr Walsh had a phone call with Ms Coonan. This was their first opportunity to speak since she started in the role of Executive Chairman.[1355] Mr Walsh sought to "flag" with her matters that he "put in the category that she was calling out as cultural".[1356] In that context, Mr Walsh raised the Bonus Jackpots matter.

G.44. Their discussion about the matter was brief.[1357] Mr Walsh's primary concern, insofar as Crown's culture was concerned, was the way in which the deductions of costs of the Category 8 promotions had been implemented.[1358] Mr Walsh considered that that was the "polar opposite" of what the directors were asking to be done.[1359] He thought that it showed a "bad culture"[1360] and a lack of transparency.[1361] However, Ms Coonan recalls him saying that the VCGLR "had a thorough look at it" in 2018 and that issue had been "cured" or "fixed".[1362] That evidence is to be understood in the context of the facts noted above which establish that, on any view, the VCGLR was aware of the deductions that were being made from at least mid-2018.

G.45. Ms Coonan does not recall Mr Walsh referring to a potential underpayment of tax. [1363] She did not think that there was any problem with regard to

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1351 Exhibit RC0437 CRW.998.001.0526 Coonan at [2].

1352 X Walsh T3215.41-43.

1353 X Walsh T3215.42-44.

1354 X Walsh T3217.8.

1355 X Walsh T3219.15-21, T3229.11-12.

1356 X Walsh T3218.5-6.

1357 Coonan T3802.37-38.

1358 X Walsh T3215.41 – T3216.12.

1359 X Walsh T3241.8-35.

1360 Coonan T3801.16-17.

1361 Coonan T3803.6, T3805.11-14.

1362 Coonan T3803.10-12, T3805.15-18.

1363 Coonan T3812.11-16.

underpayment of tax.[1364] If she had thought that there was such a problem, she would have taken further action, including speaking to the other directors.[1365]

G.46. Ms Coonan asked Mr Walsh to pull information together regarding the issue he had identified and provide it to the lawyers acting for Crown in this Commission, once they were appointed.[1366] She wanted the matter to be looked at.[1367] This Commission had just been announced and she did not want the matter emerging in a "subterranean" way.[1368]

G.47. In Mr Walsh's notes of the call, he wrote "Helen to consider".[1369] Mr Walsh does not recall what he had in mind when he wrote that note,[1370] although he understood that she would consider the matter.[1371] Ms Coonan did not understand there to be any arrangement that she would come back to him.[1372]

G.48. The next morning, Mr Walsh asked Mr Mackay to pull together some "rough numbers what the bonus jackpot figures would look like",[1373] so that he could "can get a bit of an idea of what the quantum is."[1374] When referring to "bonus jackpots", Mr Walsh does not appear to have specified whether he meant all eight categories of Bonus Jackpots, or only the Category 8 promotion.[1375] Mr Mackay appears to have assumed that Mr Walsh was referring to all eight categories of Bonus Jackpots and, consequently, formed the view that Crown's potential tax exposure related to all of those categories.[1376]

G.49. However, the only promotions that Mr Walsh was concerned about were the Category 8 promotions.[1377] There was never any doubt in his mind about the deductibility of any of the other categories of Bonus Jackpots promotions.[1378] In his view, they all related to "free play"; and "in all of the jurisdictions [he is]

1364 Coonan T3813.26-47.

1365 Coonan T3812.11-16, T3813.26-47.

1366 X Walsh T3221.9-46, T3274.33-34.

1367 Coonan T3806.2-7.

1368 Coonan T3806.2-7, 3808.4-6.

1369 Exhibit RC0358 CRW.512.135.0073 Memorandum regarding Crown Melbourne Weekly Catch Up Agenda (23 February 2021).

1370 X Walsh T3221.12-13.

1371 X Walsh T3221.18-20.

1372 Coonan T3809.5-8.

1373 X Walsh T3215.25-26.

1374 X Walsh T3215.2.26-27.

1375 Mr Mackay's recollection is that he was "to pull together a report on bonus jackpots": T2127.47-T2128.1. See also T1611.31-32.

1376 Mackay T1615.9-14

1377 X Walsh T3228.11-12.

1378 X Walsh T3223.16-21.

aware of and worked in, free play is never included in the revenue calculation for gaming tax".[1379]

G.50. On 1 March 2021, Mr Walsh called a meeting of various Crown executives to discuss tax issues, including in respect of Bonus Jackpots.[1380] He made clear to those present that this issue was "live".[1381]

G.1.8 Mr Walsh's discussions with Allens and other directors

G.51. In early March 2021, Mr Walsh had some initial discussions with Allens. The purpose of those initial meetings was to discuss matters relating to process in the Royal Commission, not any tax issues or required disclosure.[1382] It was a "pretty hectic time",[1383] given the matters Crown was required to deal with, and RFI-2 had not even been issued. Nevertheless, Mr Walsh raised the bonus jackpots issue with Allens.[1384]

G.52. On about 4 March 2021, Mr Walsh spoke with Ms Halton, and on about 9 March 2021, he spoke with Ms Korsanos and Mr Morrison. He also raised the bonus jackpots issue in those discussions.[1385] Precisely what he said is not clear on the evidence,[1386] but just like in the discussion with Ms Coonan, his focus appears to have been on what he perceived to be the principal cultural concern that arose from the matter (being Crown's failure to have been frank with the VCGLR).[1387]

G.53. Mr Walsh's recollection of his meeting with Ms Halton is that he told her: about the legal advice that Crown had received in 2012 and 2018 (describing it as "equivocal");[1388] about the slide deck dated 30 March 2012;[1389] that the VCGLR had had a very close look at the matter in 2018; and that a new TRD that would cure the issue going forward.[1390]

G.54. Ms Halton's recollection of the discussion is that Mr Walsh told her about an issue relating to jackpots from 2012 that reflected badly on Crown's culture. He said that there had been a failure to disclose information to the VCGLR, but that

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1379 X Walsh T3223.21-24.

1380 X Walsh T3231.30-T3235.33; Williamson T3090.19-35.

1381 X Walsh T3232.15-T3233.28.

1382 X Walsh T3235.43-T3236.15.

1383 X Walsh T3235.13.

1384 X Walsh T3236.9.

1385 See X Walsh T3237.22-35.

1386 See X Walsh T3237.22-35, T3238.24-T3239.46 cf. Halton T3607.39-T3610.22 and Korsanos T3695.40-T3696.16.

1387 See, eg: X Walsh T3237.33-35, T3239.37-46; Halton T3608.11-23; Korsanos T3695.40-47.

1388 X Walsh T3238.35-40.

1389 X Walsh T3237.42-43.

1390 X Walsh T3238.42-43.

disclosure had occurred in 2018.[1391] She recalled him referring to a presentation, but not legal advice.[1392] What she took from the discussion was that Mr Walsh was worried about the way the matter reflected on Crown's culture.[1393] She did not understand there to be any issue about the underpayment of tax until she read media reports on 7 June 2021, and she did not then link that issue with what she had been told by Mr Walsh.[1394]

G.55. Mr Walsh recalls the conversation with Ms Korsanos and Mr Morrison being essentially the same as the conversation with Ms Halton.[1395]

G.56. Ms Korsanos likewise recalls her discussion with Mr Walsh as focussing on a cultural issue, being a lack of transparency and poor engagement with the VCGLR.[1396] She recalls Mr Walsh saying to her and Mr Morrison that he had come across a presentation from 2012 that that showed a poor culture of transparency concerning a change to Crown's tax calculation.[1397] He also referred to internal legal advice;[1398] and he said that about three years ago there had been transparency,[1399] and that a new TRD that had cured the matter.[1400] She left the meeting not thinking that there was any issue concerning the calculation of tax.[1401] She did not understand there to be any issue about the underpayment of tax until 7 June 2021, and did not then link the issue with what she had been told by Mr Walsh.[1402]

G.57. Mr Morrison's evidence did not address the 9 March 2021 meeting he attended with Ms Korsanos and Mr Walsh. However, he recalls Mr Walsh telling him, in a brief conversation in a corridor on 19 or 21 March 2021, about a matter from 2012 concerning a change to the deductions Crown claimed for gaming tax that may need to be disclosed in response to RFI-2.[1403] Mr Walsh's concern appeared to Mr Morrison to be that this reflected a cultural issue.[1404] Mr Walsh said to Mr Morrison that he was concerned primarily about the culture of the

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1391 Halton T3608.11-31, T3609.30-31.

1392 Halton T3608.43 – T3609.2.

1393 Halton T3609.30-31.

1394 Halton T3605.24 – T3607.2.

1395 X Walsh T3239.37-46.

1396 Korsanos T3695.40-41, T3696.8-11, T3696.28-30, T3698.4-6, T3698.21-25.

1397 Korsanos T3695.41-47.

1398 Korsanos T3696.21-22.

1399 Korsanos T3696.4-6.

1400 Korsanos T3696.7-8, T3700.27-32.

1401 Korsanos T3697.47-T3698.1.

1402 Korsanos T3693.23 – T3694.24.

1403 Morrison T2244.27-40.

1404 Morrison T2248.20-21.

organisation, and that the VCGLR had been through the details in 2018 and had not raised any issues.[1405]

G.1.9 RFI-2

G.58. On 10 March 2021, the Commission issued RFI-2. Complying with that request for information was an enormous task. The request sought a range of information relating to any conduct of Crown, over a period more than 11 years, that "would, or might" constitute:

(a) a breach of any provision of eight instruments;[1406]

(b) "grounds for disciplinary action" under s 20(1) of the CCA*1991* (Vic);

(c) a breach any provision of the Casino Agreement, the Management Agreement or a condition of the Casino Licence; or

(d) a breach any obligation under the RG Code.[1407]

G.59. Complying with the request was also complicated by the other tasks that were required of Crown at the time.[1408] For example, by the end of March 2021, Crown and its directors had received a substantial number of notices to produce documents, requests for information (including RFI-2) and requests for statements for this Commission; and were also dealing with the ongoing AUSTRAC and ASIC investigations, the Perth Casino Royal Commission and the ongoing ILGA process.

G.60. After receiving RFI-2, Allens had various discussions with people within Crown to get a sense of what information may need to be disclosed.[1409] It quickly became apparent that responding to RFI-2 would need to be an iterative process.[1410] It was decided that Crown would respond to the request in tranches, with the first tranche focussing on matters that the company had recorded, in its records, as comprising actual or possible misconduct, and subsequent tranches making other necessary disclosures.[1411]

1405 Morrison T2244.27-40.

1406 Namely, the CCA *1991* (Vic), the *Casino (Management Agreement) Act 1993* (Vic), the *Gambling Regulation Act 2003* (Vic), the *Gambling Regulations 2015* (Vic), the *AML/CTF Act*, the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* and/or the *Financial Transaction Reports Act 1998* (Cth).

1407 The request also sought details of any conduct of Crown Melbourne that it was required to self-report, or which it had reported, to any government body, agency or authority.

1408 A number of board members and senior executives had also recently left Crown and, with them, a large amount of corporate memory.

1409 Maher T2338.35-40.

1410 Maher T2321.3-7.

1411 Maher T2321.3-9T2321.3-7, T2332.15-23; Williamson T3123.39 – T3214.2.

G.61. Accordingly, Crown's first tranche response to RFI-2 was not intended to comprise all matters that would be disclosed. It was, rather, to comprise matters that Crown could "easily put its hands on".[1412]

G.62. On 18 March 2021, representatives of Allens (including Andrew Maher) and Crown (including Mr Walsh) met to discuss matters that may need to be disclosed in response to RFI-2.[1413] The point of the meeting was for Mr Walsh to raise the bonus jackpots tax issue.[1414] During the meeting, Mr Walsh, *inter alia*:

(a) explained that Crown appears to have started claiming certain deductions without being candid with the regulator;[1415]

(b) referred to the presentation referred to in [G.16] above;[1416]

(c) said that if the deductions had not been legitimately approved, the consequence could be that amounts Crown was treating as deductions were not deductible;[1417]

(d) referred to the internal and external legal advice that Crown had received in respect of the matter, and said that the advice was equivocal and not clear;[1418] and

(e) provided his understanding of the amount of the potential underpayment.[1419]

G.63. Mr Walsh understood that the potential underpayment to be around $35 million to $40 million[1420] (not the $270 million that was suggested during the hearings, or the $170 million Counsel Assisting suggests in submissions[1421]). As noted above, there was never any doubt in his mind about the deductibility of any of the categories of Bonus Jackpot promotions, other than Category 8.[1422] He understood that the other categories all related to "free play", which was not required to be included in the revenue calculation for gaming tax.[1423] Mr Walsh regarded $40 million as a conservative upper estimate of the exposure

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1412 Williamson T3123.47 – T3214.2; see also T3164.19-34.

1413 Maher T2296.39-47, T2302.4-11.

1414 X Walsh T3267.4-6, T3263.3-4, 3358.7-10, T3359.5-16.

1415 X Walsh T3261.10-12.

1416 Exhibit RC0229 CRW.0000.0003.0895 Confidential File Note (19 March 2021).

1417 X Walsh T3261.34-38.

1418 X Walsh T3262.18, T3358.21-31.

1419 X Walsh T3263.37-40.

1420 X Walsh T3223.7-8, T3223.43-44.

1421 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.109].

1422 X Walsh T3223.16-21.

1423 X Walsh T3223.21-24.

(including super tax) having regard to the quantum of the Category 8 deductions and the period of time over which they had been made.[1424]

G.64. Mr Walsh did not suggest to Allens that any aspect of the bonus jackpots issue should not be disclosed to the Commission.[1425] To the contrary, he made it clear that he was very concerned about the issue;[1426] that it was an important issue;[1427] that he wanted to be open[1428] and transparent with the Commission;[1429] and that the matter may need to be disclosed to the Commission.[1430] And he sought Allens' advice about whether disclosure was required.[1431]

G.65. Mr Maher was not in a position to provide that advice on the spot.[1432] It was clear to him that it was a serious matter that required careful consideration[1433] and, at the time, Mr Maher was not familiar with the relevant law or the relevant facts.[1434] He therefore asked Mr Walsh to provide some documents so that Allens could consider and provide the requested advice.[1435] Mr Walsh promptly provided those materials to Allens.[1436]

G.66. At the time, Allens was attending to many significant competing tasks associated with responding to this Commission's inquiries.[1437] Regrettably, Allens inadvertently overlooked the need to review the documents in the folder closely and, consequently, failed to provide the requested advice to Crown.[1438]

G.67. If Allens had reviewed the folder of documents that Mr Walsh had provided, it would have advised Crown to include the bonus jackpots matter in its response to RFI-2.[1439]

G.68. Further, Mr Walsh did not simply leave the issue with Allens, as was suggested during the hearings. Despite being "knee deep" with other matters (including

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1424 X Walsh T3223.7-47

1425 Maher T2297.46 – T2298.3.

1426 Williamson T3122.18-20.

1427 Maher T2333.12-13.

1428 Williamson T3122.45-47.

1429 Williamson T3122.18-20.

1430 Exhibit RC0228 CRW.0000.0003.0893 Letter from Allens to Solicitors Assisting (7 June 2021).

1431 Maher T2297.2-11, T2318.12-33.

1432 Maher T2297.17-18.

1433 Maher T2318.3-6.

1434 Maher T2312.26-30, T2316.21-25, T2318.1-6, T2325.15-18.

1435 Maher T2297.16-20.

1436 Maher T2297.29-31.

1437 Maher T2297.41-44.

1438 Exhibit RC0228 CRW.0000.0003.0893 Letter from Allens to Solicitors Assisting (7 June 2021); Maher T2298.38 – T2299.22, T2297.41-44, T2334.20-29.

1439 Maher T2298.9-13.

preparing three statements for the Commission)[1440] he followed up with Crown's internal lawyers on at least three occasions.[1441] And "once things settled down", he was likely to raise the issue again.[1442]

G.69. Crown's lawyers also followed up with Allens on multiple occasions.[1443] As Ms Williamson said, Crown's potential underpayment of casino tax "was definitely going in [a response to RFI-2]. It was never not going in."[1444] The oversights that led to delay in Allens considering the matters raised occurred in circumstances where it was clear that there would need to be multiple rounds of responses to address RFI-2. In fact, there were further responses still in progress as at 7 June 2021,[1445] and each response to RFI-2 in that period made it clear that Crown's disclosures in response to the notice were continuing.

G.2. Underpayment of casino tax

G.70. There were suggestions during the hearings that Crown may have underpaid casino tax with respect to all eight categories of the Bonus Jackpots promotions, and that the amount of the underpayment was over $270 million. Counsel Assisting have made no submission to that effect.

G.71. However, Crown accepts that it has underpaid casino tax with respect to some of the Bonus Jackpots promotions. Specifically, it has incorrectly treated as "sums paid out as winnings" (within the meaning of cl 2 of the Management Agreement) expenses associated with:

(a) the dining rewards, accommodation and parking benefits provided to patrons as part of the Category 8 promotion; and

(b) benefits other than cash and pokie credits provided to patrons as part of the "Jackpot Payments" promotion (ie, Category 5).

G.72. In that regard, Crown accepts the advice that its directors received from Mr Archibald QC and Ms Dixon.[1446] The advice received from Mr Archibald QC and Ms Dixon had been preceded by an advice received by the directors from Mr Robertson QC[1447]. Mr Robertson QC's opinion differed from the opinion of

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1440 X Walsh T3271.23-27.

1441 X Walsh T3271.37. See also X Walsh T32169.41, T3270.39-43, T3271.23-27; 3359.29-33.

1442 X Walsh T3275.45-T3276.1.

1443 Williamson T3125.1-T3126.6. See also Exhibit RC0915 CRW.998.001.0501 Maher at [3].

1444 Williamson T3126.38-39.

1445 Further disclosures in response to RFI-2 were made on 18 June 2021, 23 June 2021 and 29 June 2021.

1446 Exhibit RC0422 CRW.512.202.0005 Memorandum from Christopher Archibald QC and Anna Dixon to ABL (5 July 2021) and Exhibit RC0920 CRW.512.207.0015 Memorandum of Advice regarding Casino Tax Under the Casino (Management Agreement) Act 1993 (Vic) (5 July 2021).

1447 CRW.512.161.0032 Opinion Re: Victoria Casino Taxes and Exhibit RC0919 CRW.512.207.0001 Supplementary Opinion regarding the Crown Melbourne Victorian state gaming tax issue (4 July 2021).

Mr Archibald QC and Ms Dixon in that he considered that the costs of dining benefits that Crown provided as part of the Category 8 promotions were likely to be deductible.

G.73. On 1 July 2021, Crown wrote to the Secretary of the Department of Treasury and Finance regarding the underpayment of casino tax.[1448] The letter said that Crown had received preliminary advice that there had been an under-reporting of casino tax of approximately $8.8 million over the period FY 2013 to date, which was regrettable and that the circumstances giving rise to the underpayment reflected a poor and unacceptable culture. The letter stated that Crown intended to pay its estimate of the amount owing, together with penalty interest, once it had finalised its inquiries.

G.74. At the time of sending that letter, Crown had only received advice from Mr Robertson QC concerning its tax treatment of the Bonus Jackpot promotions.[1449] It subsequently (on 5 July 2021) received the advice from Mr Archibald QC and Ms Dixon. In the light of that further advice, Crown accepts that the under-reporting of casino tax was greater than $8.8 million. Both Mr McCann and Ms Coonan confirmed that Crown would pay the higher of the two amounts.[1450]

G.75. On 27 July 2021, Crown wrote to the VCGLR and noted that it had resolved to make a payment to the VCGLR, consistent with the views expressed in the advice referred to in [G.72] above which it had accepted, representing an underpayment of casino tax by Crown Melbourne of $37,432,268.89 over the period commencing in the 2012 financial year to date.[1451] Crown stated that the underpayment related to the incorrect deduction of:

(a) free accommodation, car parking and dining rewards as "bonus jackpots" (ie, the Category 8 promotions); and

(b) "jackpots payments" (ie, Category 5), other than cash and pokie credits,

provided in connection with play on Crown Melbourne's gaming machines.

G.76. The letter stated that Crown Melbourne had, that day (ie, 27 July 2021), paid to the VCGLR an amount of $61,545,414.09 via EFT, which included a penalty interest component up to and including 27 July 2021 of $24,113,145.20.

G.77. The letter stated that Crown was continuing its review of other aspects of casino tax, including Matchplay, and would update the VCGLR once the review was complete.

1448 Exhibit RC0414 CRW.512.204.0001 Letter from Steve McCann to David Martine (1 July 2021).

1449 Exhibit RC0842 CRW.900.007.0081 Memorandum regarding Crown Gaming Tax (19 June 2021) and Exhibit RC0919 CRW.512.207.0001 Supplementary Opinion regarding the Crown Melbourne Victorian state gaming tax issue (4 July 2021).

1450 McCann T3508.5-7; Coonan T3842.43-T3843.23.

1451 CRW.512.242.0002 Letter to Catherine Myers (VCGLR) Re Casino Tax.

G.78. Crown also accepts that it has under-reported its GST as a consequence of its treatment of the Category 8 promotions, and that its GST will need to be re-assessed, and its State Tax Credit readjusted accordingly.

G.2.1 Matchplay

G.79. Patrons who are members of Crown Rewards accumulate loyalty points when they play EGMs and table games at the casino, and when they spend money in certain other ways at the casino complex (e.g., at restaurants, bars, nightclubs, shopping, hotels, conferences and events). Members are entitled to use those loyalty points in various ways, including acquiring goods or services at certain retail outlets and converting the points into credits that can be used to play table games or pokie credits that can be used to play EGMs.[1452]

G.80. The conversion of loyalty points into pokie credits for playing EGMs is referred to as "Matchplay".[1453] As noted above, Crown's EMS (or DACOM) is configured such that when members convert loyalty points to pokie credits as part of Matchplay, Crown records the value of the pokie credit as "turnover" and, at the same time, as a Bonus Jackpot deduction, such that the value of the pokie credit does not form part of Crown's reported GGR.

G.81. In their opinions referred to above, Mr Archibald QC and Ms Dixon, and Mr Robertson QC, said that, in their view, conversion of loyalty credits to pokie credits that occurs as part of Matchplay does not involve Crown "receiving" a "sum" within the meaning of cl 2 of the Management Agreement. Accordingly, in their view, the net effect of Crown's tax treatment of Matchplay – ie, not including pokie credits in its reported GGR – is correct.

G.82. Counsel Assisting has submitted that, contrary to those opinions, the conversion of loyalty points into pokie credits as part of Matchplay may be a "sum" that Crown "receives" that should form part of Crown's GGR. This was expressed by Counsel Assisting as the "better view".[1454] That is because, in Counsel Assisting's submission:

(a) "sum" means money or "money's worth";[1455]

(b) while "not free from doubt", the "better view appears to be" that loyalty points are "money's worth", because they "are in substance a form of tender at the Melbourne Casino, capable of being used like money throughout the Melbourne Casino complex";[1456] and

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1452 Exhibit RC0425 CRW.512.191.0001 Annexure e, Spreadsheet regarding terms and conditions relevant to each Promotion, n.d.

1453 It is Category 3 of the Bonus Jackpots promotions referred to at [G.10] above.

1454 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.171(a)].

1455 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.176].

1456 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.176].

(c) as part of Matchplay, Crown "receives" loyalty points from the patron.[1457]

G.83. Accordingly, in Counsel Assisting's submission, Matchplay may involve the receipt by Crown of "money's worth" and therefore a "sum".

G.84. Counsel Assisting did not suggest that this is a matter that may go to Crown's suitability.[1458] However, in the light of Counsel Assisting's submissions, Crown asked Mr Robertson QC, and Mr Archibald QC and Ms Dixon, to review their earlier opinions concerning Crown's tax treatment of the Matchplay promotion and consider the matter afresh.

G.85. Crown has now received further written advice from those counsel, which has been provided to the Commission.[1459] In short, the opinions of those counsel have not changed. They continue to consider that the conversion by a patron of loyalty credits to pokie credits does not involve Crown "receiving" a "sum" within the meaning of cl 2 of the Management Agreement.

G.86. In Crown's submission, the conclusions those counsel have reached is correct. The principal difficulty with Counsel Assisting's submission is that even if loyalty points are "money's worth" and a "sum" when in the hands of Crown Rewards members, when the conversion of loyalty points to pokie credits occurs, Crown would not *receive* that "money's worth" or "sum". All that occurs from Crown's perspective is that Crown discharges an obligation it owes to the member under the Crown Rewards program to ensure that the member can convert the loyalty points to pokie credits for play on an EGM. Crown thus reduces a contingent liability, but reducing a contingent liability is not (and is not submitted by Counsel Assisting to be) "money's worth" or a "sum". When the points of the member are redeemed, they are, in substance, cancelled.

G.87. Similar issues arose in a recent decision of the Supreme Court of the United Kingdom, *Commissioners for Her Majesty's Revenue and Customs v London Clubs Management Ltd.*[1460] The case concerned the obligation of a casino operator to pay gaming duty under the *Finance Act 1997*. Although the obligations of the casino operator were not the same as those of Crown under the Management Agreement, much of the reasoning of the Supreme Court is apposite.

G.88. Under the *Finance Act 1997,* the amount of gaming duty that is payable is to be calculated by reference to "gross gaming yield" (**GGY**). GGY comprises, *inter alia*, "banker's profits", which are defined in s 11(10) of the Act as:

1457 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.181].

1458 See COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.197].

1459 CRW.512.252.0012. CRW.512.252.0031.

1460 [2020] UKSC 49.

> … the amount (if any) by which the value specified in paragraph (a) below exceeds the value specified in paragraph (b) below, that is to say –
>
> (a) the **value, in money or money's worth**, of the **stakes staked** with the banker in any such gaming; and
>
> (b) the value of the prizes provided by the banker to those taking part in such gaming otherwise than on behalf of a provider of the premises.

G.89. The appellant (an operator of casinos) ran promotions that involved the provision to patrons of non-negotiable chips[1461] and free bet vouchers[1462] (referred to in the reasons as "Non-Negs"). A question in the appeal was whether bets that patrons placed using Non-Negs were "stakes staked" and had any "value, in money or money's worth" within the meaning of s 11(10)(a) and therefore formed part of the appellant's GGY.

G.90. In answering that question, Lord Kitchin (with whom Lord Carnwarth and Lady Black agreed) said that the relevant inquiry is to be performed from the perspective of the casino, not patrons:[1463]

> Banker's profits from gaming are the value in money or money's worth of the stakes staked with the banker in any such gaming, less the value of the prizes provided by the banker to the gamblers taking part in the gaming … **This assessment must, so it seems to me, be carried out from the perspective of the banker for it is the banker's profits which must be brought into account in calculating the gross gaming yield from the premises**.

G.91. His Lordship then went on to state that, for something to be "money's worth" in the hands of the casino, it must have some real value that adds to profits:[1464]

> The expression "money or money's worth" in section 11(10)(a) emphasises that in determining the value of the stakes staked **it is the actual and real world value of the stakes in the hands of the banker which matters**. Section 11(10)(a) is concerned with stakes which are or represent money (as cash chips do) or which can be converted into money. Similarly, in working out the value of the prizes provided by the banker, it is the actual or real world cost to the banker of providing the prizes that must be brought into account … **[T]he context … requires a focus on the economic substance of the stake and the real financial contribution that stake makes to the banker's profits from gaming and in turn to the gross gaming yield from the premises** …

G.92. And, his Lordship also said, providing to patrons a "free bet" and thereby reducing a contingent liability does not constitute a real financial contribution to profit:

> When the casino allows a gambler to bet with a Non-Neg, it is, in a sense, allowing the gambler to bet with the casino's own money. Put another way, **from the point of view**

1461 I.e., chips that allowed patrons to place bets, but could not be exchanged for cash or used for any other purpose.

1462 Vouchers that could be used in the same way as non-negotiable chips.

1463 [2020] UKSC 49 at [37], emphasis added.

1464 [2020] UKSC 49 at [38], emphasis added.

> **of the casino, a Non-Neg amounts to a free bet. As such, a Non-Neg has no real world value to the casino when the gambler loses it in a bet save in so far as it may be said that a contingent liability of the casino to pay out according to the rules of the game in which it is played is eliminated.** But in my view, this does not instil in the Non-Neg a "value, in money or money's worth" within the meaning of section 11(10)(a). Nor does it render it a "stake staked" within the meaning of hat provision.

G.93. In Crown's submission, the same reasoning applies to Matchplay. What constitutes "receipt" of a "sum" must be considered from the perspective of Crown. And from Crown's perspective, the conversion of loyalty points to pokie credits does not provide it with anything of real world value that might be described as a "sum" (or "money's worth"). It simply reduces a contingent liability that arises under the Crown Rewards program.

G.3. Suitability

G.94. During the hearings and in Counsel Assisting's submissions there have been a number of criticisms made of Crown that may be relevant to the Commission's consideration of Crown's suitability. They may be grouped together as follows:

(a) Crown's approach to the Category 8 promotions between 2012 and 2018;

(b) Crown's approach to the Category 8 promotions between 2018 and February 2021;

(c) criticism of Mr Walsh;

(d) criticism of Ms Coonan; and

(e) criticism of Mr McGregor.

G.3.1 Crown's approach to the Category 8 promotions between 2012 and 2018

G.95. Crown accepts that the manner in which it started treating the costs of the Category 8 promotions as deductions in 2012 was entirely unsatisfactory.

G.96. *First*, Crown should not have started treating the costs of the Category 8 promotions as deductions without having greater confidence that it was permitted to do so under the Casino Management Act. The advice that it received from Ms Tegoni made clear that there was doubt about whether or not treating those costs as deductions was permissible. In the light of that uncertainty, Crown should not have proceeded to make the deductions.

G.97. *Second*, in any event, Crown appears to have commenced treating those costs as deductions without notifying the VCGLR that it was doing so – and with an expectation (or at least a hope) that the VCGLR would not notice the deductions. Crown accepts that that was completely unacceptable.

G.98. Crown acknowledges that these matters reflect very poorly on Crown's culture at the time.

G.99. However, this aspect of Crown's conduct occurred many years ago. The relevant decisions were made by individuals who are no longer employed by Crown. Their historical conduct should not bear upon the Commission's determination of Crown's current suitability. It is precisely the kind of behaviour that Crown no longer tolerates.

G.100. The kind of behaviour that Crown now requires of its officers is demonstrated by its current approach to the bonus jackpots issue (ie, the directors obtaining further advice, promptly disclosing that advice to this Commission and the State and undertaking to pay the higher of the two amounts it was advised it was required to pay, and then duly making the payment including full penalty interest). It is also reflected in Crown's approach to the CUP matter (including appointing external senior counsel to investigate the matter immediately after Crown's management became aware of it, and disclosing the results of that investigation to this Commission and the public).

G.3.2 Crown's approach to the Category 8 promotions in the period 2018 to February 2021

G.101. By mid-2018, the VCGLR was aware of the nature of the deductions that Crown was making for the purpose of its GGR calculations. As the matters referred to in [G.23] to [G.30] above show, by mid-2018:

(a) the VCGLR knew that Crown was claiming all of the Bonus Jackpot promotions as deductions for the purpose of determining its GGR;

(b) the VCGLR sought and had obtained information from Crown to understand the nature of the relevant promotions (including the Category 8 promotions) and the deductions;

(c) Crown promptly provided all of the information that was requested, and invited the VCGLR to notify it of any further queries the VCGLR may have; and

(d) the VCGLR considered that information and formed its own view about whether or not the deductions were permissible.

G.102. Counsel Assisting have criticised Crown's response to the VCGLR's inquiries in mid-2018 and said that they were "misleading", because Crown did not disclose that, at the time the costs of the Category 8 promotions first started being treated as deductions, patrons were already entitled to some of the benefits they received from those promotions, by reason of their loyalty status.[1465]

1465 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.42].

G.103. This point was not put to any of Crown's witnesses. If a "misleading" failure to disclose information were to be relied upon for a finding of unsuitability, the Commissioner would need to be satisfied not only that the conduct was in fact misleading, but that it was not inadvertent. The proposition should therefore have been put to relevant Crown witnesses. It was not put to any of Crown's witnesses; not by Counsel Assisting, and not by counsel for the VCGLR.[1466]

G.104. Further, there is no reference, in any email or other document from in or around 2018, which suggests that any officer of Crown considered that the point was, or might have been, relevant to Crown's response to the VCGLR. There is no basis for suggesting that, when Crown was answering the VCGLR's questions in 2018, it was seeking to hide or avoid notifying the VCGLR of some fact that it appreciated might be relevant to the VCGLR's assessment of the deductibility of the Category 8 promotional costs.

G.105. However, Crown readily accepts that when it was explaining the nature of the deductions to the VCGLR in 2018 it should have told the VCGLR about its failure to be frank when the deductions relating to the Category 8 promotions commenced in 2012 and 2013. While that information was not relevant to whether or not the relevant costs were deductible, acknowledging Crown's previous failure to be frank was important to having an open and transparent relationship with the VCGLR. As Mr Walsh acknowledged, the fact that Crown did not "come clean" reflects poorly on its culture at the time, and was not good enough.[1467]

G.106. Crown also accepts that – regardless of the position the VCGLR adopted with respect to the promotions – it should not have continued treating the costs of them as deductions in the light of the legal advice it had received, both from Ms Tegoni (in 2012) and MinterEllison (in 2018 and 2019), which should have created considerable doubt about whether or not the deductions were permissible.

G.107. However, it is important to bear in mind that Crown's approach to this matter in the period 2018 to February 2021 was not determined by the individuals now in charge of Crown. As noted above, two executive directors of Crown Melbourne – Mr Barton and Mr Felstead – were aware of the issue for the entire period 2018 to 2021, and Mr Barton (who was also CEO and MD of Crown Resorts from 24 March 2020 until 15 February 2021) had assumed responsibility for resolving the issue.[1468] Crown accepts that his plan was inadequate. But given his role and authority, it would have been extremely difficult for any other executive to cause a different approach to be taken,

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1466 Which supports an inference that there is no document or even instruction from the VCGLR that suggests that the VCGLR appreciated that its consideration of the deductibility of the promotions might have been influenced by the point.

1467 X Walsh T3260.34-37. See similarly Fielding T2721.22-33.

1468 See [G.40] above.

particularly when Mr Barton's plan involved engagement with the State regarding the matter (albeit only at a time considered by him to be commercially appropriate).

G.108. Those executive directors who were aware of the issue from 2018 have all left Crown. There has been enormous change in personnel, both at the management level and Board since that time.[1469] Those now leading Crown, and with responsibility for making the relevant decisions, have a very different approach. As noted above, Ms Coonan, the other directors and senior executives have been very clear about the need for cultural change. At the first meeting between Mr Walsh (as CEO of Crown Melbourne) and Ms Coonan (as Executive Chairman of Crown Resorts), Mr Walsh raised the bonus jackpots matter with Ms Coonan. And as soon as she became aware of the matter she directed that it be disclosed to Crown's lawyers with a view to disclosure to this Commission. As Mr Walsh said, the kind of withholding of information from the regulator that occurred in 2012 is the "polar opposite" of what is now required at Crown.[1470] It would be inaccurate and unfair, in Crown's submission, to treat the approach that Mr Barton chose to take to the matter until February 2021 as indicative of the approach of Crown's current leaders, let alone of Crown's broader culture and suitability.

G.109. Counsel Assisting has directed significant criticism at the conduct since February 2021 of Mr Walsh and Ms Coonan. We address that criticism below. Some of it, in Crown's submission, is overstated. Their conduct does not, in Crown's submission, indicate that they are unsuitable. It certainly does not indicate that Crown is (by implication or extension) unsuitable, particularly in circumstances where Mr Walsh will be leaving Crown on 20 August 2021 on terms that he is presently discussing with Crown, and Ms Coonan intends to announce her retirement as soon as Crown has finalised its plans in relation to the appointment of a new leader. Crown expects to appoint that new leader by 31 August 2021.

G.3.3 Criticism of Mr Walsh

G.110. Mr Walsh has been criticised in relation to:

(a) his discussions about the bonus jackpots matter with directors in February and March 2021;

(b) his instructions to Allens regarding RFI-2; and

(c) his evidence concerning his belief of the amount of Crown's underpayment of tax.

1469 X Walsh T3260.35-37.

1470 X Walsh T3241.8-35.

G.3.3.1 Discussions with directors in February and March 2021

G.111. During the hearings and in Counsel Assisting's submissions, Mr Walsh was criticised for (it was suggested) "downplaying" the significance of the issue when he discussed it with Ms Coonan on 23 February 2021 and other directors in early March 2021, because he focussed on Crown's failure to be frank with the VCGLR in 2012 rather than the possibility that Crown had underpaid casino tax.[1471]

G.112. That criticism was, in Crown's submission, overstated. As noted above, when Mr Walsh raised the bonus jackpots matter with Ms Coonan on 23 February 2021, she had been speaking at length[1472] (and had been "very strident"[1473]) about the need for cultural change at Crown. This prompted Mr Walsh, in their discussion, to focus on matters that he perceived went to Crown's culture.[1474] His principal concern in that regard was Crown's failure to be frank with the VCGLR in 2012.[1475] As noted above, he considered that to be reflective of a "bad culture"[1476] and the "polar opposite" of what ought to have been done.[1477] That does not mean that he was downplaying the possibility that Crown had underpaid casino tax – at least not intentionally. It is more likely that the legal question whether or not Crown had underpaid tax was not as important to him, as matter of culture, as failing to be frank with the VCGLR.

G.113. Further Ms Coonan's recollection that Mr Walsh told her that the issue had been "cleared with VCGLR"[1478] and "cured" or "fixed" must be considered in the context of what was being discussed. What Mr Walsh was principally concerned about was Crown's failure to be frank with the VCGLR in 2012. That issue *had* largely been cured or fixed, because the VCGLR was now aware of the deductions that Crown was claiming, and could form its own view about them.

G.114. But Crown accepts that Mr Walsh could – and should – have raised the potential underpayment of tax with Ms Coonan. Given the significance of that aspect of the matter it should have been raised squarely and promptly with her.[1479]

1471 See, e.g., COM.0500.0001.0001 Counsel Assisting Closing Submissions at [16.4.13], [16.4.36].

1472 X Walsh T3215.42-44.

1473 X Walsh T3217.8.

1474 X Walsh T3218.3-6.

1475 X Walsh T3215.47.

1476 Coonan T3801.16-17.

1477 X Walsh T3241.8-35.

1478 Coonan T3804.22-23.

1479 It is, however, not entirely clear on the evidence whether or not Mr Walsh did raise that aspect of the matter with Ms Coonan. Ms Coonan's recollection is that Mr Walsh did not raise it: Coonan T3810.18-28. Mr Walsh said that he raised the bonus jackpots tax "issue"; but he did not say (and he was not asked) whether he referred to the potential underpayment of tax: see, e.g., X Walsh T3218.3-11.

G.115. For the same reasons, Crown accepts that Mr Walsh should have raised the potential underpayment of tax in his discussions with the other directors.[1480] Whatever the precise content of Mr Walsh's conversations with the other directors regarding this issue, the matter was not raised in a way that made the potential underpayment clear to those directors. Mr Walsh did not (or did not intentionally) downplay the issue.[1481] Again, the fact that he referred principally to Crown's failure to be frank with the VCGLR in 2012, suggests that, in those particular conversations, what he was focussed on and most concerned about was the aspect of the matter that he perceived reflected most poorly on Crown's previous culture.

G.116. Notably, Ms Halton has found Mr Walsh to be candid[1482] and "very open, honest and straightforward".[1483] Ms Williamson said:[1484]

> Mr Walsh has been a breath of fresh air. I think he's one of the best CEOs in my time here that Melbourne has had. He wants to be open and transparent with all the regulators, the Commission, especially. I think he's a great CEO and he has a new way of doing things, and open and transparent is the name of the game, basically.

G.117. Counsel Assisting has also said that, when speaking with Ms Korsanos about the bonus jackpots matter on 9 March 2021, Mr Walsh made a statement that was "misleading", being that "the situation had been … cured through a technical requirements document update". Counsel Assisting submits that it is "clear" that the statement was misleading from the advice MinterEllison gave in 2019.[1485]

G.118. However, Counsel Assisting appears to have assumed that Mr Walsh was addressing the question whether Crown was legally entitled to treat the costs of the Category 8 promotions as deductions (ie, the subject of MinterEllison's November 2018 advice). He was not. As Ms Korsanos said, the "discussion was focussed on … a cultural issue",[1486] *viz*. Crown's failure to be frank with the VCGLR. Mr Walsh is likely to have been suggesting that, since the TRD (a document proposed by the VCGLR that specified technical requirements for Crown's EGMs) "aligns almost entirely with the way that the Bonus Jackpot

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1480 Whether Mr Walsh raised the potential underpayment of tax in those discussions is also unclear on the evidence. Ms Korsanos, Ms Halton and Mr Morrison said that he did not do so: see Korsanos T3608.39-43, T3609.30-37; Halton T3605.24-28; Morrison T2244.12-21. Mr Walsh, on the other hand, recalls referring to the legal advice that Crown received in 2012 and 2018 (describing it as "equivocal" and saying that it "didn't leave us in a clear position"): X Walsh T3238.35-40, T3239.37-46.

1481 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.118(d)], [5.1.138], [16.4.13], [16.6.27].

1482 Halton T3612.1-2.

1483 Halton T3612.39-40. See also T36140.36-37.

1484 Williamson T3163.8-13

1485 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.121].

1486 Korsanos T3695.40

program operated in practice",[1487] coupled with the interactions in mid-2018 of which Mr Walsh was aware, the VCGLR would have been well aware of the nature of the deductions that Crown was making, even though Crown had not been forthcoming by proactively raising the deductions at an earlier point, which was the cultural issue of concern to Mr Walsh.

G.3.3.2 Instructions to Allens regarding RFI-2

G.119. Counsel Assisting have also submitted that Mr Walsh downplayed the potential underpayment of casino tax when raising it with Allens on 18 March 2021,[1488] and that this contributed to or caused the inadvertent oversight by Allens to advise on whether or not the matter should be disclosed to this Commission.[1489]

G.120. In Crown's submission, that is not the position. First, it is contrary to the weight of the evidence. As noted in [G.62] to [G.69] above, Mr Walsh:

(a) called the 18 March 2021 meeting specifically for the purpose of raising the potential need to disclose the bonus jackpots matter to the Commission. It would be passing strange for Mr Walsh, at a time when Crown personnel and Allens staff were very busy responding to Commission work, to convene a dedicated meeting on the topic if his objective were to downplay it;

(b) in that meeting, identified all key aspects of the matter, including:

(i) the presentation referred to in [G.16] above;

(ii) the failure to be frank with the VCGLR in 2012;

(iii) that Crown had been treating some costs as deductions that may not have been deductible;

(iv) his understanding of the quantum of the potential underpayment; and

(v) the (internal and external) legal advice Crown had received;

(c) made it very clear that it was an important issue, and that disclosure may be required;

(d) provided Allens with the materials required to advise on disclosure; and

(e) followed the matter up on at least three occasions with Crown's lawyers.

1487 Exhibit RC0767 CRW.512.135.0028 Memorandum regarding Gaming Machines Food Program Initiative – GGR Treatment, 18 November 2019 at [14](b).

1488 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.138], [5.1.145].

1489 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.146].

G.121. That evidence is consistent only with the conclusion that Mr Walsh sought to provide to Allens any and all information required for Allens to provide the advice that he had requested.

G.122. Counsel Assisting submits that Mr Maher "accepted" that had Mr Walsh "properly instructed him", the issue would have been disclosed to the Commission before 7 June 2021.[1490] But Mr Maher's clear evidence was that if Allens had reviewed the folder of documents that Mr Walsh had provided (which Allens inadvertently omitted to do), it would have advised Crown to include the bonus jackpots matter in a response to RFI-2 before 7 June 2021.[1491]

G.123. In any event, whether or not Mr Walsh contributed to the inadvertent oversight by Allens would say little if anything about his or Crown's suitability, unless he did so intentionally. And any suggestion that he did so intentionally – ie, that he took all of the steps referred to above, but refrained from taking any additional steps, in an attempt to induce Allens (a highly respected firm) to overlook to provide the requested advice – would not be correct. It was not even put to Mr Walsh.

G.124. Crown accepts, without reservation, that the bonus jackpots matter should have been disclosed to the Commission sooner than it was. It is highly regrettable that the matter was overlooked for a period. But as Mr Maher explained, that was due to Allens' oversight. Counsel Assisting's submission that Crown is responsible for the oversight,[1492] and that this is a factor that "strongly suggests" that Crown is unsuitable to hold the licence,[1493] are inconsistent with the weight of the evidence and should not be accepted.

G.3.3.3 Mr Walsh's understanding of the amount of Crown's potential tax liability

G.125. As noted above, Mr Walsh's evidence was that he understood that Crown's potential underpayment of tax was around $35 million to $40 million.[1494] Counsel Assisting submits that this evidence should be rejected, on the basis that:[1495]

(a) the spreadsheet that Mr Mackay prepared concerning bonus jackpots (see [G.48] above) referred to all eight categories of Bonus Jackpots promotions; and

(b) after 7 June 2021, Crown Resorts sought advice on the lawfulness of deducting all of those eight categories (cf. Category 8 only).

1490 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.140].

1491 Maher T2298.9-13.

1492 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.146].

1493 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.197(e) and (f)].

1494 X Walsh T3223.7-8, T3223.43-44.

1495 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.131].

G.126. In Crown's submission, the Commissioner should not reject Mr Walsh's evidence on this topic. As noted above, the expression "bonus jackpots" can be used to describe all eight categories of promotions together, as well as the final category of promotions only. Mr Mackay's spreadsheet likely referred to all eight Bonus Jackpot categories (rather than Category 8 only) because Mr Walsh did not specify which of the two the spreadsheet was to address. In short, it appears that there was simply an understandable miscommunication given the ambiguity in the term "bonus jackpots".

G.127. The fact that, at a later point in time, well after Mr Walsh's discussion with Mr Mackay, others (namely the directors of Crown Resorts) sought advice on the lawfulness of all eight categories of Bonus Jackpots promotions after 7 June 2021 does not mean that Mr Walsh understood there to be any realistic prospect of Crown having underpaid tax in respect of all of those categories. His understanding was based on his experience and his evidence related to an earlier point in time. As he said, "in all of the jurisdictions [he is] aware of and worked in, free play is never included in the revenue calculation for gaming tax".[1496] Further, the factual context following 7 June was that Mr Mackay's evidence related to a spreadsheet that did cover all eight categories of Bonus Jackpots, and it had been suggested in the Commission hearings that Crown may have underpaid tax in respect of all of those categories. Accordingly, it is not surprising that the board would seek advice on all of them, for completeness.

G.128. Further, Mr Walsh's evidence of his understanding of the amount of Crown's tax liability was not challenged: it was not put to him that he was being untruthful, or that he did not genuinely believe that the amount of the potential tax liability was as he said.

G.3.4 Criticism of Ms Coonan

G.129. As noted above, when (or soon after) Mr Walsh spoke with Ms Coonan on 23 February 2021, he made a note "Helen to consider". When Ms Coonan was examined by Counsel Assisting, it was put to her that this note implied that she was going to "come back to him" after she considered the position.[1497]

G.130. In Crown's submission, that is not what the note implies. Mr Walsh does not recall what he had in mind when he wrote that note.[1498] There was no arrangement, and Ms Coonan did not say, that she would come back to him.[1499] Nor was there any arrangement (or offer by Mr Walsh) to provide further information or materials to her, to enable her to consider the matter further.[1500]

1496 X Walsh T3223.21-24.

1497 Coonan T3809.1-3.

1498 X Walsh T3221.12-13.

1499 Coonan T3809.5-8.

1500 Coonan T3845.6-12.

Mr Walsh may simply have formed the view during their call (or soon after) that Ms Coonan would give some consideration to some aspect of the matter.

G.131. In their written submissions, Counsel Assisting advance the proposition that, "contrary to her evidence", Ms Coonan was "to review or consider the issue".[1501] However, the notion that Ms Coonan had agreed to conduct a "review" was not put to Mr Walsh or Mr Mackay. Moreover, as Ms Coonan explained, she could not sensibly have undertaken to perform a "review". Mr Walsh did not provide, or say that he would provide, any materials to her to enable her to perform any "review".

G.132. Further, Ms Coonan's evidence about "considering" the matter must be considered in context. She was responding to Counsel Assisting's proposition that she had agreed "to come back to" Mr Walsh:[1502]

> Q. That implies, doesn't it, as a result of your conversation with him, you were going to come back to him after you considered the position?
>
> A. I don't know what he meant but there was never any arrangement that I would come back. The extent of my interactions on this was to direct him to send it for advice and disclosure.
>
> Q. And when he ---
>
> A. I did say --- sorry, Mr Finanzio. I did say it should be reviewed.
>
> Q. When he met with Mr Mackay, Mr Mackay took a note of his instructions from Mr Walsh, on the very next day, of what he understood what his instructions were, and Mr Mackay's note of what Mr Walsh told him was "Helen to consider".
>
> A. I understand that, but I had nothing to consider. Nothing was given to me, ever brought back to me. I known, I don't know what Mr Walsh meant by that note. [I did] say it should be reviewed, and my direction to him was pretty clear.

G.133. Her reference to having "nothing to consider" was plainly a reference to having no *materials* to consider. It was not put to her that Mr Walsh could not sensibly have formed the impression that she would "consider" (ie, give some thought to) the matter. Her evidence, read fairly and in context, was that she had not agreed to perform any detailed review or assessment of the matter and then revert back to Mr Walsh after having done so. That evidence is not inconsistent with the evidence of Mr Walsh,[1503] and should be accepted. Further, Mr Walsh's evidence was that after Allens were appointed, he indicated to Ms Coonan that he would raise the matter with them.[1504] Mr Walsh did not provide any further information or documents to Ms Coonan at the time, as might be expected if

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1501 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.95].

1502 Coonan T3809.1-23.

1503 Cf. COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.96], [16.5.77], [16.5.78].

1504 X Walsh T3229.34-43.

they had an understanding that Ms Coonan was to consider or act on the matter in some way.

G.134. Counsel Assisting also criticised Ms Coonan for not making further inquiries about the bonus jackpots matter once Mr Walsh had raised it with her.[1505] But as noted above, the issue was presented to her as a failure to be frank with the VCGLR in 2012 that was fixed or cured in 2018 – ie, as a cultural issue that did not involve illegal (or potentially illegal) conduct and that had ceased occurring years earlier. In Crown's submission, that is not the kind of matter that ought suggest to the Executive Chairman of an organisation the size of Crown as warranting personal attention and follow-up inquiry – particularly given the number and nature of issues Crown was facing.[1506]

G.135. Moreover, Ms Coonan wanted to ensure that the matter was properly investigated; that Crown received appropriate legal advice in respect of it; and that disclosure of it was made if required.[1507] She therefore directed that the matter be raised with Crown's lawyers, and properly investigated. In Crown's submission, given what Ms Coonan had been told about the matter, and her role, that approach was not unreasonable and does not warrant criticism being made of her.

G.3.5 Criticism of Alan McGregor

G.136. Counsel Assisting makes various criticisms of Mr McGregor with respect to the bonus jackpots issue, including suggesting that he should not stay in his role.[1508]

G.137. In Crown's submission, that criticism of Mr McGregor should not be accepted. None of it was put to him. When he was examined (and when asked questions in writing) there was no suggestion of any impropriety on his behalf with respect to the bonus jackpots issue.

G.138. Mr McGregor was not even asked about the extent of his involvement with the matter. He was asked no questions about the extent to which he advised on or considered the tax treatment of the relevant promotions. Nor was he asked about what if any responsibility he had in making decisions about the tax treatment of the promotions, or in deciding what if any disclosure to the VCGLR should occur.

G.139. Further, as noted above, Mr Barton – the CEO and MD of Crown Resorts at the time – was planning to resolve the matter following consultation and by agreement with the State. He was senior to Mr McGregor and had responsibility

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1505 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.200], [16.5.79]-[16.5.84].

1506 As Ms Coonan said, it is not the role for an Executive Chairman to follow up and take responsibility for every matter that comes across his or her desk: T3811.34-38.

1507 Coonan T3805.27-33, T3806.2-7, T3811.5-9, T3811.23-28.

1508 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [5.1.203], [5.1.208], [12.1]-[12.3].

for, and had determined how he wanted to, resolve the matter. In those circumstances, it is not clear what exactly Counsel Assisting says that McGregor ought to have done. In Crown's submission, the criticism of him is unfair and should not be accepted.

H. PROCESSES FOR MAKING FUNDS AVAILABLE TO PATRONS

H.1. This part of the submissions cover Crown's processes for making funds available to patrons at Crown Melbourne, as they have become relevant to the work of the Commission. It is split into three sub-parts, dealing with:

(a) the Hotel Transactions/CUP process;

(b) the "paid out" process; and

(c) the use of cheques.

H.2. The first sub-part is responsive to paragraphs 7.1.1 to 7.8.5 and 7.9.1 to 7.9.2 of Counsel Assisting's closing submissions (Hotel Transactions/CUP). The second sub-part is responsive to 7.8.6 to 7.8.8 of Counsel Assisting's closing submissions. The final sub-part is responsive to paragraphs 6.6.1 to 6.6.26 of Counsel Assisting's closing submissions (Responsible Service of Gaming).

H.1. Hotel Transactions/CUP

H.1.1 Events leading up to Crown informing the Commission of CUP issue

H.3. Crown's 21 April 2021 response to RFI-002 flagged that a matter had then only recently come to the attention of the board of Crown Resorts. As had been foreshadowed in the 21 April 2021 letter, the 6 June 2021[1509] letter updated the Commission on that matter. It did so in the form of an 87 page memorandum of advice of senior counsel (the **Independent Advice**).[1510]

H.4. The catalyst for the Independent Advice was the board of Crown Resorts taking steps to investigate comments apparently made by a Crown employee on 16 March 2021 during a leadership and development training session. Those comments were recorded[1511] as being to the effect that Crown engaged in two practices designed to circumvent government laws and/or facilitate money laundering, namely:

(a) *first*, a practice whereby one patron would transfer money from their Chinese bank account to a Chinese bank account of a second patron, and then the second patron would transfer the same amount from their Australian bank account to the Australian bank account of the first patron (the **Alleged Reciprocal Payment Conduct**); and

(b) *second,* a practice whereby an international patron staying at the Crown Towers hotel would have an "incidental charge" marked to their

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1509 CRW.510.097.1736 Letter from Allens to the Commission (6 June 2021).

1510 Exhibit RC0268 CRW.900.002.0001 Independent Advice from Christopher Archibald QC, Christopher Carr SC and Anna Dixon (1 June 2021).

1511 Employee 15 did not confirm he made the comments: T2455.4-46 and T2459.20-38.

account/bill (termed 'folio' within Crown Towers) by a Crown staff member at the Crown Towers front desk, after paying for that amount using a credit or debit card issued by an international financial institution, most commonly a CUP card, and then the value of that incidental charge would be made available to the patron for gaming at the casino (the **CUP process**).

H.5. These comments were identified, as they were being made, by a concerned Crown employee who was participating in the training session.[1512] The next day that Crown employee made a report to the Surveillance Team at Crown Melbourne, which was logged as a "Surveillance Log Entry Report".[1513]

H.6. Ms Jan Williamson, the General Manager – Legal, Crown Melbourne, gave evidence that this document was brought to her attention soon thereafter and then she and Mr Robert Meade, another Crown in-house lawyer, commenced an investigation.[1514]

H.7. The matter was referred by Crown's in-house lawyers to Allens on 22 March 2021,[1515] including with Crown's historical documents and records relating to the CUP process,[1516] and the employee that was recorded as having made the comments was interviewed by Ms Williamson and Mr Meade on 25 March 2021.[1517] Crown pauses to note that no criticism can fairly be made of Mr Meade for instructing Employee 15 to keep the matter confidential during this meeting, particularly where Mr Meade had taken immediate steps to investigate the matter, had already promptly raised it with senior management and Crown's external lawyers, and continued to urgently investigate thereafter. Further, (as his file note shows) Mr Meade encouraged Employee 15 to raise any future concerns through the appropriate channels; any implicit suggestion that Mr Meade was not encouraging Employee 15 to continue to raise any concerns should be firmly rejected by this Commission. Mr Meade also brought the matter to the attention of Crown's Group Chief Compliance and Financial Crime Officer, Mr Steven Blackburn.[1518]

1512 Exhibit RC0935 CRW.512.048.0046 Text message exchange of 16 March 2021.

1513 Exhibit RC0934 CRW.520.018.9523 Surveillance Log Entry Report (17 March 2021).

1514 Williamson T3189.45 – 3190.18.

1515 Exhibit RC0315 CRW.512.137.0008-0031 Handwritten note of Rob Meade to Allens with attachments.

1516 Including the Crown internal manual informing staff how to carry out the CUP process: Exhibit RC0943 CRW.900.001.0026 'How to process Union Pay main cage paid outs for gaming guests'.

1517 Exhibit RC0936 CRW.512.048.0044 First page of file note of meeting between Employee 15, Jan Williamson and Robert Meade (25 March 2021); and Exhibit RC0936a CRW.512.048.0045 Second page of file note of meeting between Employee 15, Jan Williamson and Robert Meade (25 March 2021).

1518 Blackburn T2935.6-16.

H.8. On 9 April 2021 an out of session Crown Resorts Board meeting was held and it was resolved to appoint senior counsel of appropriate standing to conduct an investigation into the matter.[1519]

H.9. On 14 April 2021 the Board of Crown Resorts, through its solicitors (Arnold Bloch Leibler, (**ABL**)), commissioned senior counsel, with the assistance of ABL and junior counsel, to conduct an investigation and advise on their findings, both as to the facts and legal issues arising.[1520] This was 7 days before Crown's 21 April 2021 response to RFS-002, which *inter alia*, flagged that a new matter had recently come to the attention of the board of Crown Resorts.

H.10. Counsel retained by ABL conducted their investigation over a period of approximately 6 weeks.[1521] The investigative process included counsel, with ABL, conducting interviews of Crown employees (including hotel employees),[1522] and analysing relevant documents before advising, as noted, on the facts and legal conclusions by way of the Independent Advice. That advice was provided to the Board on 1 June 2021. It was then provided to the Commission on 6 June 2021.[1523] Notwithstanding the urgency with which Crown acted to obtain advice, Crown had identified shortly after the training session, and by no later than 22 March 2021, that the CUP process was a *historical* practice. It occurred between 2012[1524] and 2016. Thus it was not a practice that Crown had to be concerned might continue whilst investigations were taking place.[1525] This is not to downplay its seriousness. It was a wholly unacceptable practice, that was contrary to law, and should never have occurred. But it is important in assessing present suitability to recognise the immediate

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1519 CRW.510.041.0176 Crown Resorts Board Meeting Minutes 9 April 2021 at .0177.

1520 Exhibit RC0938 CRW.900.003.0096 Brief to Christopher Archibald QC and Christopher Carr SC and CRW.900.003.0091 Brief to Anna Dixon.

1521 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [4].

1522 Counsel assisting's criticism that the investigation did not interview any hotel staff is not accurate. David Stoddart and Kate Cannon were both interviewed. Mr Stoddart is the former General Manager of Commercial for Crown's Melbourne hotels and Ms Cannon is the former Rooms Division Training Supervisor for Crown's Melbourne hotels. (Exhibit RC0268 CRW.900.002.0001 Independent Advice at [27], [28] and Schedule 1) (COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0149, [7.6.4]).

1523 Crown notes that during this time an interim update was provided to the Commission in the form of the letter setting out the allegations made in the training session and that the Crown Resorts Board had commissioned the Independent Advice: CRW.510.098.0227 Allens letter to the Commission (21 April 2021); and CRW.510.098.0281 Attachment to Allens letter (21 April 2021).

1524 Although there is some evidence to suggest that the CUP process started in 2013, Crown ultimately accepts the findings of the Independent Advice. The evidence suggestive of a 2013 start date is Exhibit RC0268zz CWN.514.071.3304 VIP Review Workshop note (9 April 2013). This note suggests that the CUP practice *could* have been conceptualised in 2013, not 2012 – see note "*Look into whether there is an opportunity for customers to use China Union Pay to access $*".

1525 Exhibit RC0315 CRW.512.137.0008-0031 Handwritten note of Rob Meade to Allens with attachments, which begins "*Attached are a series of documents I have identified regarding an arrangement for patrons which was in operation prior to 2017*" [emphasis added].

action that Crown has taken upon becoming aware of the historical matters raised by the employee in the training session.

H.11. As Counsel Assisting fairly submit, this action:

> … reflects well on the current board of Crown Resorts.

and

> shows a willingness to expose the company to outside scrutiny, a greater acceptance of the need for transparency, and a more open approach to regulators. This acceptance of the need for transparency was further emphasised when the board of Crown Resorts and Crown waived legal professional privilege in respect of the CUP issue generally.[1526]

H.1.2 Evidence of the Crown employees

H.12. The employee that made the comments in the training session was called to give evidence to the Commission in confidential hearings and was given the pseudonym Employee 15.[1527] Crown accepts that, when giving evidence, Employee 15 appeared to retreat from the account of his observations set out in the Surveillance Log Entry Report.[1528] Crown accepts that this Commission can properly accept the account in that log as a substantively accurate record of the matters raised in the training session, and submits that it is not necessary for this Commission to reach a final view on whether the precise words and terminology[1529] were correctly attributed to the employee in question. What is clear is that the employee raised the two practices with quite some specificity and in a context which identified those practices as being wrong.

H.13. Importantly, however, on any view what was raised by the employee was practices which were stated to be practices taking place in the past; there was no suggestion either in the security log or in the employee's evidence that either practice was ongoing. It was also clear from Employee 15's evidence that he had no first-hand knowledge of the CUP process.[1530] The highest Employee 15 put his awareness of the CUP process was in the nature of "rumour".[1531]

H.14. Crown accepts Employee 15's evidence to the Commission was not sufficiently forthcoming. For the avoidance of doubt, however, while Counsel Assisting

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1526 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0147, [7.5.9].

1527 Employee 15 T2444.46-2473.26.

1528 Exhibit RC0376 CRW.520.018.9523 Surveillance Log Entry Report (17 March 2021).

1529 Even if Employee 15 used the expression "money laundering" during the training session, so far as the CUP process was concerned, his evidence was that that the practice was designed to avoid *currency controls*. He was subsequently unsure about his use of the phrase "money laundering" in the training session and/or did not appear to distinguish money laundering from currency control circumvention: Employee 15 T2454.44 – 2455.10 and T2456.44 – 2457.37 and T2458.47 – 2459.5 (currency controls). Cf. T2455.37-46 (money laundering).

1530 Employee 15 T2467.28-36 and T246.11-13.

1531 Employee 15 T2468.13-43.

submits that Employee 15 may have been concerned about "giving evidence against his employer",[1532] Crown does not understand it to be implied that Crown instructed or pressured Employee 15 to be unco-operative in the witness box or to not give evidence critical of Crown. Indeed, no such finding is fairly open.

H.15. By contrast, Employee 10 gave more helpful direct evidence about the CUP process.[1533] She presented as honest and responsive, and on multiple occasions gave direct responses that went towards evidencing wrongdoing by Crown.[1534]

H.16. Employee 10 was, at the time of her evidence, the most senior manager working at Crown Towers.[1535] She also had extensive prior employment history at Crown Towers since 2009, including as a concierge and then chief concierge.[1536]

H.17. She gave detailed evidence of the CUP process,[1537] and confirmed she had been trained by Crown to conduct the transactions as part of covering the shifts of duty managers in her role as chief concierge.[1538]

H.18. The key elements of the CUP process that Employee 10 described were as follows:

(a) she only recalled it being used by international guests;[1539]

(b) the process would commence when an email was sent to those at Crown Towers with duty manager level authority;[1540]

(c) that email would be from the gaming management part of the business, and would request approval for CUP processing;[1541]

(d) it would then be approved by a person with the relevant level of seniority;[1542]

(e) once approved, the patron would then be escorted to the Crown Towers front desk by their host;[1543]

1532 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0152, [7.8.4].

1533 Employee 10 T2416.29 – 2444.43.

1534 E.g. Employee 10 T2424.33-36, T2430.33 – 2431.3 and T2432.1-30.

1535 Employee 10 T2418.43-46.

1536 Employee 10 T2417.27 – 2418.18.

1537 Employee 10 T2420.1 – 2432.30.

1538 Employee 10 T2420.32-42.

1539 Employee 10 T2430.35 – 2430.41.

1540 Employee 10 T2421.6-18.

1541 Employee 10 T2421.6-18.

1542 Employee 10 T2421.6-18.

1543 Employee 10 T2421.6-18 and T2425.43-44.

(f) the patron/host would present the patron's patron card and separate identification, being an international passport;[1544]

(g) the transaction was processed, in the sense that there was a deduction from the patron's card, which took place on a dedicated NAB EFTPOS machine that was separate to the ones used by the front desk for other transactions (which did not accept CUP),[1545] and the patron/host would be given a Crown Towers receipt and an EFTPOS receipt, stapled together;[1546]

(h) other than the receipt, the patron was not provided with anything by Crown Towers in exchange for the deduction from their account, such as accommodation or anything else incidental to their hotel stay;[1547]

(i) from her recollection the value of individual transactions ranged between $10,000 to $500,000. There were approximately 3 to 5 such transactions per week and only CUP cards were used[1548] (although Crown notes that the process was available for use with other cards[1549]);

(j) the NAB EFTPOS machine had a $10,000 limit, so transactions of more than that had to be conducted in increments of that amount;[1550]

(k) there would be a balancing of the transaction so that if $140,000 was charged to the patron's CUP card, there would be an equivalent offset of a charge of the same amount, so as to present as a net zero transaction for the purposes of Crown Towers,[1551] and this would be recorded on both the Crown Towers records and the patron's account/bill as "pre-approved bank transaction";[1552]

(l) the patron and guest would then leave the Crown Towers front desk;[1553]

(m) there was no interaction by the Crown Towers staff to enquire as to the source of the funds,[1554] or to make any sort of AML reporting;[1555] and

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1544 Employee 10 T2421.6-18 and T2430.1-3.

1545 Employee 10 T2422.45 – 2423.11.

1546 Employee 10 T2421.6-26 and 2426.4-20.

1547 Employee 10 T2421.20-41.

1548 Employee 10 T2422.9-31.

1549 CRW.512.179.0001 Crown Towers Hotel Instruction, "How to Process a Main Cage Purchase", (August 2016).

1550 Employee 10 T2423.37 – 2424.14.

1551 Employee 10 T2423.25-34 and 2425.23-34.

1552 Employee 10 T2424.16 – 2425.20.

1553 Employee 10 T2426.26-27.

1554 Employee 10 T2430.33-38.

1555 Employee 10 T2432.37 – 2433.35.

(n) the Crown Towers hotel never itself made payments of cash as part of the CUP process.[1556]

H.19. Although Employee 10 did not know from first-hand knowledge where the patrons would then go or what the patrons were actually paying for, she subsequently learned from publicly available material that the payment was a credit towards gaming, which was consistent with her observations of the transactions.[1557]

H.20. Employee 10 explained that the account/bill itself would not be misleading in the sense that the transaction was not described as 'accommodation' or alike, although it could mislead the financial service provider, CUP, or a law enforcement agency looking at the bank records, because it would look as though the patron had paid for hotel services.[1558]

H.21. Employee 10 confirmed that the CUP process ceased being conducted in November 2016, which she observed was shortly after the time of the China arrests[1559] (although Crown Towers to this day otherwise accepts CUP cards for ordinary and legitimate payment for hotel services).[1560] This is consistent with Counsel Assisting's closing submissions, which correctly (with respect) accept that the CUP process was a "*historical* practice".[1561]

H.22. Crown executives and Board members also gave some evidence about the CUP process:

(a) Michelle Fielding, Group Manager Regulatory and Finance, gave evidence about advices she and Ms Tegoni had given in respect of the CUP process;[1562]

(b) Jan Williamson gave evidence that Ms Tegoni was the in-house lawyer responsible for the CUP process (which was consistent with the Independent Advice), as well as evidence as to the investigation into the issue this year, the cessation of the CUP process in 2016, and a failed attempt by the VIP business to revive it in 2018 or 2019;[1563]

1556 Employee 10 2436.4-16.

1557 Employee 10 T2427.2-23.

1558 Employee 10 T2431.41 – 2432.23.

1559 Employee 10 T2428.3-25.

1560 Employee 10 T2428.44-47. From the point that the CUP process stopped the designated NAB EFTPOS machine was used only for hotel services: Employee 10 T2442.36 – 2443.7. Crown Towers has since removed the designated CUP NAB EFTPOS machine because its other EFTPOS machines now process CUP: Employee 10 T2442.10-34.

1561 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0146, [7.5.1].

1562 Fielding T2683.32-2686.28. Ms Tegoni is no longer with Crown, and did not co-cooperate with the investigation that gave rise to the Independent Advice: Exhibit RC0268 CRW.900.002.0001 Independent Advice at Schedule 2.

1563 Williamson T3173.1 – 3190.39.

(c) Steven Blackburn, Group Chief Compliance and Financial Crime Officer, gave evidence as to financial crime generally, including specifically the CUP process and the investigation into that matter;[1564]

(d) Xavier Walsh, CEO Crown Melbourne, gave evidence of his awareness of the CUP process during his time as Chief Operating Officer;[1565]

(e) Nick Weeks, Executive General Manager, Transformation Regulatory Response, was asked about the CUP process in passing;[1566]

(f) Alan McGregor, CFO of Crown Resorts, gave evidence of his knowledge of the CUP Process, which he said was limited until recently before he gave evidence,[1567] and which he acknowledged should not have been the case;[1568]

(g) Jane Halton, Director Crown Resorts, referred in her evidence to the CUP process as part of evidence regarding the change within Crown generally to better focus upon not just risk, but compliance, and the risk management framework and culture of Crown generally;[1569] and

(h) Antonia Korsanos, Director Crown Resorts, similarly to Ms Halton, referred in her evidence to the CUP process as part of the broader change within Crown, [1570] and noted specifically that she considered it a positive thing that when Employee 15 raised the issue in the training session the concerned Crown employee was comfortable enough to escalate the matter in the way described above.[1571]

H.23. Crown notes in more detail some of the matters put to Mr Blackburn regarding the CUP process below. Otherwise, this executive and board level evidence is relevant to Crown's culture and transformation program addressed in Part C of these submissions.

1564 Blackburn T2933.23 – 3002.14.

1565 X Walsh T3283.12-47.

1566 Weeks T3399.29-33 and T3400.4-7.

1567 McGregor T3541.12 – T3542.3.

1568 McGregor T3542.32 – 35.

1569 Halton T3571.34 – 3574.17.

1570 Korsanos T3703.3 – 3708.28.

1571 Korsanos T3703.45 – 3704.19.

H.1.3 Crown's acceptance of the Independent Advice and response to aspects of Counsel Assisting's closing submissions

H.24. The Independent Advice found no evidence of the Alleged Reciprocal Payment Conduct actually taking place.[1572]

H.25. As such, it is not to the point that:[1573]

(a) Mr Blackburn accepted that the Alleged Reciprocal Payment Conduct *could* turn out to be a "*revelation rather than allegation*";[1574] or

(b) persons interviewed for the Independent Advice, but not called to give evidence at the Commission, had some, untested, notions of the practice.[1575]

H.26. Rather, given that:

(a) the authors of the Independent Advice, in their own words, had "not been able to identify evidence indicating the existence of …" the Alleged Reciprocal Payment Conduct;

(b) the Commission has received no separate evidence to suggest the practice actually took place, even historically;

(c) by reason of the third party payment prohibition that Crown has adopted, as described in Part D above, such conduct could not now take place with any involvement of Crown accounts. Any funds received from a third party by way of the Alleged Reciprocal Payment Conduct would be returned, and thus make it unlikely to be attractive to persons attempting to conduct nefarious transactions,

it is respectfully submitted that the allegation cannot fairly influence the Commission's assessment of Crown's suitability to maintain its licence.

H.27. The Independent Advice found that the CUP process was a documented and approved process within Crown Towers that indeed took place on a large scale, both as to frequency and size of transactions, between 2012 and 2016.

H.28. Crown accepts those findings. It follows that Crown accepts:

(a) the factual version of events found;[1576]

1572 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [5], [354] – [357] and [359].

1573 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0150, [7.7.1] – [7.7.6].

1574 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0150, [7.7.3].

1575 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0150, [7.7.4].

1576 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [17] – [180].

(b) that Crown was aware of the risk that the CUP process could be a breach of s 68 of the CCA, and Crown decided to run that risk;[1577]

(c) that the internal legal advice obtained purportedly for the purposes of 'signing off' on the CUP process was infected by significant pressure to achieve the desires of the commercial side of the Crown business;[1578]

(d) to the extent that that internal legal advice was to the effect that the CUP process was *not* a breach of s 68 of the CCA, it was wrong;[1579]

(e) that between 2012 and 2016, Crown committed a very large number of breaches of s 68 of the CCA by way of the CUP process;

(f) it is not far-fetched to imagine that organised crime figures took advantage of the CUP process;[1580]

(g) the CUP process may have involved Crown dealing in the proceeds of crime;[1581] and

(h) that, overall, the evidence surrounding the CUP process suggests a severe failure by Crown to take prudent and appropriate steps to prevent risks that the CUP process might entail or facilitate illegal or unlawful conduct, and that those failures appeared to have an explanation in an environment in which compliance staff felt significant pressure to provide solutions that were favourable to Crown's commercial interests, and in which any unfavourable answers might be overridden by management.[1582]

H.29. Crown also accepts that a finding of breach of s 124(1) of the CCA is open.[1583] However, as soon as the current Board became aware of that historical practice, Crown commenced an urgent, independent investigation and shared the results with this Commission, the VCGLR and other regulators. Accordingly, while the CUP process is undoubtedly an example of past poor conduct, it is also a significant demonstration of Crown's new and improved culture.

1577 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [11], [12], [48], [49], [65], [66], [117] – [143], [147] – [149]. [154] – [158] cf. [94] Theiler, CRW.512.172.0002 [103] O'Connor.

1578 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [11] and [212].

1579 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [201] – [204].

1580 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [309] and [360]. Although as Counsel Assisting rightly conceded in the examination of Mr Blackburn, it could not be confirmed definitively that the CUP process was used by organised crime: Blackburn T2937.8-12.

1581 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [338] and [360].

1582 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [360].

1583 As Counsel assisting accept: COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0332 [18.3.18].

H.30. Further, Crown accepts the additional criticisms of the CUP process put to, and accepted by, Mr Blackburn. In particular, that:

(a) there is a degree of dishonesty in having gaming charges described in the way they were and appearing on a hotel account/bill;[1584]

(b) the CUP process misled CUP, and any other financial institution whose cards were used, and had the potential to mislead any law enforcement agency looking at the bank records with an eye to what the card holder was paying for;[1585]

(c) assisting a patron to breach another jurisdiction's currency controls is wrong[1586]and ethically concerning, even if not illegal;[1587]

(d) if reporting to AUSTRAC in respect of the CUP process was required, failing to do so at the relevant time would hinder AUSTRAC and law enforcement agencies in their efforts to investigate money laundering and organised crime;[1588]

(e) there were parallels between the CUP process and the Southbank and Riverbank accounts issues (described in Part D above), in the sense that there was no layer or system for detecting that actions might have been taking place in circumvention of money laundering scrutiny;[1589] and

(f) the CUP process is a typology behaviour that *may* be indicative of money laundering risk.[1590]

H.31. Although Crown accepts that the process could be indicative of money laundering risk because it obscured (in substance) gambling expenditure as hotel expenditure, Crown notes that it also had many features which suggest it was not used to facilitate money laundering. One of the features of the types of money laundering considered at Part D above, is the desire to mask the identity of the person obtaining the money. Patrons using the CUP process were not able to do so anonymously. The CUP process involved the confirmation of the identification of the patron in the form of a passport described above. There was

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1584 Blackburn T2943.36-44.

1585 Blackburn T2944.1-26.

1586 Blackburn T2294.5-43.

1587 Blackburn T22949.5-26.

1588 Blackburn T2952.45–2953.3 and T2953.21-27.

1589 Blackburn T2956.16-23.

1590 Counsel assisting was rightly cautious in not putting the matter higher than a mere possibility (COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0144, [4.2(a)]). The evidence footnoted only puts the matter as a mere possibility of risk. Specifically: (a) the Deloitte letter of 21 June 2021 at Exhibit RC0316 DTT.010.0006.0007 records that the CUP process: "… *is considered to be a typology/behaviour* ***that may*** *be indicative of money laundering (ML)* ***risk****, and as such, is in the scope for Deloitte to consider …* [emphasis added]"; and (b) Steven Blackburn was agreeing with that statement from the Deloitte letter, although it was not read in full (Blackburn T2966.44 – 2967.2).

an electronic and paper record of the transactions. The paperwork associated with use of the process has also been noted above.

H.32. In those circumstances, it is not open for the Commission to find (nor do Counsel Assisting go so far as to submit) that the CUP process *is* a typology behaviour indicative of money laundering.[1591]

H.33. Crown also submits that the Commission ought to reject the criticisms advanced by Counsel Assisting[1592] based on the fact that only one attendee escalated the matters raised in the training session.

H.34. Counsel Assisting contend that there are four conclusions that may be drawn from the fact that only one attendee at the training session reported the matters raised. While Mr Blackburn accepted that two of those explanations were possible or available conclusions, he emphasised that there were other "alternative explanations" as well.[1593]

H.35. Crown submits that no conclusions could safely be drawn about why those other employees did not escalate the matter (cf Counsel Assisting's closing submissions at paragraph7.5.14), particularly where the other employees were not interviewed by the Commission. Several possibilities are open. In particular, given that the practices raised in the training session had ceased, other attendees may not have considered it necessary to escalate practices that had stopped. Of course, it is highly desirable that employees report past conduct too (as occurred) but the fact that the practices in question were no longer occurring may readily explain why other employees did not escalate the matter. Ultimately, the conclusions Counsel Assisting raise in their submissions are too speculative to usefully guide the work of the Commission. The reporting by employees should also be considered in light of Crown's continued efforts to expand and deepen the AML training of employees, as set out in Part D of these submissions. The fact an employee raised the past practice at this stage is commendable, and reflective of the changed culture at Crown.

H.36. Crown submits that, as was Mr Blackburn's evidence (considered below), approached holistically, the way in which the CUP process was approached by Crown after it was raised in the training session reflected well upon Crown's current culture and suitability to maintain a licence. The fact that other employees present did not escalate the matter does not materially detract from that.

1591 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0142 [7.1.9] and .0144, [7.4.2(a)]. To be fair to Counsel Assisting, the proposition put is that it is a typology behaviour that *may* be indicative of money laundering.

1592 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0148, [7.5.13] – [7.5.14].

1593 Blackburn T2930.41-46. For the second two he did not even make the limited concession: Blackburn T2931.43 – 2932.43

H.37. Crown also submits that the criticism in Counsel Assisting's closing submissions to the effect that there was or is some form of reluctance to conduct a "root cause" analysis [1594] is not warranted. Crown Resorts procured a comprehensive advice, which included the conduct of a wide-ranging investigation.

H.38. Crown does not dispute the conclusion in the Independent Advice, which identified the root cause for the CUP process in a failure to take prudent and appropriate steps to prevent risks that might entail or facilitate illegal or unlawful conduct, which occurred in an environment in which compliance staff felt significant pressure to provide solutions that were favourable to Crown's commercial interests, and in which any unfavourable answers might be overridden by management.[1595]

H.39. In accepting this as the root cause of the CUP process, Crown notes that the authors of the Independent Advice were describing an unacceptable set of circumstances and values within Crown at a particular point of time, nine to five years in the past. Crown maintains that it would be unfair for the Commission to use the submission that there has been no root cause analysis as a basis for finding that that unacceptable set of circumstances and values within Crown remain to this day. Rather, the root cause was plainly unearthed by the independent and respected members of counsel as part of their compilation of the Independent Advice.

H.40. Crown also notes that it has also expanded Deloitte's forensic review to cover the CUP process and to provide assurance that the CUP process is no longer occurring.[1596] While Crown has no reason to think the practice continues, it has commissioned Deloitte to investigate that matter to ensure its understanding is correct. Deloitte's review will test the volume and frequency of the hotel card transactions and identify whether the CUP process occurred outside of Crown Melbourne or outside the period identified by the Independent Advice. This has been done so that Crown can, fully appraised of the extent to which the process was used, take any further measures necessary.

H.1.4 Crown's conclusion as to suitability to hold a licence

H.41. Crown notes the following matters arising out of the CUP process, which it submits are generally supportive of a finding of suitability to hold a licence:

1594 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0148-9, [7.5.19] and .0153, [7.9.1(e)].

1595 Exhibit RC0268 CRW.900.002.0001 Independent Advice at [360].

1596 CRW.512.202.0001 Deloitte Forensic Review and Controls Assessment – Engagement Variation – Hotel Card Transactions and Extension of Forensic Review Relevant Period (21 June 2021).

(a) Crown and Counsel Assisting agree that the CUP process was historical conduct;[1597]

(b) there is evidence that the CUP process was a CPH initiative,[1598] and as is noted in Part C, there is no real prospect of CPH wielding similar negative influence within Crown in the future; [1599]

(c) whilst it is true that some people raised the possibility of reintroducing the practice in 2018 or 2019, [1600] Ms Williamson (who specifically recalled being asked about that by Mr Ishan Ratnam), gave evidence to the effect that the CUP process was not reintroduced, and that Mr Joshua Preston, then Crown Resorts' senior in-house lawyer, had given unequivocal instructions that it should not be reintroduced;[1601]

(d) when the historical practice was identified in mid-March 2021, Crown moved quickly and decisively to investigate it,[1602] and brought it to the attention of the Commission expressly in the form of the Allens letter dated 21 April 2021,[1603] and then more fully by way of the Independent Advice on 6 June 2021. As noted above, Counsel Assisting has rightly recognised that this conduct stands to Crown's credit;[1604]

(e) as noted above, Crown has engaged Deloitte to investigate the CUP process as part of its forensic review and has committed to providing the results of that investigation to the Commission, AUSTRAC, the VCGLR, the ILGA and the GWC.[1605] It is submitted that this is demonstrative of Crown's desire to fully understand its past wrongdoing.

1597 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0146, [7.5.1].

1598 Exhibit RC0350 CRW.523.002.0355 Email from Jan Williamson to Debra Tegoni dated 18 July 2013, which when taken with Ms Williamson's oral evidence at T3175.29-30, suggests that she was told by Roland Theiler that CUP was a CHP initiative. This is also supported by a record of a VIP Review Workshop held on 9 April 2013, which evidences that CPH representatives (Michael Johnston, Mark Arbib, Steve Bennett and Brad Kady) were present when the following item was discussed "Look into whether there is an opportunity for customers to use China Union Pay to access $": Exhibit RC0268zz CWN.514.071.3304 at 3305: VIP Review Workshop #1 held on 9 April 2013.

1599 This is also noted by Counsel Assisting: COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0142, [7.2.2].

1600 COM.0500.0001.0001 Closing submissions of Counsel Assisting the Commission at .0142, [7.1.8] and .0144. [7.3.1].

1601 Williamson T3181.38 – 3182.16.

1602 As detailed in paragraphs H.9 above.

1603 CRW.510.098.0227 Allens letter to the Commission (21 April 2021); and CRW.510.098.0281 Attachment to Allens letter (21 April 2021).

1604 COM.0500.0001.0001 Closing Submissions Counsel Assisting at .0147, [7.5.9].

1605 Blackburn T2952.4-26.

(f) Mr Blackburn, whose substantial expertise in respect of compliance and financial crime is not only evident,[1606] but makes him the foremost expert in the area to have given evidence to the Commission, said that:

(i) he was "thrilled" with the way in which Mr Meade identified, escalated and addressed the CUP process issue;

(ii) the way in which Mr Meade handled the issue once identified (in escalating it) was precisely what someone sitting in Mr Blackburn's position, as a Head of Compliance or a Head of Financial Crime, wanted from employees;[1607]

(iii) when challenged about the task of reforming Crown's culture given all the money laundering and financial crime problems of the past, and whether Crown's commitment to change was merely cosmetic, said that he had witnessed "a real genuine desire to manage, mitigate, stop anything that has even the remote semblance to financial crime";[1608]

(iv) unlike every single other organisation at which he has worked previously, at Crown he has *not* come across an attitude that what he does in terms of compliance is a "cost centre" that the organisation would prefer not to pay;[1609]

(v) he had seen *nothing* like the type of culture that might be said to have permitted the CUP process to be implemented and continue at Crown described in the Independent Advice, or indeed the culture that existed in 2019 at Crown, in his time there;[1610] and

(vi) was extremely positive as to Crown's remediation plan generally.[1611]

H.42. It follows that Crown respectfully disagrees with Counsel Assisting's closing submissions on a finding of unsuitability made at paragraphs 7.9.1 and 7.9.2.

H.43. With respect, there is no reasonable basis for why what are agreed to have been *historical* practices that ceased five years ago should form a basis for a finding of apparently now present "systemic and cultural problems at Crown" of the nature set out in the sub-paragraphs (a) to (f) of 7.9.1 of Counsel Assisting's closing submissions (that is, other than reference to the 'root cause' issue, which is dealt with at paragraphs H.37 to H.39 above).

1606 Blackburn T2913.35 – 2916.37.

1607 Blackburn T2953.3-8.

1608 Blackburn T2964.46.

1609 Blackburn T2978.4-21, T2979.17-18.

1610 Blackburn T2981.16-17.

1611 Blackburn T3076.11-13.

H.44. Also in this regard, this part of Counsel Assisting's closing submissions does not acknowledge that suggestions coming from the commercial side of Crown's business to reinstate the CUP process as recently as 2018 or 2019, were resolutely shut down by the compliance/legal side of the business. [1612] Whatever the position in 2012, this chain of events illustrates that the appetite to take unacceptable risks and "run the gauntlet" was already changing in 2018-2019, and Crown's culture in relation to matters of compliance and risk tolerance is the subject of continuing and far-reaching reforms.

H.45. In those circumstances, ultimately, Crown submits that the fact that the CUP processes occurred in years past does not warrant a finding that Crown is currently unsuitable to maintain a licence and irredeemably so.

H.46. Further, in describing the elevation and investigation of the allegations from the training session as mere "green shoots" and "insufficient to ground a conclusion that any significant turn-around of culture has occurred",[1613] Counsel Assisting (with respect) offers an opinion that is contrary to the uncontested evidence of Mr Blackburn.

H.47. In this regard, it is relevant to recall that Mr Blackburn said he was "thrilled" with the way certain aspects of the investigation were handled, that it was exactly what he was looking for as a Head of Compliance or a Head of Financial Crime and that unlike at other places he confronted no resistance to compliance/financial crime reporting at Crown[1614] (all of which was noted in Counsel Assisting's closing submissions).[1615]

H.48. In those circumstances, Crown submits that the relatively recent way in which the allegations raised in the training session were handled by Crown does demonstrate a genuine shift in culture and is, ultimately, supportive of a finding of Crown's current suitability to maintain its licence.

H.2. Obtaining cash from Crown Towers

H.49. This part of the submissions addresses the evidence of Employee 10 concerning patrons obtaining cash advances from the front desk of Crown Towers that were termed "paid out".[1616] It is responsive to paragraphs 7.8.6 to 7.8.8 of Counsel Assisting's closing submissions, although it also includes details that go beyond those paragraphs.

1612 Williamson T3181.38 – 3182.16.

1613 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0153, [7.9.2].

1614 Blackburn T2953.3-8.

1615 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0147, [5.10].

1616 Employee 10 T2434.22 – 2444.37. This section does not deal with the evidence of the other two instances in which Crown Tower's front desk might provide a patron with cash, being (a) return of a bond originally provided in case; or (b) return of a pre-paid accommodation charge when patron does not stay as long as originally paid for: Employee 10 T2435.20-28.

H.2.1 The details

H.50. Employee 10 gave evidence that there were historical practices at Crown Towers whereby a certain class of patrons could, in effect, obtain a limited amount of cash from the hotel front desk (**paid out processes**).

H.51. In circumstances where the certain class of patron was a guest of the hotel, the amount of cash provided to them by the front desk would be added as an amount payable on the patron's account/bill (and Crown's corresponding records), with a notation "paid out" and the amount of cash listed. This amount would then be settled by charging the patron's credit card for this amount (plus a service fee), along with their accommodation fees and incidentals, at the end of their stay.[1617]

H.52. In circumstances where the patron was not a guest at the hotel, their credit card would be charged for the amount (plus a service fee), and an account/bill would be generated only stating the "paid out" amount and the service fee. This account/bill would list the patron's arrival and departure dates as the same date, and would give the room number as beginning with a '9', which was a reference to a non-existent room (**room 9 process**).[1618]

H.53. Employee 10 conceded, as was correct, that in the Room 9 process example, Crown Towers was merely acting as a merchant and the patron's credit card statements was going to show payment to a hotel when there was no use of accommodation services.[1619]

H.54. Employee 10 also explained a variation of the room 9 process by reference to the account/bill at CRW.512.168.0042. The people referred to on that account/bill were given the pseudonyms Mr GN and Mr PG.

H.55. The evidence was that that invoice evidenced:

(a) Mr GN purchased an electronic product for Mr PG from a third-party vendor;[1620]

(b) Mr PG's credit card was charged by Crown Towers for the cost of the item;

1617 Employee 10 T2434.29-2435.42.

1618 Employee 10 T2437.29 – 2438.9. Crown notes that there appeared to be a non-nefarious explanation for the room 9 process – namely the Crown Towers hotel had to record the transaction in its internal operating system (called OPERA), and if the patron was not a guest, this meant creating a bill or folio for the patron with a nominal room. Employee 9 T2389.25 – 2390.11 and T2399.44 – 2400.02. It was not put to any witness that the OPERA system allowed for cash to be obtained in this way without creating a notional room.

1619 Employee 10 T2438.11-27.

1620 By 'paying for' the evidence was not that Mr GN gifted Mr PG the item, rather that he conducted the purchase on Mr PG's behalf.

(c) following that charging, the same amount was provided to Mr GN in cash by the Crown Towers front office – ie, in order to reimburse him for the purchase he made for Mr PG.[1621]

H.56. Employee 10 also confirmed that:

(a) none of the paid out processes are any longer conducted by Crown Towers,[1622] thus meaning, as with the CUP process, the Commission is considering historical conduct;

(b) when Crown Towers did conduct the paid out processes, it only did it so for a certain sub-set of customers, being *hotel* VIP customers, who are distinct from *gaming* VIP customers;

(c) Mr GN, who is Crown Towers' biggest single hotel VIP customer,[1623] does not gamble at all,[1624] and, in fact, none of the other patrons whose names appeared on the account/bills the witness was shown by Counsel Assisting were gambling customers.[1625]

H.2.2 Implications of the paid out process for assessment of suitability

H.57. As the Commission is aware, following Employee 10's evidence, Allens wrote to the Commission pursuant to RFI-002 and NTP-061, indicating that Crown considered that in facilitating the exchange as between Mr GM and Mr PG, it may have provided a registrable designated remittance service in contravention of s 74(1A) of the *AML/CTF Act*.[1626]

H.58. That notwithstanding, Crown submits it is highly unlikely that the paid out processes were used to facilitate money laundering.

H.59. In circumstances where the transactions the subject of the practice were recorded by the hotel as "paid out" (which accurately recorded the nature of the transaction) and the practice was limited to a known class of patrons for relatively modest amounts, [1627] there is no basis to conclude that the practice was a typology of money laundering risk, much less that it was a practice used to facilitate money laundering.

1621 Employee 10 T2438.42–2439.39.

1622 Employee 10 T2443.9-15.

1623 Employee 10 T2439.19-20.

1624 Employee 10 T2444.3-7 and 2444.25-33.

1625 Employee 10 T2444.9-14.

1626 Exhibit RC1260 CRW.0000.0002.0193 Letter to Commission (29 June 2021).

1627 Employee 9, who also had experience with the historical paid out process, said it only happened in his experience twice (being since 2019) and was only for cash amounts of $500 in the first instance and between $500 and $800 in the second instance (Employee 9 T2392.29-47, T2393.37-39, T2394.5-13), which he likened to drawing cash out at "Woolies" (Employee 9 T2393.24-25).

H.60. Crown also notes that none of the hotel VIP customers about which the Commission received evidence (in the form of accounts/bills) were gaming customers of Crown. This likely demonstrates that the paid out processes did not involve any tension between promoting the commercial interests of Crown and maintaining compliance with laws as identified by the Independent Advice in respect of the CUP process, and as is referred to extensively in Counsel Assisting's closing submissions.[1628] Rather, a reasonable inference to draw is that they were simply part of a 'customer care' initiative by a company in a customer focused industry.

H.61. In those circumstances, ultimately, Crown submits that the Commission ought to have little regard to the historical paid out processes in the Commission's assessment of Crown's suitability to maintain its licence.

H.62. Finally, while Crown notes Counsel Assisting's recommendation that the Commission refer the Mr GM and Mr PG example directly to AUSTRAC for further investigation.[1629] Crown reported this transaction to AUSTRAC on the same day as its report the Commission.[1630]

H.3. Use of Cheques

H.3.1 Bank cheques – example of Mr Hasna

H.63. This part of the submissions further addresses the evidence of the former patron, Mr Ahmed Hasna, as it is touched upon in Counsel Assisting's closing submissions at paragraph 6.6.14 (Crown Melbourne practices and breaches) and 6.6.19 to 6.6.26 (A Case Study – the importance of section 68).

H.64. Those parts of Counsel Assisting's closing submissions are to the effect that Crown's apparent practice of accepting cheques not made out to Crown, constitutes regular breach of s 68(3)(b) of the CCA, and that Mr Hasna's example was an unfortunate story that would not have occurred if only Crown complied with the requirements of s 68.[1631]

H.65. Unfortunately, with respect, those parts of Counsel Assisting's closing submissions proceed from a mistake about Mr Hasna's experience. In fact, when handed to the Crown representative, Mr Hasna's cheque was a bank cheque payable to Crown for the purposes of s 68 of the CCA. An analysis of the relevant surrounding law is set out below.

H.66. First though, for the avoidance of doubt, Crown confirms that it has a practice whereby VIP patrons can indorse a **bank** cheque (being a cheque drawn on (ie,

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1628 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0143, [7.2.6] and .0152, [9.1].

1629 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0152, [8.8].

1630 CRW.549.012.0001 Email from Mr Blackburn (29 June 2021).

1631 The problems with Mr Hasna's evidence more generally have been set out at Part F above.

payable by) an authorised deposit taking institution) that is payable to the patron with the patron's signature and membership number on the back of the bank cheque, give that indorsed cheque to a Crown representative, and in exchange have their deposit account credited to the amount of the cheque, from which the patron can then withdraw chips to gamble. Crown then banks the bank cheque into its own account.[1632]

H.67. The evidence of Mr Hasna's experience in this respect was that:

(a) in May 2016, he attended the Mahogany Room and presented a bank cheque for $100,000 payable to "Ahmed Hasna or Bearer",[1633] he signed the back of the cheque and gave it to the cashier. A copy of both the front and back of that bank cheque is in evidence,[1634] it is plainly drawn on Australia and New Zealand Bank Group Limited (***ANZ***)[1635] and the back of it has been signed;

(b) in accordance with Crown's internal processes, an "early release of funds" was approved by Mr Lawrence and Sean Knights, Executive General Manager Table Games.[1636] Mr Hasna's patron number and the initials of Mr Lawrence and Mr Knights were recorded on the back of the cheque;[1637]

(c) Mr Hasna then signed to deposit the funds into his Crown deposit account and withdrew the full $100,000 in casino chips.[1638]

H.68. Crown submits that this process was and is in compliance with s 68 of the CCA. Section 68 relevantly provides that:

> **68 Credit etc.**
>
> (1) In this section—
>
> ***cheque*** means a cheque (other than a traveller's cheque) that—
>
> (a) is drawn on an account of an authorised deposit-taking institution for a specific amount payable on demand; and
>
> (b) is dated but not post-dated.

1632 Lawrence T1736.1-8.

1633 COM.0004.9990.0001 Hasna T35.22 – 36 (3 May 2021) at 0035.

1634 Exhibit RC0177 CRW.512.097.0057 Bank cheque. This document is incorrectly described in the transcript at T1779.33 as "Exhibit #RC0177 – Blank Cheque issued by ANZ…".

1635 An authorised deposit taking institution for the purposes of s 68(1) of the CCA.

1636 Exhibit RC0171 CRW.998.001.0401 Lawrence [14].

1637 Exhibit RC0177 CRW.512.097.0057 Bank Cheque.

1638 Exhibit RC0178 CRW.512.097.0122 Patron Receipt and Chip Purchase Voucher.

> (2) Except to the extent that this section otherwise allows, a casino operator must not, and an agent of the operator or a casino employee must not, in connection with any gaming or betting in the casino—
>
> (a) accept a wager made otherwise than by means of money or chips; or
>
> (b) lend money or any 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 Commission, wholly or partly release or discharge a debt.
>
> (3) A casino operator may establish for a person a deposit account to which is to be credited the amount of any deposit to the account comprising—
>
> (a) money; or
>
> (b) a cheque payable to the operator; or
>
> (c) a traveller's cheque.
>
> …
>
> (5) The operator may, in exchange for a cheque payable to the operator or a traveller's cheque, issue to a person chip purchase vouchers of a value equivalent to the amount of the cheque or traveller's cheque.

H.69. The phrase "drawn on an account of an authorised deposit-taking institution" in s 68(1) was inserted in 2001, replacing the words "drawn on a bank".[1639] This change was part of a broader update to Victorian legislation, reflecting the regulation by the Australian Prudential Supervision Authority of not just banks, but also non-bank financial institutions (such as credit unions).[1640]

H.70. The term "cheque" is defined by s 10(1) of the *Cheques Act 1986* (Cth) (***Cheques Act***) as follows:[1641]

> A cheque is an unconditional order in writing that:
>
> (a) is addressed by a person to another person, being a financial institution; and
>
> (b) is signed by the person giving it; and
>
> (c) requires the financial institution to pay on demand a sum certain in money.

1639 *Statue Law Amendment (Authorised Deposit-Taking Institutions) Act 2001* (Vic) Schedule item 10.3.

1640 Explanatory Memorandum to the Statue Law Amendment (Authorised Deposit-Taking Institutions) Bill 2001, p1-2.

1641 The Victorian Parliament, in respect of the CCA, is assumed to have meant to use this legal technical meaning of the term (absent the contrary intention clearly appearing, which it does not): *Attorney-General (NSW) v Brewery Employees Union of New South Wales* (1908) 6 CLR 469, 531 per O'Connor J.

H.71. The *Cheques Act* also relevantly provides as follows:

3 Interpretation

(1) In this Act, unless the contrary intention appears:

…

bearer means the person in possession of a cheque payable to bearer.

delivery, in relation to a cheque, means the transfer of possession of the cheque from one person to another.

…

holder means:

(a) in relation to a cheque payable to order—the payee or an indorsee who is in possession of the cheque as payee or indorsee, as the case may be; and

(b) in relation to a cheque payable to bearer—the bearer.

…

possession, in relation to a cheque, means possession (whether actual or constructive) of the cheque.

…

(1A) For the purposes of this Act, a cheque is payable **to or to the order of** a person or persons if:

(a) it is expressed to be payable:

(i) to the person or persons; or

(ii) to the order of the person or persons (or words to that effect); or

(iii) to the person or persons or to the order of the person or persons (or words to that effect); and

(b) it is not also expressed to be payable to bearer.

…

20 Cheques either payable to order or to bearer

A cheque is either payable to order or payable to bearer.

21 Cheques payable to order

A cheque is payable to order if the cheque is expressed, whether originally or by indorsement, to require the drawee institution to pay the sum ordered to be paid by the cheque to or to the order of:

(a) a person specified in the cheque as payee or indorsee;

…

25 Delivery essential for drawing or indorsement

A contract arising out of the drawing or an indorsement of a cheque is incomplete and revocable until delivery of the cheque.

26 Requisites for effective delivery

The delivery of a cheque is not effective to complete a contract arising out of the drawing or an indorsement of the cheque unless the delivery is made by the drawer or indorser, as the case may be, in order to give effect to the drawing or indorsement, as the case may be.

…

39 Every cheque transferable by negotiation

(1) Every cheque may be transferred by negotiation until it is discharged.

(2) Subsection (1) has effect in relation to a cheque notwithstanding anything written or placed on the cheque.

(3) Without limiting the generality of subsection (2), the crossing of a cheque does not affect the transferability of the cheque by negotiation.

(4) Nothing in this section affects the transferability of a cheque otherwise than by negotiation.

40 Transfer of cheque by negotiation

(1) The transfer of a cheque by negotiation is the transfer of the cheque from the holder to another person in such manner as to constitute the other person the holder.

(2) A cheque payable to order is transferred by negotiation if:

(a) it is indorsed by the holder; and

(b) the cheque is delivered so as to complete the contract arising out of the indorsement.

(3) A cheque payable to bearer is transferred by negotiation if it is delivered by the holder to another person (whether or not the cheque is indorsed by the holder).

41 Requisites for indorsement

(1) An indorsement of a cheque is not effective to transfer the cheque by negotiation unless:

(a) the indorsement is written or placed on the cheque and signed by the indorser; and

(b) the indorsement is an indorsement of the entire cheque.

…

> (3) A mere signature on a cheque is, in point of form, sufficient for an indorsement of the cheque.
>
> (emphasis added)

H.72. Thus, in summary:

(a) a cheque is "payable to order" where it is expressed to require payment to or to the order of a person specified in the cheque.[1642] A cheque is otherwise "payable to bearer";[1643]

(b) every cheque is transferable by negotiation until it is discharged;[1644]

(c) a cheque that is payable to order is transferred by negotiation if it is indorsed by the holder and delivered so as to complete the contract arising out of the indorsement;[1645]

(d) a cheque that is payable to bearer is transferred by negotiation if it is delivered to another person, regardless of whether or not it is indorsed;[1646]

(e) a mere signature on a cheque is, in point of form, sufficient for an indorsement of the cheque.[1647]

H.73. It follows that Mr Hasna's signature on the cheque was sufficient to constitute an indorsement. By handing that indorsed bank cheque to a Crown representative, Mr Hasna completed the delivery and contract arising out of the indorsement for the purposes of the *Cheques Act*. At that point, as a cheque payable to order, the bank cheque had been transferred by negotiation from Mr Hasna to Crown. Had it been a cheque payable to bearer, the delivery alone would have been sufficient.

H.74. As a result, the bank cheque had become "payable to the operator" for the purposes of s 68(3) of the CCA. Accordingly, Crown did not breach s 68 by crediting the amount of that cheque to Mr Hasna's deposit account.

H.75. Crown thus submits that:

1642 *Cheques Act* s 21.

1643 *Cheques Act* s 22.

1644 *Cheques Act* s 39(1). The regime for transfer by negotiation and indorsement provided for by ss 39 to 41 reflects the long recognised position that cheques, being bills of exchange, are both transferable and negotiable instruments: Malek A, Odgers J, *Pagent's Law of Banking*, 14th edition, London, Lexis Nexis Butterworths, 2014, p. 704.

1645 *Cheques Act* s 40(2).

1646 *Cheques Act* s 40(3).

1647 *Cheques Act* s 41(3).

(a) it was (with respect) a mistake to put to Mr Lawrence that the relevant practice was a breach of the CCA; [1648]

(b) it was (again, with respect) a mistake to submit to the same effect at paragraphs 6.6.14 and 6.6.19 to 6.6.22 of Counsel Assisting's closing submissions; and

(c) this matter ought to have no bearing on the question of Crown's suitability to maintain its licence.[1649]

H.3.2 Release of funds before cleared

H.76. This part of the submissions responds to paragraph 6.6.15 of Counsel Assisting's closing submissions.

H.77. There, Counsel Assisting submit that Crown has a regular practice of releasing funds from deposit accounts before cheques have cleared, which constitutes regular contraventions of s 68(4) of the CCA. The evidence cited is:

(a) a passage of transcript of Mr Lawrence[1650] and Crown's Early Release of Funds Approval Matrix (fn. 932);[1651] and

(b) a document (cited twice in the footnote)[1652] depicting 6 screens and apparently 5 different Patron Activity Inquiry logs[1653] from Crown's SYCO system and a further passage of transcript of Mr Lawrence (fn. 933).[1654]

H.78. Crown submits that Counsel Assisting's submission should not be adopted.

H.79. *First*, in the SYCO document, for each of the Patron Activity Inquiry logs the first entry in time (being the one lowest on the screen) refers to the relevant cheque being a **bank** cheque – ie, "BCHQ", "NAB BCHQ", "WBC BCHQ", "NAB CHQ" and "ANZ BANK CHQ". Although not all of the later entries refer to the cheque as a bank cheque, it is clear that they are all referring back to the original bank cheque. Crown also notes the title of the document includes the phrase "Bank Cheque".

1648 Lawrence T1740.41-1741.20: as put to Mr Lawrence in cross-examination: "*you are not allowed, under the Casino Control Act, to deposit a cheque payable to anyone other than the operator into a deposit account*".

1649 The evidence of Mr Hasna and Mr Lawrence from a responsible gambling perspective is dealt with at Part F above.

1650 Lawrence T1741.22-43.

1651 Exhibit RC0173 CRW.512.097.0062 Early Release of Funds Approval Matrix.

1652 Exhibit RC0701 CRW.512.167.0001 Patron Activity Enquiry – Bank Cheque.

1653 The two screens on Exhibit RC0701 CRW.512.167.0001 at .0003 Patron Activity Enquiry – Bank Cheque are apparently all part of the 1 entry.

1654 Lawrence T1745.3-8.

H.80. It can thus be inferred that this is a record of Crown's early release of **bank** cheques, whether as per Mr Hasna's example (ie, following indorsement) or simply bank cheques made payable to Crown in the first instance.

H.81. Either way, this is permitted by s 68(3)(b), which allows the crediting to a patron's deposit account of a bank cheque payable to the operator (Crown). Section 68(3)(c) also permits crediting a patron's deposit account with a traveller's cheque.

H.82. There is no requirement in ss 68(3)(b) or 68(3)(c) that Crown await the funds from the bank cheque or traveller's cheque to clear prior to crediting the patron's deposit account.

H.83. To the extent that this constitutes the provision of a form of credit to the patron, it is not prohibited by s 68(2) because that section begins with "Except to the extent that this section otherwise allows …" and the practice is allowed by s 68(3).

H.84. Given that Crown is permitted to credit the patron's deposit account with a bank cheque payable to Crown, the cross examination of Mr Lawrence on this point – in which a distinction was sought to be emphasised between actual cleared funds, on the one hand, and Crown treating the funds as cleared in its SYCO system, on the other[1655] – was, respectfully, not to the point.

H.85. Further, upon Crown being permitted to credit the patron's deposit account pursuant to s 68(3), and so doing, Crown is then also permitted to issue the patron with a chip purchase voucher for amounts up to the credit of the account, pursuant to s 68(4). As apparently occurred in Mr Hasna's case.

H.86. *Second*, nothing in the Early Release of Funds Matrix (including page 2) otherwise suggests a breach of s 68(4) of the CCA.

H.87. In fact, the document refers expressly to bank cheques. While in respect of telegraphic transfers (although not the subject of Counsel Assisting's submissions), under the heading 'Excerpt from Standard Operating Procedures Cage Operations' it is said that:[1656]

> The following information will be recorded on the Telegraphic Transfer Acknowledgment **when an Early Release is approved**:
>
> (i) Authorising officer that has **received** and verified the funds; and
>
> (ii) Authorising management contacted in accordance with the requirements of the Early Release of Funds Approvals Matrix.
>
> (emphasis added)

1655 Lawrence T1743.43 – 1745.8.

1656 Exhibit RC0173 CRW.512.097.0062 Early Release of Funds Approval Matrix.

H.88. That is, in respect of telegraphic transfers, it appears that at the time approval is made, the funds have been received by Crown (although this was not explored with Mr Lawrence in evidence, as the focus was upon the 'clearing' of cheques).[1657]

H.89. *Third*, at the outset of the relevant passage of transcript of Mr Lawrence's evidence,[1658] he made it clear that the early release of funds only occurs in two instances, being *bank* cheques and telegraphic transfers.[1659]

H.90. When that is kept in mind, nothing in his evidence on this topic,[1660] including the passages cited by Counsel Assisting, go in any way towards demonstrating breach of s 68(4).

H.91. It is thus submitted that (contrary to paragraph 6.6.15 of Counsel Assisting's closing submissions) there has been no evidence of regular contravention of s 68(4), and this matter ought to have no bearing on the question of Crown's suitability to maintain its licence.

H.3.3 Acceptance of blank cheques

H.92. This part of the submissions responds to paragraphs 6.6.16 to 6.6.18 of Counsel Assisting's closing submissions.

H.93. There, Counsel Assisting submit that Crown has a practice of providing patrons with chips, and then filling in the amount of the counter cheque at the close of play. It is submitted that this is a breach of s 68.[1661]

H.94. Counsel Assisting does not specify which sub-section of s 68 is said to be breached. Instead, Counsel Assisting refers to the fact that a blank cheque is not a cheque for the purposes of s 68 because it is not drawn for a specific amount. If the practice took place for domestic patrons, it would likely breach the general prohibition on providing credit to domestic patrons under s 68(2). Counsel Assisting submits that it is open to find Crown regularly breaches s 68 in this way.[1662]

H.95. Crown, of course, accepts that, because of the definition in s 68(1), a blank cheque could never be a cheque for the purposes of s 68 of the CCA. Indeed, Crown also notes that, again because of the definition in s 68(1), a cheque needs also to be drawn on an authorised deposit taking institution to constitute a cheque for the purposes of s 68.

1657 Lawrence T1741.22 and T1746.25.

1658 The relevant passage should be taken as a whole between: T1741.22 and T1746.27.

1659 Lawrence T1741.29-31.

1660 For example, his or Counsel Assisting's references to "cheques" rather than "bank cheques".

1661 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0139, [6.6.18].

1662 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0139, [6.6.18].

H.96. The exchange between the Commissioner and Mr Lawrence quoted at paragraph 6.6.17 of Counsel Assisting's closing submissions must be understood in its proper context.[1663] When that it done, it is clear that Mr Lawrence was referring to the possibility of the filling in of a blank counter cheque pursuant to an approved cheque cashing facility.[1664]

H.97. Mr Lawrence explained the purpose and operation of a cheque cashing facility in his statement.[1665] A cheque cashing facility is governed by detailed SOPs[1666] and an Internal Control Statement[1667] both of which are developed with and approved by the VCGLR (whose logo appears on each page of each document).

H.98. At paragraph 1.1 of the Internal Control Statement it is stated that one of its objectives, and outcomes it is designed to achieve, is:

> To complement the provisions of s 68 Casino Control Act (1991) (Act) pertaining to the granting of credit (**to persons not ordinarily residing in Australia**) as part of a Premium Player or Junket arrangement entered into with Crown …
>
> (emphasis added)

H.99. The emphasised text is a reference to s 68(8) of the CCA, which is in the following terms:

> Despite subsection (2), a casino operator may provide chips on credit to a person who is not ordinarily resident in Australia for use while participating in—
>
> (a) a premium player arrangement with the casino operator; or
>
> (b) a junket at the casino—
>
> if the casino operator and the person satisfy the requirements of any relevant controls and procedures approved by the Commission under section 121 in respect of a premium player or a junket player (as the case may be).

H.100. It was not clarified with Mr Lawrence when he was referring to the possibility of the use of a blank cheque whether he was talking about international patrons. It is submitted he must have been, given how emphatically he denied the

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1663 Lawrence T1747.29-34; T1755.37 to 1757.44.

1664 He was also accepting that the evidence of a current host (Employee 6) he was being taken to (as set out in COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0139, [6.6.16]) was in respect of the same matter.

1665 Exhibit RC0171 CRW.998.001.0401 Lawrence at [24]-[25], [28].

1666 Exhibit RC0172b CRW.510.045.7466 Cheque Cashing Facilities and Credit Facilities Standard Operating Procedures.

1667 Exhibit RC0172a CRW.510.045.6891 Cheque Cashing Facilities and Credit Facilities Internal Control Statement.

possibility of Crown domestic patrons using cheques in this way.[1668] It is submitted that he ought to be believed.[1669]

H.101. Similarly, when Employee 6 gave the evidence quoted at paragraph 6.6.16 of Counsel Assisting's closing submissions, the questioning was at large, and not specifically directed towards domestic patrons.[1670] Crown submits that it is unsurprising that Employee 6, as a host, was unfamiliar with the process provided for by the cheque cashing facility SOP and Internal Control Statement. The SOP, in particular, demonstrates that Crown has a detailed process for providing credit to international patrons that involves the use of cheques only pursuant to an Approval Matrix, evidently designed to protect Crown's position in respect of potential bad debts, and that this is all administered by Crown's credit control and cage management teams, and does not involve hosts.[1671]

H.102. In those circumstances, it is submitted that (contrary to paragraph 6.6.18 of Counsel Assisting's closing submissions) there has been no evidence of regular contravention of s 68 on the basis of the use of cheques not complying with the definition s 68(1), and cheque cashing facility SOP and Internal Control Statement suggest the practices that were described in evidence were only in respect of international patrons.

H.103. Accordingly, it follows that this matter ought to have no bearing on the question of Crown's suitability to maintain its licence.

1668 Lawrence T1750.43 – 1751.4 and T1754.33–38.

1669 As noted in Part F, Mr Lawrence presented as a frank and honest witness who was willing to make concessions unfavourable to both Crown and himself, which are relied upon by Counsel Assisting: COM.0500.0001.0001 Closing Submissions Counsel Assisting at .0140, [6.25].

1670 Employee 6 T579.38 – 580.12.

1671 Exhibit RC0172b CRW.510.045.7466 Crown Melbourne Limited Cheque Cashing and Credit Facilities Standard Operating Procedures at 7476, [3].

I. CROWN'S DEALINGS WITH THE VCGLR

I.1. Introduction

I.1. Crown accepts that some of its past dealings with the VCGLR reflect poorly on the company. The threat to call the Minister was completely unacceptable.[1672] Likewise the failure to disclose the bonus jackpots deductions to the VCGLR.[1673] Aspects of the position Crown adopted in relation to junkets and the China investigation are also the subject of legitimate criticism.

I.2. As discussed in Part I.6 of these submissions, the Commission can be confident that these mistakes will not be repeated. Crown's new CEO, Mr McCann, and Crown's new head of compliance, Mr Blackburn, now have personal carriage of the VCGLR relationship.[1674]

I.3. While Crown acknowledges that aspects of the case studies examined in this Commission reflect poorly on Crown, it submits that they are not representative of the overall nature of the dealings over the last five years. As is developed below, the evidence of representatives on both sides who were regularly involved in those dealings demonstrates that, on the whole, the dealings between Crown and the VCGLR were cooperative and constructive. So too do the contemporaneous documents bear out that characterisation.

I.4. Adopting the order of Counsel Assisting's submissions, these submissions begin by making some general observations about the nature of the relationship with the regulator (**Part I.2**); they then address the dealings in relation to the China investigation (**Part I.3**); next, they address the dealings in relation to the Sixth Review (including recommendation 17) (**Part I.4**); they then address the show-cause hearing (**Part I.5**); finally, they address how the Commission can be confident that the dealings that have reflected poorly on the company will not be repeated (**Part I.6**).

I.2. The importance of the relationship with the regulator

I.5. Crown largely accepts Counsel Assisting's submissions at paragraphs 4.2.1 to 4.2.23, subject to the following observations.

I.6. *First*, in relation to s 26 of the *Casino Control Act*, to which Counsel Assisting refer at paragraph 4.2.14 of their submissions, legal professional privilege is a legitimate basis for not producing documents pursuant to a notice issued under

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1672 Exhibit RC0008 VCG.9999.0001.0001Cremona at [106].

1673 The issue of bonus jackpots, including disclosure to the VCGLR, is dealt with separately in Part G of these submissions.

1674 Aware of the mistakes that have been made in the past, Mr McCann and Mr Blackburn have already had a meeting with the VCGLR directed to setting the tone and expectations for dealings going forward, as is set out in Part I.6 below: McCann T3454.7-T3457.9.

that section.[1675] So long as Crown is acting in good faith, invocating legal professional privilege [1676] is consistent with the regulatory framework determined to be appropriate by Parliament.

I.7. Moreover, caution as to the disclosure of privileged material by Crown is reasonable and understandable given the real waiver risk attaching to any voluntary disclosure. Waiver arguments on the part of extant and future litigants are not an abstract possibility: they have occurred, for example, in the class actions to which Crown is subject. The waiver risk associated would not exist if s 26 of the CCA abrogated legal professional privilege. That may be something that the Commission considers recommending.

I.8. *Second*, some measure of debate between regulator and regulated entity is normal and healthy. As the Financial Services Royal Commission demonstrated, too close a relationship between a regulator and regulated entities is not. The criticisms of Crown at times proceed on the footing that any instance of disagreement was a sign of a broken relationship. That is not so. While constant disputation would no doubt be a bad sign, the dealings between Crown and the VCGLR over the last five years have not been characterised by constant disputation.

I.9. *Third*, Ms Arzadon's opinion as to the past and current dynamic between the VCGLR and Crown, referred to by Counsel Assisting at paragraph 4.2.23, reflected the materials provided to her. She was provided with the following materials in relation to the VCGLR relationship: (1) the witness statement of Mr Bryant; (2) the VCGLR's Final Report on the China investigation; and (3) the VCGLR's reasons for decision in relation to the April disciplinary action.[1677] Ms Arzadon's attention was not drawn to the evidence analysed in these submissions, including Mr Cremona's evidence.

I.3. Dealings in relation to the China investigation

I.10. Crown accepts that it should have handled the China investigation differently.

I.11. This section of the submissions first addresses what Crown apprehends to be Mr Bryant's main criticisms in relation to Crown's dealings with the VCGLR. The submissions then turn to the evidence of Mr Richard Murphy in relation to the China investigation (to which Counsel Assisting have not referred). Finally, the submissions address the criticisms made by Counsel Assisting in paragraph 4.3.139 of their submissions.

1675 Section 26(2) abrogates self-incrimination privilege but not legal professional privilege.

1676 Legal professional privilege being a substantive right the upholding of which is in the broader public interest: *Glencore International AG v Federal Commissioner of Taxation* (2019) 93 ALJR 967 at [21] per Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ.

1677 Exhibit RC0477 COM.0007.0001.0178 Elizabeth Arzadon Expert Opinion regarding Cultural Change at Crown Melbourne (June 2021) at .0204.

I.3.1 Summary of Mr Bryant's criticisms

I.12. As Crown apprehends it, Mr Bryant's criticisms in relation to the China arrests investigation fall into three categories:[1678]

(a) alleged misleading of the regulator by individuals within Crown;[1679]

(b) failure by Crown as an organisation to provide within prescribed timeframes complete responses to VCGLR requests for documents and other information, including s 26 notices,[1680] stemming, in Mr Bryant's view, from prioritisation of the Federal Court class action over responding to the regulator;[1681] and

(c) lack of willingness by Crown as an organisation to make appropriate concessions, thereby prolonging the investigation process and delaying the taking of steps to address shortcomings.[1682]

I.3.2 Alleged misleading of the regulator

I.13. Allegations of misleading the regulator are a serious matter and Crown hastens to acknowledge that any misleading of the regulator is unacceptable.

I.14. Mr Bryant's allegations of misleading the regulator relied on two matters:

(a) *first*, in Mr Bryant's view, a presentation given by Joshua Preston to the VCGLR on 31 August 2017[1683] contained misleading statements;[1684] and

(b) *second*, answers given by Jason O'Connor and Barry Felstead in interviews with Mr Bryant in 2018 were different from the answers given by them under examination by Counsel Assisting at the Bergin Inquiry.[1685]

I.15. Beginning with the presentation given by Mr Preston to the VCGLR, the allegation of misleading the regulator was put by Mr Bryant on the following bases:

1678 Exhibit RC0001a VCG.9999.0001.0002 Bryant summarised at [138].

1679 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(a)], [138(d)], and [138(e)].

1680 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(b)].

1681 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(c)].

1682 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(f)].

1683 See Exhibit RC0001a VCG.9999.0001.0002 Bryant at [28].

1684 See Exhibit RC0001a VCG.9999.0001.0002 Bryant at [88], [127]. The presentation is Exhibit RC0001d VCG.0001.0001.9002 Crown Presentation to the VCGLR.

1685 See Exhibit RC0001a VCG.9999.0001.0002 Bryant at [46]-[52], [126]-[128].

(a) in summarising advice that Crown had received from the security firm Mintz Group about operating in mainland China, Mr Preston's presentation used the expression "people engaged in gambling" as distinct from the words actually used in the Mintz Group advice, which were "people who work in the gambling business";[1686] and

(b) Mr Preston's presentation contained the statement that "Crown did not produce … materials [promoting gambling] for distribution in China", whereas material produced to the VCGLR in March 2019 indicated otherwise.[1687]

I.16. This Commission does not have before it the response of Mr Preston (who no longer works for Crown) to these allegations. Given the seriousness of the allegations against Mr Preston personally, it is necessary to proceed cautiously. In the circumstances, Crown simply makes the following observations.

I.17. *First*, as to the difference in language between "people engaged in gambling" and "people who work in the gambling business", Mr Bryant sees that difference as a "significant change"[1688] and infers, on that basis, that it was a deliberate attempt to conceal Crown's knowledge of a focus by the Chinese authorities on businesses like Crown's.[1689] Mr Bryant's view about the import of the difference in language, while strongly held, is something about which reasonable minds can differ. As Mr Bryant himself acknowledged, his view was "one view of the presentation" given by Mr Preston.[1690] If there was an intention to mislead, that is inconsistent with the presentation specifically identifying the advice as having been given by Mintz Group and as having been provided in October 2015.[1691] (The actual advice was produced to the VCGLR a few months after Mr Preston's presentation, in November 2017.)[1692]

I.18. *Second*, as to the difference between the statement that "Crown did not produce … materials [promoting gambling] for distribution in China" and the March 2019 material produced to the VCLGR, there is nothing to suggest this aspect of the presentation reflected something different from Mr Preston's own understanding at the time he gave the presentation in August 2017 (noting that Mr Preston had no direct knowledge of what had occurred on the ground in China). Mr Murphy's evidence indicated that knowledge of gambling

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1686 See Exhibit RC0001a VCG.9999.0001.0002 Bryant at [127].

1687 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [88].

1688 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [127].

1689 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [127].

1690 Exhibit RC0001zzz VCG.0001.0002.6074 Memorandum regarding Crown Presentation to the VCGLR on 31 August 2017 at _0005.

1691 Exhibit RC0001d VCG.0001.0001.9002 Memorandum regarding Crown Presentation to the VCGLR (31 August 2017) at _0006.

1692 Bryant T15.38-39.

promotional material possibly being stored in mainland China came at a later stage.[1693]

I.19. As noted above, the other matter relied on by Mr Bryant in alleging that he was misled in the China investigation was the difference between what was said by Messrs O'Connor and Felstead in interviews with Mr Bryant in 2018 and their evidence before the Bergin Inquiry.

I.20. Given Mr O'Connor has given a statement to this Commission on that topic,[1694] it is appropriate (in relation to him) simply to refer to that statement.

I.21. As for Mr Felstead, who no longer works for Crown, all that can be said, in the absence of evidence from him, is that it is possible that the difference is attributable to his recollection improving with the assistance of documents drawn to his attention only after the VCGLR interviews. Asked about the matter by Counsel Assisting, Mr Murphy gave the following evidence:[1695]

> People had thought they had an understanding previously about certain events when they were subsequently shown an email that said actually you were shown this article at the time, they say, "Okay, all right if I was shown that article at the time, then I must have known about it, but if you ask me beforehand without the benefit of that email, I give an honest answer to say no I don't." So that is my understanding of the answers given in witness interviews that the VCGLR criticises.

I.22. Crown accepts the alternative, that Mr Felstead was being dishonest, is also a possibility.

I.3.3 Failure to provide complete responses to information requests on time

I.23. Crown accepts that s 26 notices must be taken very seriously.

I.24. Turning to Mr Bryant's specific criticisms in this regard, Mr Bryant pointed to three matters:

(a) Crown restored back-up tapes as part of the class action discovery process when it had not taken that step in response to s 26 notices.[1696] Accordingly, in Mr Bryant's view, Crown took a more "robust" approach to discovery in the class action than it did to responding to the s 26 notices.[1697]

(b) Crown in some instances provided material uncovered through the recovery of the back-up tapes, and the subsequent review of that material

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1693 Murphy T2769.20-23.

1694 CRW.512.172.0002 O'Connor.

1695 Murphy T2815.26-34.

1696 See, for example, Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(c)].

1697 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(c)].

as part of the class action, after the time for compliance with relevant s 26 notices had expired.[1698]

(c) Material that Crown had previously withheld from the VCGLR on the ground of legal professional privilege was eventually produced to the VCGLR in January 2020.[1699]

I.25. As with Mr Bryant's allegations in relation to misleading the regulator, this Commission does not have before it any evidence from Mr Preston (who had carriage of the responses to the VCGLR's requests for information and documents as part of the China investigation) in response to Mr Bryant's criticisms. In the absence of that evidence, the best Crown can do is to make the following observations.

I.26. *First*, it is not the case that Crown failed to produce, within the timeframes prescribed by the s 26 notices, any material that it had available to it and was aware of at the time production fell due.

I.27. As Mr Preston indicated in a letter to the VCGLR, backup tapes contain no intelligible information until restored by specialist IT contractors.[1700] As he said in another letter to the VCGLR,[1701] that process takes considerable time (measured in months). Once the tapes have been restored, the content on them must be reviewed. As correspondence between Crown and the VCGLR records, the review process undertaken in relation to the China backup tapes was extensive,[1702] involving review of at least 21,000 documents and spanning years not weeks.

I.28. Further, it is not clear that it would have been possible for Crown to produce the documents that were in fact produced following the restoration process, and the subsequent review of the restored material, within the timeframes set by the relevant s 26 notice. In this regard:

(a) Mr Bryant's criticises the production, in June 2018, of backup tape material in response to a s 26 notice issued on 2 February 2018.[1703] That notice gave Crown two weeks in which to produce the relevant material. It would not have been possible to restore the backup tapes, and then conduct the review of those restored databases for responsive material, within that two-week timeframe.

1698 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(b)].

1699 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(e)].

1700 Exhibit RC0001ff VCG.0001.0001.8192 Letter from Joshua Preston to Stephen Berriman at_0003 ("cannot be viewed until tapes are restored").

1701 Exhibit RC0001p VCG.0001.0001.8185 Letter from Joshua Preston to Stephen Berriman at _0004.

1702 Exhibit RC0001vvvvv VCG.0001.0002.3364 Letter from Richard Murphy to Adam Ockwell.

1703 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [53].

(b) Mr Bryant also points to the production, in March 2019, of material responsive to a s 26 notice issued in August 2018.[1704] That lengthy notice gave Crown four weeks in which to produce the relevant material. Crown did produce four volumes of documents by the due date, 21 September 2018.[1705] There were only 34 documents that were produced in response to the August 2018 notice in March 2019 that were not duplicates of documents that had already been produced.

I.29. *Second*, as to Mr Bryant's observation that a tranche of new material was provided to the VCGLR as late as January 2020,[1706] that material had been privileged up until the end of December 2019. At that point, privilege was waived over that material by the filing of witness statements in the class action that referred to and attached the advice.[1707] Prior to that waiver, it was legitimate and consonant with the CCA for Crown not to produce that material on the ground of privilege.

I.30. Counsel Assisting suggested by reference to the January 2020 disclosure that Crown waived privilege when it suited Crown.[1708] In fact, the reason that privilege was waived over the legal advice on Crown's operations in China was that it was simply not possible to defend the allegation in the Federal Court class action that Crown was "aware", within the meaning of the ASX Listing Rules, that its operations in China were illegal without disclosing the contents of the advice Crown received in that regard. This was a matter of necessity, not choice.

I.3.4 Lack of willingness to make appropriate concessions

I.31. Mr Bryant's third and final criticism of Crown in relation to the China investigations was that Crown made concessions to the VCGLR only after it had made concessions to the Bergin Inquiry (those concessions being made years after the VCGLR investigation commenced).[1709]

I.32. The concessions that were made to the Bergin Inquiry were based on concessions made by certain witnesses at that Inquiry under examination by Counsel Assisting. Importantly they were concessions that had not been made by those witnesses prior to that point. Those witnesses, especially Mr Felstead, made concessions that they had simply never made before.[1710] It was these concessions on the part of individual officers that prompted the company in its submissions to make concessions reflecting that evidence. The same

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1704 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [87].

1705 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [81].

1706 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(e)].

1707 Bryant T81.31-46.

1708 Bryant T82.1-3.

1709 Exhibit RC0001a VCG.9999.0001.0002 Bryant at [138(f)].

1710 See Exhibit RC0291 MEM.5004.0001.0002 Memorandum regarding the Zantran class action.

concessions were then made by Crown to the VCGLR in response to a list of propositions to which the VCGLR asked Crown to respond.[1711]

I.33. Had the relevant witnesses before the Bergin Inquiry made their concessions at an earlier point in time, Crown would have made concessions reflecting their evidence to the VCGLR earlier. In the circumstances, Crown cannot be fairly criticised for not making appropriate concessions to the VCGLR sooner than it did.

I.34. Although Crown's response to that list of propositions was characterised by Counsel Assisting as "taking every point, arguing every issue, not accepting basic propositions of fact that are clearly open",[1712] the response, which was settled by senior counsel,[1713] in fact made numerous concessions.[1714] The only propositions that were not conceded were those that were inconsistent with the evidence of the relevant individuals in their signed statements filed in the Federal Court class action.

I.3.5 Suggested fuller provision of documents to the Bergin Inquiry than the VCGLR

I.35. A matter raised by the VCGLR in its Final Report on the China arrests,[1715] to which Counsel Assisting refer at paragraphs 4.3.133 to 4.3.134 of their submissions,[1716] was the suggestion that Crown may have entered into an arrangement with the Bergin Inquiry whereby Crown agreed to provide privileged documents to that Inquiry on a confidential basis.[1717] By contrast, it was said, Crown had not offered any such arrangement to the VCGLR. It was suggested that Crown had thereby been fuller and more cooperative in its production of documents to the Bergin Inquiry than it had been to the Victorian regulator.

I.36. The criticism is unwarranted for two reasons.

1711 Exhibit RC0001eeee VCG.0001.0002.3412 Letter from Ross Kennedy to Helen Coonan and Andrew Demetriou.

1712 Coonan T3765.27-29.

1713 Coonan T3767.7-12.

1714 Exhibit RC0001ffff VCG.0001.0002.3415 Letter from Helen Coonan to Ross Kennedy.

1715 Exhibit RC0003 VCG.0001.0001.0001 VCGLR Confidential Report of Investigation into China Arrests at [640].

1716 See also Bryant T82.28-T83.45.

1717 Exhibit RC0003 VCG.0001.0001.0001 VCGLR Confidential Report of Investigation into China Arrests at [640(c)].

I.37. *First*, well before the Bergin Inquiry was even announced, Crown offered to provide all documents discovered in the class action to the VCGLR.[1718] For reasons unknown to Crown, that offer was not taken up by the VCGLR.

I.38. *Second*, there was no special arrangement entered into with the Bergin Inquiry. Commissioner Bergin had the powers of a Royal Commissioner conferred upon her.[1719] That meant that she could compel the production of documents and the giving of evidence by summons. And, as in Victoria, legal professional privilege was not a ground on which a person could refuse to produce a document or give an answer.[1720] Privilege was in effect abrogated. Crown thus produced privileged material that fell within the terms of Commissioner Bergin's summonses.

I.39. As has already been explained above, it is different under the regime that Parliament has determined to be appropriate for interactions between the casino operator and the VCGLR.

I.3.6 Mr Murphy's evidence in relation to the China investigation

I.40. As noted earlier, the other witness who gave evidence as to dealings between Crown and the VCGLR in relation to the China investigation was Mr Murphy.

I.41. Mr Murphy was Crown's lawyer for many years, including in recent times. He dealt with the VCGLR on many occasions. He had carriage of the investigation into the China arrests,[1721] briefed the board regularly about it, and assisted in preparing communications to the VCGLR, including responses to the draft report.[1722]

I.42. Mr Murphy's evidence was that the dealings between Crown and the VCGLR were not hostile:[1723]

> Q. I'm just interested to understand that because we look at things on a piece of paper and don't know the tone.
>
> A. Yes.
>
> Q. You were there.
>
> A. Yes.

1718 Exhibit RC0001vvvvv VCG.0001.0002.3364 Letter from Richard Murphy to Adam Ockwell at [9].

1719 CRW.507.004.5663 Bergin Inquiry Terms of Reference (contained in Crown Resorts Risk Management Committee Diligent Pack (4 December 2019)) at .5731.

1720 *Royal Commissions Act 1923* (NSW), s 17(1).

1721 Murphy T2761.12-13.

1722 Murphy T2760.31-35.

1723 Murphy T2813.34-37.

> Q. And I'm interested in your insights into what the relationship was like, whether it was hostile.
>
> A. No.

I.43. He gave evidence that he never observed any animosity between the VCGLR and Crown.[1724] He described meetings with the VCGLR as follows:[1725]

> I should say the meetings were convivial. I'm not sure that I'm particularly recalling this specific meeting because there were several but they were all convivial.

I.44. He went on to add:[1726]

> … certainly all our dealings with them were positive and cordial. In fact, I would say good humoured.

I.45. Asked about Mr Bryant's frustration with Crown, Mr Murphy gave the following evidence:[1727]

> They made the decision to interview the staff, sorry, interview all the people they wanted to interview at a reasonably early stage, and probably felt in retrospect that if they had waited until they had more documents, then there might have been more matters that they could have put to those witnesses. So I think that is probably what fed into their feelings about the way the investigation progressed.

I.46. There is no reason to doubt Mr Murphy's evidence. His evidence needs to be weighed with Mr Bryant's in forming an assessment about Crown's dealings in relation to the China investigation.

I.3.7 Counsel Assisting's criticisms in relation to the China investigation

I.47. At paragraph 4.3.139 of their submissions, Counsel Assisting set out their conclusions in relation to Crown's dealings with the VCGLR. They criticise Crown for its defensive approach in relation to the China investigation and say that it has contributed to a deterioration in the relationship with the VCGLR. While there are aspects of the evidence relied on by Counsel Assisting about which reasonable minds can differ, and while Mr Murphy's evidence needs to be weighed in the balance, Crown accepts that to be so. Crown certainly accepts that it could and should have handled the China investigation differently, as Counsel Assisting submit.

I.48. The dealings in relation to the China investigation were largely conducted by individuals who no longer work for or advise Crown. With the relationship now under different stewardship, as explained at Part I.6 below, the Commission can

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1724 Murphy T2813.39-44.

1725 Murphy T2813.20-23.

1726 Murphy T2814.33-34.

1727 Murphy T2814.26-33.

be confident that Crown will take a different approach to any future regulatory investigation.

I.4. Dealings between Crown and the VCGLR in relation to the Sixth Review

I.49. At paragraphs 4.3.140 to 4.3.262 of their submissions, Counsel Assisting set out aspects of the evidence given by Mr Cremona (and to a lesser extent, Ms Fielding) in relation to recommendation 17. Counsel Assisting do not set out any of the evidence that Mr Cremona gave about his dealings with Crown in relation to other Sixth Review recommendations.[1728]

I.50. Crown submits that the Commission ought to take a holistic approach to the evidence. Accordingly, this section of the submissions begins by addressing the evidence in relation to the Sixth Review dealings generally, before moving on to address recommendation 17 and Counsel Assisting's specific criticisms in relation to it.

I.51. Crown acknowledges that aspects of its dealings with the VCGLR in relation to recommendation 17 were unacceptable – the clearest example of that being the threat to call the Minister, but submits that the dealings with the VCGLR in relation to recommendation 17 are not representative of its broader relationship or dealings with the VCGLR.

I.4.1 Crown was generally cooperative and responsive in relation to the Sixth Review

I.52. In relation to the conduct of the Sixth Review (and for that matter the Fifth Review), the VCGLR itself found Crown to be cooperative. The Sixth Review noted "the cooperation of Crown's directors and staff in the conduct of this review".[1729] The Fifth Review noted that Crown's "cooperation with the review was complete and generally timely".[1730] These remarks reflected the settled views of the VCGLR.[1731]

I.53. In implementing the recommendations arising out of the Sixth Review, Crown staff worked together with VCGLR staff.[1732] There were regular meetings between Crown and the VCGLR.[1733] Crown staff and VCGLR staff also corresponded regularly. In that correspondence, Crown staff were cooperative

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1728 That evidence is dismissed at paragraph 4.3.265 of COM.0500.0001.0001 Counsel Assisting Closing Submissions.

1729 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence at .0786.

1730 Exhibit RC0013 CRW.510.025.5690 Fifth Review of the Casino Operator and Licence at .5704.

1731 Cremona T209.2-12. Mr Cremona personally had limited involvement in the conduct of the Sixth Review (or the Fifth Review): Cremona T127.43-T128.5, T210.14-29.

1732 Exhibit RC0008 VCG.9999.0001.0001 Cremona at [28]; Cremona T211.6-10.

1733 Exhibit RC0008 VCG.9999.0001.0001 Cremona at [31], [36], and [38]; Cremona T211.12-36.

and responsive. To take some examples from just the more recent correspondence (covering a range of different recommendations):

(a) In an email chain from October/November 2019 concerning *recommendation 3*,[1734] Michelle Fielding responded to various queries from Rowan Harris of the VCGLR by attaching a letter[1735] and status schedule.[1736] Mr Harris responded by saying: "Thank you for providing Crown's response. The status schedule is very helpful".[1737]

(b) In an email chain from February 2020 concerning *recommendation 6*,[1738] Ms Fielding responded to various queries from Mr Harris.[1739] Ms Fielding provided detailed responses to each query and Mr Harris said: "Thank you for your responses. Very helpful indeed."[1740]

(c) In an email chain from March 2020, Sonja Bauer[1741] responded to various queries from Mr Harris in relation to the implementation of *recommendation 7*. Mr Harris thanked Ms Bauer for her responses.[1742]

(d) In an email chain from November 2019 in relation to *recommendation 12*, representatives of Crown and the VCGLR engaged in a series of friendly, polite, and cooperative email exchanges.[1743]

(e) In an email chain from March 2020,[1744] Ms Fielding and Ms Bauer provided detailed responses to further queries concerning the implementation of *recommendation 7*. Mr Harris responded by saying: "Thank you Michelle and Sonja".[1745]

1734 Exhibit RC0462s CRW.510.029.1934 Email chain between Michelle Fielding and Rowan Harris et al.

1735 Exhibit RC0462p CRW.510.029.1761 Letter from Michelle Fielding to Rowan Harris.

1736 Exhibit RC0462q CRW.510.029.1763 Table of Deloitte Recommendations and Status.

1737 Exhibit RC0462s CRW.510.029.1934 Email chain between Michelle Fielding and Rowan Harris et al at .1934.

1738 Exhibit RC0462z CRW.510.029.2798 Email chain between Michelle Fielding and Jacqueline Couch et al.

1739 Exhibit RC0462z CRW.510.029.2798 Email chain between Michelle Fielding and Jacqueline Couch et al at .2803.

1740 Exhibit RC0462z CRW.510.029.2798 Email chain between Michelle Fielding and Jacqueline Couch et al at .2802.

1741 Exhibit RC0462ffff CRW.510.029.3156 Email chain between Michelle Fielding, Rowan Harris and Sonja Bauer at .3157.

1742 Exhibit RC0462ffff CRW.510.029.3156 Email chain between Michelle Fielding, Rowan Harris and Sonja Bauer at .3156.

1743 Exhibit RC0462xx CRW.510.029.5967 Email chain between Michelle Fielding and Rowan Harris.

1744 Exhibit RC0462gg CRW.510.029.3147 Email chain between Rowan Harris and Michelle Fielding.

1745 Exhibit RC0462gg CRW.510.029.3147 Email chain between Rowan Harris and Michelle Fielding at .3147.

(f) In an email chain from August 2020,[1746] Ms Fielding responded to various queries from Mr Harris in relation to *recommendations 1, 3, and 16*. Ms Fielding's responses were polite and responsive, and Mr Harris thanked her for them.

(g) In May 2019, Ms Fielding emailed Mr Cremona about *recommendation 5*.[1747] Recommendation 5 was that Crown "convene annual round table sessions briefing key internal staff on the VCGLR's risk-based approach to regulation, with a particular focus on how that approach relies on the integrity of Crown's internal processes". In advance of setting up the first such annual session, Ms Fielding wrote to Mr Cremona: "I thought there might be value in asking whether there are any additional or recent materials that the VCGLR would also like to have mentioned or provided as part of this presentation – that might further inform the group as part of Recommendation 5? Please let me know if there is any supplementary material available that we could provide."[1748] Ms Fielding was here actively seeking to ensure that the annual sessions delivered in accordance with recommendation 5 were consistent with the VCGLR's expectations.

(h) In September 2019, Ms Fielding wrote to Mr Cremona in relation to *recommendation 18* to the effect that, before writing formally to the VCGLR in relation to Crown's implementation of that recommendation, she wanted as a matter of courtesy to discuss the matter with Mr Cremona before doing so.[1749]

(i) In August 2019, Crown wrote to Mr Harris responding politely and in detail to various queries concerning *recommendation 14*.[1750]

I.54. Mr Cremona agreed that the cooperative tone of these exchanges was typical of the tone of communications between Crown and the VCGLR.[1751]

I.55. Mr Cremona gave evidence that he and his team met with Ms Fielding and Ms Bauer on a regular basis; that he knew them well; and that he had on most occasions found them to be cooperative and responsive.[1752] Mr Cremona also gave evidence that Crown staff generally were cooperative and responsive in relation to requests that he and his team would make.[1753] Mr Cremona said that,

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1746 Exhibit RC0464v VCG.0001.0003.1700 Email chain between Rowan Harris and Michelle Fielding.

1747 Exhibit RC0462bbbb CRW.510.029.2734 Email from Michelle Fielding to Jason Cremona.

1748 Exhibit RC0462bbbb CRW.510.029.2734 Email from Michelle Fielding to Jason Cremona.

1749 CRW.510.029.9128 Email from Michelle Fielding to Jason Cremona (24 September 2019).

1750 Exhibit RC0462bbb CRW.510.029.6357 Email chain between Joshua Preston and Rowan Harris et al.

1751 Cremona T224.9-15.

1752 Cremona T211.31-T212.6.

1753 Cremona T213.12-21.

generally speaking, what the VCGLR asked for from Crown, it received, and by the dates it had asked to receive it.[1754]

I.56. Mr Cremona said that he and his team felt quite comfortable reaching out, whether by phone or by email, to members of the Crown staff whenever they had queries or concerns in relation to any aspect of the implementation of the Sixth Review recommendations.[1755]

I.57. Mr Cremona summarised the tone of the dealings between Crown and the VCGLR as follows: "Across the board … the tone was cooperative".[1756]

I.4.2 Crown met the VCGLR's recommendations and timeframes

I.58. The VCGLR has concluded, and confirmed in formal correspondence, that Crown has met all of the Sixth Review recommendations that have so far fallen due. Further, the VCGLR has concluded, and confirmed in formal correspondence, that Crown has been implementing all ongoing recommendations.[1757] More specifically:

(a) of the 20 recommendations in the Sixth Review, 17 had a fixed completion date.[1758] The other three – being 5, 7, 18 – are ongoing recommendations;[1759]

(b) of the 17 recommendations with a fixed completion date, the VCGLR decided in early February 2021 that one was unnecessary to complete. That was recommendation 20, which was that a meeting be held between the Crown Resorts board and the VCGLR to review the implementation of the Sixth Review recommendations;[1760] and

(c) of the 16 remaining recommendations with a fixed completion date, recommendation 9 and the third limb of recommendation 8(b) are yet to fall due.

I.59. In respect of the 16 recommendations that have so far fallen due – being 1, 2, 3, 4, 6, 8(a), the first and second limbs of 8(b), 10, 11, 12, 13, 14, 15, 16, 17, 19 – in each case:

1754 Cremona T224.17-19.

1755 Cremona T212.18-23.

1756 Cremona T224.14-15.

1757 Cremona T213.45-T214.2.

1758 See Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence at .0791-.0794; Cremona T214.4-7.

1759 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence at .0791-.0794; Cremona T214.9-19.

1760 See Exhibit RC0462aaaa CRW.510.030.0856 Letter from Ross Kennedy to Ken Barton; Cremona T214.21-23.

(a) Crown submitted to the VCGLR, prior to the relevant completion date, that Crown considered it had satisfied the recommendation[1761](Table A in Annexure I.1 sets out the correspondence bearing this out); and

(b) the VCGLR acknowledged that Crown had completed the recommendation,[1762] noting that in some cases the VCGLR sought clarification on aspects of Crown's submissions or further information before providing that acknowledgment (Table A in Annexure I.1 also sets out the correspondence bearing this out).

I.60. The VCGLR has also formally acknowledged that Crown has been implementing the three ongoing recommendations – 5, 7, 18.[1763] Table B in Annexure I.1 sets out the correspondence bearing this out.

I.61. In respect of recommendation 10, Crown provided information and assistance to the VCGLR beyond what the recommendation required:[1764]

(a) In the VCGLR's 13 November 2019 letter acknowledging completion of the implementation of, *inter alia*, recommendation 10,[1765] the VCGLR requested information arising from the successful implementation of that recommendation. Specifically, the VCGLR sought data from the trial of Crown's "time out" program. This request went beyond recommendation 10 – necessarily so, since the request was made in a letter acknowledging Crown had implemented that recommendation.[1766]

(b) On 15 January 2020, Mr Cremona wrote to Ms Fielding providing details of the data sought, requesting a first tranche of data by 28 February 2020 and a second tranche of data by 31 August 2020.[1767]

(c) As requested, Ms Fielding duly provided the first tranche of data on 24 February 2020[1768] and the second tranche of data on 31 August 2020.[1769]

1761 Cremona T214.33-38.

1762 Cremona T215.9-13.

1763 Cremona T216.40-45.

1764 In addition to the specific documents referred to in the footnotes to the subparagraphs, see Cremona T218.14-T224.7.

1765 Exhibit RC0014 CRW.510.029.4623 Letter from Ross Kennedy to Joshua Preston.

1766 Exhibit RC0014 CRW.510.029.4623 Letter from Ross Kennedy to Joshua Preston.

1767 Exhibit RC0015 CRW.510.029.4643 Letter from Jason Cremona to Michelle Fielding.

1768 Exhibit RC0016 CRW.510.029.4347 Letter from Michelle Fielding to Rowan Harris (note that the letter was addressed to Mr Harris not Mr Cremona).

1769 Exhibit RC0017 CRW.510.029.4581 Letter from Michelle Fielding to Jason Cremona.

(d) On 25 September 2020, the VCGLR requested additional data,[1770] which was provided by Ms Fielding in a letter sent on 19 October 2020.[1771]

I.4.3 The dealings in relation to recommendation 17 are not a representative example

I.62. This Commission requested a statement from the VCGLR providing "up to three examples that *best illustrate* how responsive and co-operative Crown Melbourne is in its dealings, and its approach and attitude to its dealings, with the VCGLR".[1772]

I.63. Mr Cremona provided the statement in response to that request. He was and is the head of the Licence Management and Audit team within the VCGLR.[1773] That team was given responsibility for assessing Crown's implementation of all Sixth Review recommendations.

I.64. As noted above, all Sixth Review recommendations that have so far fallen due (being all but recommendation 9 and the third limb of recommendation 8(b)) have been implemented to the satisfaction of the VCGLR (as confirmed in writing). So too have the ongoing recommendations.

I.65. Mr Cremona did not in his statement provide any detail of Crown's cooperation with his team. Nor did he provide details of Crown's responsiveness to his team and its cooperation in implementing all of the VCGLR's recommendations on time. He picked only one example, recommendation 17, from the 20 recommendations arising from the Sixth Review when he had the option of addressing up to three in his evidence.

I.66. The dealings in relation to recommendation 17 do not "best illustrate" Crown's responsiveness and level of cooperation. As Mr Cremona conceded, recommendation 17 was in fact the *worst* example he could find of Crown's level of cooperation and responsiveness.[1774] It was an outlier so far as the implementation of the Sixth Review recommendations is concerned. Crown's response in relation to the other recommendations was, in Mr Cremona's own words, "as we would expect of a regulated entity".[1775]

I.67. That is consistent with the contemporaneous documents. Those documents record that recommendation 17 was the recommendation the implementation of

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1770 Exhibit RC0018 CRW.510.029.4610 Email chain between Rowan Harris and Michelle Fielding.

1771 CRW.510.004.2741 Letter from Michelle Fielding to Rowan Harris (19 October 2020).

1772 CRW.512.062.0001 at .0002 (RFS–VCGLR–001).

1773 Exhibit RC0008 VCG.9999.0001.0001 Cremona at [1], [15].

1774 Cremona T225.12-16; T.226.26-28.

1775 Cremona T226.38-40.

which VCGLR staff were most concerned about. Mr Cremona said himself in an email to his superior, Ms Fitzpatrick, sent on 22 May 2019: "I highlighted that this recommendation was the one we were most concerned about".[1776] Indeed, in an internal VCGLR paper dated 8 May 2019 prepared for a Commission meeting:[1777]

(a) the only recommendation – of all 20 – listed as "not on track" (represented by a red traffic light) was recommendation 17;[1778]

(b) all but one of the other 19 recommendations were listed either as "completed" or "on track" (represent by a green traffic light);[1779] and

(c) the one exception was recommendation 11, which was listed as "potentially not on track" (represented by an amber traffic light).[1780]

I.4.4 The VCGLR accepts that Crown had implemented recommendation 17

I.68. In relation to recommendation 17, Crown and the VCGLR had differing views on how the recommendation was to be interpreted.[1781] The difference centred on the relevance of the Program to addressing the money-laundering risks that recommendation 17 contemplated.[1782]

I.69. Crown was, as Mr Cremona put it, "pushing its AML program".[1783] Mr Cremona's view, on the other hand, was that Crown's Program was "irrelevant" to recommendation 17.[1784] With respect, that was and is incorrect.

I.70. Recommendation 17 required Crown to undertake a robust review, with external assistance, of relevant internal control statements, including input from AUSTRAC, to ensure that money-laundering risks were appropriately addressed. The primary mechanism for addressing money-laundering risks is a

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1776 Exhibit RC0009jj VCG.0001.0002.3525 Email from Jason Cremona to Alex Fitzpatrick; See also Cremona T227.37-40.

1777 Exhibit RC0009hh VCG.0001.0001.0094 Sixth Casino Review recommendations – progress update, referred to in Exhibit RC0008 VCG.9999.0001.0001 Cremona at [98].

1778 See Exhibit RC0009hh VCG.0001.0001.0094 Sixth Casino Review recommendations – progress update at .0006 and .0022.

1779 See also Cremona T229.25-30.

1780 See Exhibit RC0009hh VCG.0001.0001.0094 Sixth Casino Review recommendations – progress update at .0016. In relation to recommendation 11, it should be noted that Crown submitted to the VCLGR on 28 June 2019, prior to the required completion date for recommendation 11, that it had completed that recommendation: Exhibit RC0109llll CRW.507.001.6563 Letter from Barry Felstead to Catherine Myers. The VCGLR accepted that to be so on 13 November 2019: Exhibit RC0014 CRW.510.029.4623 Letter from Ross Kennedy to Joshua Preston.

1781 Cremona T230.30-33.

1782 Cremona T230.35-47; see also Exhibit RC0008 VCG.9999.0001.0001 Cremona at [43], [64], [82], and [95].

1783 Exhibit RC0008 VCG.9999.0001.0001 Cremona at [43].

1784 Exhibit RC0008 VCG.9999.0001.0001 Cremona at [95]; See also Cremona T231.3-8.

reporting entity's Program. As Mr Cremona acknowledged, "the AML/CTF program is clearly a fundamental tool in addressing [money-laundering] risks".[1785] That is why s 81 of the *AML/CTF Act* mandates, by way of a civil penalty provision, that a reporting entity have an AML program before commencing the provision of any designated service.

I.71. It is submitted that it would not have been sensible to review the ICSs from the perspective of AML risk without regard to the Program. Mr Cremona himself ultimately accepted that a strict dichotomy between the ICS and the AML Program cannot be sustained.[1786]

I.72. Further, Mr Cremona appears to have held the view that Crown did not have visibility over individual junket players and their gambling activity, and that the casino only needed to know what the junket as a whole had wagered.[1787] That was not correct. Like premium players, Crown knew who the individual junket players were and tracked their gambling activity. The matter over which Crown did not have visibility was the contributions of individual junket players to the front money put up by the junket operator.

I.73. Even though there was a difference as to the proper interpretation of recommendation 17, Crown implemented recommendation 17 in accordance with the VCGLR's interpretation. That was the VCGLR's settled view. In a 29 October 2019 letter from the VCGLR to Crown, the VCGLR noted: "Crown has implemented recommendation 17".[1788] Although the letter went on to say that the VCGLR would "also be conducting an independent review of the relevant ICSs, with external assistance, to consider whether risks relating to money laundering and junket operations have been adequately considered … and if further controls are required to address any risks identified," the settled view of the VCGLR was still that Crown had implemented recommendation 17.

I.74. It can be inferred that that was a carefully considered decision on the part of VCGLR.[1789] It followed a deferral by the VCGLR of its final decision as to whether Crown had implemented the recommendation until after the VCGLR was given an opportunity to review a report by the external consultant that had

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1785 Exhibit RC0008 VCG.9999.0001.0001 Cremona at [81]; See also Cremona T154.44, T231.33-47.

1786 As Mr Cremona said in an email addressed to his superior Alex Fitzpatrick on 15 August 2019: "[I] recognise the need to review the AML/CTF program… Licensing do envisage reviewing the suitability of the AML/CTF program if the link into the ICSs is to be retained": Exhibit RC0009xx VCG.0001.0002.3543 Email from Jason Cremona to Alex Fitzpatrick.

1787 This is repeated at [4.3.155] of COM.0500.0001.0001 Counsel Assisting Closing Submissions. See also Cremona T130.32-41, T133.17-26.; Exhibit RC0008 VCG.9999.0001.0001 Cremona at [26], [42], [61] ("no KYC for participants").

1788 Exhibit RC0462uuu CRW.510.031.0224 Letter from Ross Kennedy to Joshua Preston.

1789 Cremona T.236.19-23.

assisted Crown in its review of the ICSs (Initialism).[1790] That report was requested on 21 August 2019 and provided by Crown within seven days[1791] (a timeframe about which Mr Cremona made no complaint).[1792] Following consideration by the VCGLR of that Initialism report, the VCGLR decided that Crown had implemented recommendation 17.[1793]

I.75. Mr Cremona personally agreed with that view of the VCGLR.[1794] It is submitted that he was correct to do so, having regard to the work that Crown had done in implementing recommendation 17. Crown satisfied the three parts to recommendation 17 that Mr Cremona identified in his evidence:[1795]

(a) Crown did review all ICSs to assess which were potentially relevant to AML risks and to determine whether any amendments were needed to ICSs falling into that category;[1796]

(b) Crown did engage external assistance (Initialism) to carry out that same exercise, and to provide any other commentary Initialism might have on the ICSs;[1797] and

(c) Crown did consult with AUSTRAC, including providing proposed amendments to the ICSs to AUSTRAC.[1798] Although the provision of those ICSs to AUSTRAC did not occur promptly, it did occur within the required timeframe,[1799] but AUSTRAC declined to have input or comment on the ICSs in any event on the basis that it considered it inappropriate to do so.[1800]

1790 See Exhibit RC0009zz VCG.0001.0001.2124 Letter from Ross Kennedy to Joshua Preston; Exhibit RC0009aaa VCG.0001.0001.0072 Letter from Neil Jeans to Ross Kennedy; See also Cremona T236.25-30.

1791 Exhibit RC0009zz VCG.0001.0001.2124 Letter from Ross Kennedy to Joshua Preston; Exhibit RC0009aaa VCG.0001.0001.0072 Letter from Neil Jeans to Ross Kennedy; Cremona T236.37-45.

1792 Cremona T237.2-5.

1793 Exhibit RC0462uuu CRW.510.031.0224 Letter from Ross Kennedy to Joshua Preston.

1794 Cremona T237.15-17; Exhibit RC0008 VCG.9999.0001.0001 Cremona at [122], [129], referring to Exhibit RC0009ww VCG.0001.0001.0041 Memorandum regarding the Sixth Casino Review – recommendation 17 at [37], [130], [136], see also at [118], [119], [120(a)], [121(c)].

1795 Cremona T129.4-17.

1796 Exhibit RC0009tt VCG.0001.0001.0037 Letter from Barry Felstead to Catherine Myers; Cremona T237.25-29.

1797 Exhibit RC0009tt VCG.0001.0001.0037 Letter from Barry Felstead to Catherine Myers at _0002; Exhibit RC0009aaa VCG.0001.0001.0072 Letter from Neil Jeans to Ross Kennedy at _0003; Cremona T237.31-38.

1798 Cremona T238.2-15.

1799 Cremona T239.17-21.

1800 See Exhibit RC0009tt VCG.0001.0001.0037 Letter from Barry Felstead to Catherine Myers at _0002; the actual letter is Exhibit RC078 CRW.510.029.8076; See also Cremona T239.5-14.

I.76. The results of this work were captured in a table enclosed with a letter sent by Crown to the VCGLR on 1 July 2019 in which Crown submitted that it had satisfied recommendation 17.[1801] As can be seen from the table, all 15 ICSs were reviewed, including by Initialism, and changes were made to seven of them.

I.77. Before leaving the topic of the implementation of recommendation 17, it is necessary to say something further about the Initialism report that was obtained as part of implementing recommendation 17. There was a suggestion in Mr Neil Jeans' evidence in chief to the effect that his report had somehow been misrepresented to the VCGLR.[1802] As was clarified with him in re-examination, the descriptions of the report in Crown correspondence were entirely accurate and faithfully reflected both the instructions to him and the content of his report.[1803] Further, as already noted, the entire report was provided to the VCGLR. It follows that the suggestion that his report had been misrepresented to the VCGLR was incorrect.

I.4.5 Crown ultimately went beyond what recommendation 17 required

I.78. The VCGLR was aware of the significant potential risks of money laundering through casinos, particularly through junket operations.[1804] It was aware that Crown was in ongoing dialogue with AUSTRAC to strengthen its AML/CTF program, as part of the casino junkets campaign.[1805] It made the observation in its Sixth Review that, to assist in mitigating the risks associated with junkets, Crown's ICSs for junkets could be strengthened.[1806] And it recommended that Crown undertake a robust review (with external assistance) of relevant internal control statements, including input from AUSTRAC, so as to ensure that money-laundering risks are appropriately addressed.[1807]

I.79. Having implemented recommendation 17 in accordance with the VCGLR's interpretation, Crown subsequently went beyond what the VCGLR had observed and recommended in relation to junkets and the money laundering

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1801 The table is Exhibit RC0462ttt CRW.510.029.8080 Table regarding VCGLR Recommendation 17; The letter enclosing it is Exhibit RC0009tt VCG.0001.0001.0037 (also Exhibit RC078 CRW.510.029.8076 Letter from Barry Felstead to Catherine Myers).

1802 Jeans T807.44-T809.11.

1803 Jeans T850.28-T853.47.

1804 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence at .0913.

1805 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence at .0914.

1806 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence at .0917.

1807 Exhibit RC0002 COM.0005.0001.0776 VCGLR Sixth Review of the Casino Operator and Licence at .0917.

risks to which they give rise. It did that by permanently ceasing dealings with all junket operators.[1808]

I.80. The VCGLR never made that recommendation or direction.[1809] Nor had any other casino in Australia taken that step at the time.[1810]

I.4.6 Counsel Assisting's criticisms in relation to recommendation 17

I.81. At paragraphs 4.3.263 to 4.3.264 of their submissions, Counsel Assisting set out their criticisms in relation to recommendation 17.

I.82. The first criticism concerns what Counsel Assisting described as "misleading statements or impressions conveyed to the VCGLR in relation to Crown's alleged engagement with AUSTRAC" (paragraph 4.3.263). Although not specifically identified in paragraph 4.3.263, Crown apprehends Counsel Assisting to be referring to two matters.

I.83. The first is that the minutes of a meeting with the VCGLR held on 31 October 2018 record the following:[1811]

> Crown noted that AUSTRAC has not expressed concern with Crown's procedures in respect of the Junkets ICS and regulates Crown through its AML Program

I.84. Counsel Assisting submit (at paragraph 4.3.186) that this records a statement by Ms Fielding that conveyed the impression that AUSTRAC had been consulted about recommendation 17, in circumstances where the evidence indicates that consultation in relation to recommendation 17 took place at a later time, in May 2019.[1812]

I.85. When this proposition was put to Ms Fielding, she rejected it.[1813] She said that the statement recorded in the minutes "reflected a general comment that AUSTRAC had not expressed concern with Crown's ICSs before".[1814] The

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1808 November 2020 decision to permanently cease dealings with all junket operators, subject to consultation with State gaming regulators (and only recommence dealing with any junket operator if that operator is licensed or otherwise approved by all State gaming regulators): Exhibit RC0009fff VCG.0001.0002.6158 ASX Media Release regarding Future Junket Relationships; Exhibit RC0437f CRW.507.005.5423 Crown Resorts Board Meeting Minutes 11 November 2020 at .5425. The decision to permanently cease dealing with junkets followed a suspension, in September 2020, of all dealings with junket operators until 30 June 2021 pending a review: Exhibit RC0009eee VCG.0001.0002.2522 ASX Media Release regarding ILGA Inquiry; See also, Exhibit RC0461 CRW.0000.0003.0572.

1809 It was only after Crown had permanently ceased dealing with junkets that the VCGLR, on 17 December 2020, approved an amended Junket ICS.

1810 Cremona T242.20-28.

1811 Exhibit RC0009f VCG.0001.0002.3505 Minutes of Sixth Casino Review Recommendations meeting at _0003.

1812 Exhibit RC0009ii VCG.0001.0002.3131 File note by Rowan Harris regarding Sixth Casino Review – Recommendation 17.

1813 Fielding T2655.7-23.

1814 Fielding T2655.21-23.

record of the statement in the minutes is capable of being read in that way. It does not refer to recommendation 17. There is no reason to reject Ms Fielding's explanation.

I.86. The second matter appears to be that, on 3 May 2019, Ms Fielding sent a status update to the VCGLR that contained the following statement:[1815]

> Crown has met with AUSTRAC to discuss this recommendation.

I.87. Counsel Assisting submit (at paragraph4.3.219) that this created the impression that Crown had met with AUSTRAC to discuss the Junket ICS and had in fact given AUSTRAC the Junket ICS.

I.88. It was not put to Ms Fielding that her statement created the impression that the Junket ICS had been given to AUSTRAC and was misleading on that basis. The statement refers only to meeting with AUSTRAC and does not mention giving the Junket ICS to AUSTRAC. In those circumstances, the submission that Ms Fielding misled the regulator by the statement relied on should not be accepted.

I.89. As for conveying the impression that Crown had met with AUSTRAC to discuss the recommendation, while the statement did convey that impression, it reflected Ms Fielding's understanding at the time.[1816] Further, a file note prepared by the VCGLR on 20 May 2019 records:[1817]

> Briony [of AUSTRAC] has had one brief conversation with Crown in relation to AUSTRAC's input into recommendation 17. In addition, AUSTRAC did an on-site tour of Crown at the beginning of May 2019.

I.90. That is consistent with a meeting with AUSTRAC having occurred by 3 May 2019.

I.91. Counsel Assisting's second criticism in relation to recommendation 17 concerns the threat to call the Minister. As acknowledged above, that threat was completely unacceptable.

I.92. Mr Cremona's evidence was that, on the morning of 24 May 2019, he received a telephone call from Ms Fielding responding "pretty aggressively" to a letter that the VCGLR had sent to Mr Preston and that Ms Fielding had said that Mr Preston was furious and would most probably call the Minister.[1818]

1815 Exhibit RC0009gg VCG.0001.0002.6023 Updated Section 25 Recommendations Table.

1816 Fielding T2662.32-25.

1817 Exhibit RC0009ii VCG.0001.0002.3131 File note by Rowan Harris regarding Sixth Casino Review – Recommendation 17.

1818 Exhibit RC0008 VCG.9999.0001.0001 Cremona at [106].

I.93. Ms Fielding candidly acknowledged the inappropriateness of the call in her evidence.[1819] Asked to give the Commissioner an assurance that the call is not something that would be repeated in the future, Ms Fielding said:[1820]

> I wouldn't ring Jason in that tone again, whether I was asked to or not. Or anybody else at the regulator, for that matter.

I.94. Ms Fielding's call, while unacceptable, was out of character, as Mr Cremona himself acknowledged:[1821]

> I just think the tone was unexpected. I've had many engagements with Michelle, many discussions with Michelle along --- across my 20 years in gambling regulation, and I was clearly taken aback by the tone, the aggressive nature and the fact that there was --- referencing calling the minister is almost like "We take offence to what you've said and we are going to take action to escalate and seek that our position be put forward". It is something that we ordinarily don't hear.

I.4.7 Recommendation 8

I.95. In re-examination of Mr Cremona by counsel for the VCGLR, it appeared to be suggested that there was "pushback" in relation to recommendation 8.[1822] This was put on the basis that there had been redactions made to a report prepared by Emeritus Professor Blaszczynski in relation to that recommendation.

I.96. This suggested criticism is not warranted. On 2 September 2020, Crown wrote to the VCGLR noting that the Blaszczynski report was commissioned under legal professional privilege and that advice was sought from Emeritus Professor Blaszczynski on matters outside the scope of recommendation 8.[1823] Information contained in the Blaszczynski report pertaining to recommendation 8 was provided to the VCGLR that day in the form of a partially redacted copy of the report.

I.97. On 15 October 2020, the VCGLR queried Crown's redactions to the report and requested a response within 14 days.[1824] On 29 October 2020, within that timeframe, Crown provided a completely unredacted copy of the report.[1825] There was, thus, no "pushback". On the contrary, the additional matters addressed by Emeritus Professor Blaszczynski related to, among other things, recommendations 10 and 11 of the Sixth Review, for which Crown was not

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1819 Fielding T2665.15-21.

1820 Fielding T2666.41-47.

1821 Cremona T178.35-T179.9.

1822 Cremona T244.23-T245.31.

1823 Exhibit RC0462hh CRW.510.029.3601 Letter from Michelle Fielding to Ross Kennedy.

1824 Exhibit RC0464m VCG.0001.0002.3093 Letter from Alex Fitzpatrick to Michelle Fielding.

1825 Exhibit RC0462jj CRW.510.029.3177 Letter from Michelle Fielding to Alex Fitzpatrick; Exhibit RC0462kk CRW.510.029.4158 (unredacted report) Letter from Rawdon Consultancy to Jan Williamson and Sonja Bauer.

required to obtain external advice by the VCGLR, but nonetheless did so in a proactive manner to assess enhancement opportunities.

I.5. The VCGLR's remarks in its April reasons for taking disciplinary action

I.98. At paragraphs 4.3.266 to 4.3.267 of their submissions, Counsel Assisting address the VCGLR's decision to impose a fine of $1 million on Crown Melbourne following the hearing of a show-cause notice alleging contraventions of s 121(4) of the CCA in relation to junket controls.[1826]

I.99. At the end of its reasons for decision, the VCGLR made some remarks that the VCGLR said were "not matters that are strictly relevant to the Commission's consideration of the outcome of this matter".[1827] Those remarks included the following:[1828]

> The Commission considers it highly regrettable that, so soon after being given a presentation which included [certain earlier quoted] statements from Ms Coonan and Mr Walsh, at the hearing before the Commission on 21 January 2021 (and in the written submissions that were produced on 5 February 2021), Crown would take an approach that was so clearly at odds with the matters that had been expressed at the meeting on 17 December 2020.
>
> The Commission had been hopeful, following the presentations from Ms Coonan and Mr Walsh, that a more co-operative approach would in fact be taken to regulation, commensurate with Crown's privileged position as both the sole holder of a casino licence in Victoria and also, as a corporate citizen who enjoys (specifically insofar as the matters referred to in these confidential reasons are concerned) a degree of self-regulation as a result of the reforms that occurred in 2004. The Commission considers this matter to have been Crown's first opportunity to have demonstrated, by its deeds, that it had altered its previous approach to regulatory matters.
>
> Regrettably, the Commission's experience has been that there has not, in fact, been any alteration in Crown's approach.
>
> The distinction between Mr Walsh's statements recorded in the transcript on 17 December 2020 on the one hand and those recorded in the transcript on 21 January 2021 on the other are very difficult to reconcile.

I.100. As is explained in Part E above, Crown accepts that it should not have responded to the VCGLR show-cause notice in the way that it did in the 21 January 2021 hearing and in the February 2021 submissions. That approach was driven by a strategy set by Crown's previous executives and legal advisers.[1829] The criticism

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1826 Exhibit RC0292 VCG.0001.0002.6984 VCGLR Decision and Confidential Reasons for Decision.

1827 Exhibit RC0292 VCG.0001.0002.6984 VCGLR Decision and Confidential Reasons for Decision at [264].

1828 Exhibit RC0292 VCG.0001.0002.6984 VCGLR Decision and Confidential Reasons for Decision at [270]-[274].

1829 Walsh T3349.41-3350.3; Weeks T3428.25-31; Coonan T3767.7-3768.21; Halton T3637.22-27.

of Mr Walsh about these events is responded to in Annexure C.2, which specifically addresses his suitability as an associate of Crown Melbourne.

I.101. Crown otherwise respectfully submits that criticism of Crown for adopting the stance that it did – legitimate as it is conceded to be – should take into account the different contexts of the show-cause hearing (which was in substance a proceeding in the nature of a prosecution) and the meeting addressed to reform and relationship building that was attended by Ms Coonan and Mr Walsh. The VCGLR appeared to acknowledge this at the time of the hearing. Mr Barton, Crown's former CEO, made some opening remarks at the beginning of the hearing about Crown's reform program and referred to the "good and constructive dialogue" that Crown sought to maintain with the VCGLR.[1830] The Chair of the VCGLR, Mr Kennedy, responded:[1831]

> … the Commission is very interested in the reform program as it progresses, but today's probably a matter more for the particulars of the show cause notice, so we might confine ourselves to that, but I look forward to an opportunity soon for further updates on the reform agenda.

I.6. Current stewardship of the VCGLR relationship

I.102. The relationship with the regulator depends in large part on the particular individuals within the organisation who have carriage of it.[1832] Often those individuals are lawyers.[1833] The individuals who had carriage of the dealings in relation to the China investigation and recommendation 17 no longer work for or advise Crown.

I.103. Crown's new senior leaders have taken personal carriage of the VCGLR relationship. Ms Coonan has been investing in building and strengthening that relationship since she assumed the role of interim Executive Chair.[1834] Very shortly after his arrival, Mr McCann asked for a meeting with the VCGLR as soon as possible.[1835] Mr McCann and Mr Blackburn met with the VCGLR in late June[1836] to discuss the relationship between Crown and the VCGLR and how to improve it.[1837]

1830 Exhibit RC0366 VCG.0001.0002.6532 VCGLR Transcript of Proceedings in the matter of Crown Melbourne at .0003, line 15 to 0005, line 2.

1831 Exhibit RC0366 VCG.0001.0002.6532 VCGLR Transcript of Proceedings in the matter of Crown Melbourne at .0005, lines 4-8.

1832 Arzadon T3989.6-18

1833 Arzadon T3989.20-T3990.12.

1834 Exhibit RC0437 CRW.998.001.0526 Coonan at [82(o)]; Coonan T3757.14-18, T3853.31-43; McCann T3454.7-33.

1835 McCann T3455.20-26.

1836 McCann T3454.7-29.

1837 McCann T3455.43-T3456.5.

I.104. Mr McCann and Mr Blackburn discussed with the VCGLR their personal commitment to an open and transparent relationship with the regulator, including updating the regulator frequently.[1838] Mr McCann encouraged the VCGLR to be frank and open with Crown about any concerns or issues the VCGLR might have in relation to any matter.[1839]

I.105. The meeting was amicable.[1840] Mr Blackburn gave evidence that it was a "terrific meeting" and that it was "very constructive and positive".[1841]

I.106. Both Mr McCann and Mr Blackburn are very much aware of the shortcomings in Crown's approach to the China investigation and the show-cause hearing and of the VCGLR's legitimate grievances in relation to those dealings.[1842] With carriage of the relationship now in their hands, the Commission can be confident that the approach taken in those dealings will not be repeated, particularly having regard to the steps that Mr McCann and Mr Blackburn have already taken so soon after commencing in their roles.

I.7. Conclusion as to suitability

I.107. Crown has made some serious past mistakes in its dealings with the VCGLR.

I.108. That said, it has generally had a good relationship and behaved "as [the VCGLR] would expect of a regulated entity".[1843]

I.109. Crown has learnt from its past mistakes, and is highly unlikely to repeat them. Crown is committed to agreeing with the VCGLR a series of processes, assurance reviews, and communication protocols to embed assurance of best practice with the VCGLR.

I.110. Overall it is submitted that these matters do not warrant a finding that Crown is unsuitable and irredeemably so.

1838 McCann T3455.1-3.

1839 McCann T3455.28-31.

1840 McCann T3454.31-33.

1841 Blackburn T3070.8-10.

1842 McCann T3457.11-3458.13; Blackburn T3069.26-43.

1843 Cremona T226.38-40.

ANNEXURES

ANNEXURE A.1: INDEPENDENT MONITOR OR SUPERVISOR

1. Crown accepts that, regardless of the conclusion reached on present suitability, it is appropriate for an independent monitor or supervisor to be appointed to oversee and scrutinise the implementation of its program of reforms and further initiatives arising out of the recommendations of this Commission.

2. Counsel Assisting submitted that:[1844]

   (a) an independent monitor should be appointed to scrutinise Crown's reform process, with powers to look into every aspect of Crown Melbourne's affairs, past and present;

   (b) the independent monitor should have the power to obtain documents and advice, and to interrogate staff;

   (c) the independent monitor should be able to appoint experts to assist in the task of supervision, and to conduct investigations of their own;

   (d) the cost of supervision should be borne by Crown; and

   (e) the independent monitor should be implemented by legislative amendment to create the "office of a supervisor".

3. Crown agrees with (a) to (d).

4. While Crown does not oppose (e), it submits that it is not necessary to create the office of a supervisor by way of legislative amendment given the powers already conferred on the VCGLR under the Casino Control Act.

5. In Crown's submission, sufficient powers exist to appoint an independent monitor or supervisor and for that monitor or supervisor to be given broad powers of the type suggested by Counsel Assisting.

6. In particular:

   (a) under s 16 of the Casino Control Act, the VCGLR can amend the conditions of the casino licence.

   (b) under s 23 of the Casino Control Act, the VCGLR can give Crown a written direction that relates to the conduct, supervision or control of operations in the casino and it is a criminal offence for Crown not to comply with the direction. The power conferred by this section includes a power to give a direction to a casino operator to adopt, vary, cease or refrain from any practice in respect of the conduct of casino operations.

1844 COM.0500.0001.0001 Counsel Assisting Closing Submissions at [19.1.37] - [19.1.40].

(c) under s 26 of the Casino Control Act, the VCGLR can require the production of documents to an 'authorised person' (which could include an independent monitor) and can require a person to attend before an authorised person for examination.

7. Crown respectfully submits that the appointment of a monitor or supervisor under the existing legislative framework is likely to provide an efficient and effective means of achieving the type of supervision and oversight of Crown that is envisaged in Counsel Assisting's submissions. Crown would work with the monitor to provide whatever assistance is required to carry out their task.

8. Any monitorship would, of course, supplement the oversight that the VCGLR already exercises over Crown Melbourne's operations. Crown is committed to continuing to work closely and constructively with the VCGLR in addition to any monitor or supervisor appointed to oversee the implementation of Crown's reform program.

ANNEXURE A.2: CROWN MELBOURNE CONTRIBUTIONS

9. The Melbourne casino has operated in Melbourne since 1994 and on its current site since 1997. The direct and indirect benefits that Crown has provided to the State of Victoria in that period – and that it would continue to provide if it retains its casino licence – are considerable. Crown is a major employer. Crown's workforce mirrors the Melbourne community, of which it is a significant part. Crown has had a longstanding commitment and a number of successful programs to ensure that it has an inclusive and diverse workforce. It also supports thousands of other businesses through its procurement activities, it contributes large sums to the State's revenue, it has invested large sums in entertainment and tourism infrastructure, it provides income to shareholders,[1845] it provides training and development opportunities, it supports a range of community programs and it promotes Victoria as a tourist destination.

Crown's People and Economic Contribution

10. Approximately 12,600 people are employed across the Crown Resorts businesses (Melbourne, Perth and Sydney), with total salaries and wages for the group exceeding $900m per year (pre-COVID disruptions)[1846] and over half of those employees (approximately 6,600) are employed by Crown Melbourne.[1847] Including contractors and tenants, there are over 20,700 people working across the Crown Resorts businesses nationally, and over 11,600 of these people work at the Crown Melbourne property.[1848] Crown Melbourne is Victoria's largest single site employer.[1849]

11. In addition to direct employment, prior to the COVID pandemic, Crown spent over $900 million annually on general procurement, indirectly supporting approximately 4,000 local business in Victoria and Western Australia.[1850] Crown and its tenant restaurants spend over $100 million annually on the purchase of Australian grown produce. In the first half of 2021, Crown Melbourne spent $47 million supporting 900 small businesses.

12. Crown Melbourne has repeatedly been recognised as an Employer of Choice and Employer of the Year.[1851]

1845 Including over 46,000 small shareholders (holding 5000 shares or less): Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at .1608.

1846 See, eg, FY19 Annual Report, CRW.515.004.9268 at 9373.

1847 As at 14 July 2021.

1848 As at 14 July 2021.

1849 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0120.

1850 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0120.

1851 Australian Employer of the Year in 2010 and 2013 and Victorian Employer of Choice in 2014, 2015, and 2016: Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0120.

13. Further, Crown has a longstanding commitment to developing an inclusive and diverse workforce. Among other things, it has:

    (a) an award-winning Indigenous Employment Program now in its 12th year which has employed over 1,000 Indigenous Australians[1852];

    (b) the CROWN*ability* program, which provides employment opportunities for people with a disability[1853] and has employed over 650 people with a disability; and

    (c) initiatives with respect to gender equity,[1854] LGBTIQ+ inclusion through the establishment of the Crown Pride Employee Network, and a family support network, recognising families of all types and cultural and linguistic diversity.[1855]

Financial contribution

14. Crown is a major contributor to the revenue of the State of Victoria. Since 2014, Crown has paid over $3 billion to Victorian State revenue including through general player casino taxes, commission-based player taxes and payroll tax.[1856]

15. Crown has also paid,[1857] and will continue to pay, substantial additional amounts to the State under the Casino Management Agreement, including $250 million in July 2033.[1858]

16. Crown pays approximately $18 million per annum into the Community Benefit Levy which helps fund Victorian hospitals.[1859]

1852 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at .1484-.1485. Crown has an agreement with the Commonwealth Department of Prime Minister & Cabinet for attaining a 3.1% Indigenous workforce. Crown Resorts is also a member of the "Elevate" group, the highest level of endorsement granted by Reconciliation Australia.

1853 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1485.

1854 This has included corporate initiatives such as adopting a Gender Action Plan, membership of Male Champions for Change, and support for Women in Gaming and Hospitality Australia, as well as concrete steps such as providing uncapped paid domestic violence leave for both permanent and casual employees and introducing measurable objectives for achieving gender diversity: Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1485, 1491.

1855 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1485.

1856 Excluding the repayment of gaming tax (and penalty interest) relating to bonus payments and jackpot payments and a gaming tax shortfall payable on 29 August 2021.

1857 Exhibit RC0502 COM.0005.0001.1056 Consolidated Casino Management Agreement at 1090, clauses 20.3 and 21.1.

1858 Exhibit RC0502 COM.0005.0001.1056 Consolidated Casino Management Agreement at 1090, cl 21A.

1859 Victorian Budget 2021/22, Statement of Finances (Budget Paper No. 5), p 221 (see item 'Casino Control Act No. 47 of 1991, Section 114 – Hospitals and Charities Fund'). See also Victorian Budget 2020/21, Statement of Finances (Budget Paper No. 4), p 200.

17. Crown also contributes substantially to Commonwealth government revenue. Since 2014, it has paid at least $812.4 million to the Commonwealth through corporate income taxes.[1860] In the 2019 financial year alone, Crown paid over $650 million in taxes to all levels of government.[1861]

18. Further contribution to the Australian economy comes from Crown's expenditure on capital works, including new resorts and upgrades to existing properties. Between 2006 and the end of FY20, Crown has spent over $5.5 billion in capital expenditure across its resorts. Of this, $2.2 billion has been spent in Melbourne, $1.7 billion has been spent in Perth and $1.6 billion in Sydney.

19. A 2018 independent assessment by ACIL Allen Consulting found that Crown Melbourne contributed up to $3.16 billion to Australian real Gross Domestic Product (and that Crown Perth contributed up to $1.24 billion).[1862]

Income for shareholders

20. As at 31 August 2020, Crown had over 47,957 shareholders, including over 46,000 small shareholders.[1863] In the period since 2014, Crown has paid annual dividends to its shareholders in excess of $3 billion.[1864]

Training and development

21. Crown provides important learning and development opportunities to the community through Crown College, a Registered Training Organisation (RTO) providing nationally recognised vocational education.[1865] Crown College provides culinary, patisserie, hospitality and management training and qualifications. Since its inception, over 11,225 employees have graduated and completed a qualification from Crown College, including over 8,500 trainees. In addition, the establishment of Crown College International in Melbourne offers an international program, from which 88 international students have graduated since its inception.[1866]

22. In the 2019 financial year alone, Crown provided technical, leadership, health and safety and customer service training to more than 7,500 employees.[1867]

1860 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0119.

1861 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0119.

1862 CRW.527.001.7927 ACIL Allen Consulting Report October 2018 at .7929.

1863 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at .1608.

1864 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0119.

1865 Only Registered Training Organisations can deliver nationally recognised courses accredited under the Australian Qualifications Framework: See Australian Skills Quality Authority, *What is an RTO?* https://www.asqa.gov.au/about/vet-sector/what-are-rtos

1866 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1484.

1867 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0121.

More than 870 were enrolled in Certificates III and IV, and Diploma level qualifications.[1868]

23. Further, Crown operates the 500 Training Places program offering free Certificate II and III courses to people in the community who may face disadvantage develop employment skills or transition industries.[1869]

24. Crown has won numerous awards in recognition of the quality of the training it provides (in addition to the Australian and Victorian Employer of the Year), including the Victorian Tourism Awards for Excellence in Education and Training 2013, 2014, and Hall of Fame in 2015.

Community programs

25. Crown firmly believes in and is committed to supporting the communities in which it operates. It established the Crown Resorts Foundation (**CRF**) to formalise that support. The CRF focuses on creating and supporting opportunities for young Australians through educational programs. [1870] It supports Indigenous education opportunities, arts and culture programs and partnerships with organisations to provide opportunities for young Australians.

26. The CRF committed $100 million over 10 years to the National Philanthropic Fund (the largest corporate philanthropic commitment in Australia). The National Philanthropic Fund is now in its seventh year of operation and is currently delivering multiyear financial support to over 120 programs. Each year, these programs provide opportunities for thousands of school students from the lowest-community socio-educational advantage schools to participate in arts programs.[1871]

27. The CRF also supports local charities operating in Melbourne's CBD, including The Salvation Army Project 614 and Father Bob Maguire, which provide support to vulnerable persons. That includes financial support, food and other donations, time and support of Crown employees and other fundraising efforts.[1872] In 2019-20, Crown Melbourne also donated over 9 tonnes of produce to the Victorian Parliament catering team to create meals for people in need. [1873]

28. The CRF also provides significant emergency national disaster support. In response to the 2019/20 Black Summer Emergency Bushfires, it provided $2.5 million to support Victorian emergency response organisations including the

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1868 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at 0121.

1869 Being people affected by redundancies (particularly from the automotive industry), Aboriginal and Torres Strait Islander people, new immigrants, and women in crisis. To date, 125 graduates of the program have gained employment in the hospitality and security industries: Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1483.

1870 https://www.crownresorts.com.au/Our-Contribution/Crown-Resorts-Foundation.

1871 https://www.crownresorts.com.au/Our-Contribution/Crown-Resorts-Foundation.

1872 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1487.

1873 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1487.

Victorian Country Fire Authority, the Victorian Government Bushfire Fund, Zoos Victoria and WIRES.[1874] Crown also raised more than $550,000 for various charities and causes associated with those bushfires through a range of activities.[1875]

29. A focus of the CRF is the education of indigenous Australians.[1876] Since inception, the programs supported through the CRF's indigenous education partnerships have delivered:

(a) over 14 million hours of educational programs;

(b) over 500 hours of engagement to 5,200 Indigenous students each year, on average; and

(c) over 17,600 hours of upskilling or teacher training to over 1,000 teachers and community members to support Indigenous education outcomes.[1877]

30. Separately to the CRF, Crown supports hundreds of charities and not-for-profit organisations across Victoria, Western Australia and New South Wales each year. This support is delivered via prizes for charity fundraisers, support for fundraising events, employee volunteer hours and other corporate support. For example, Crown worked with the family violence support centre Safe Steps to provide safe accommodation, at no cost, to those experiencing domestic and family violence during the start of the pandemic. Crown provided 1,231 room nights under this program.

31. Crown is also a partner organisation in an Australian Research Council Linkage Program, led by the University of Melbourne, which is evaluating the impact of indigenous preferential procurement programs. Crown's involvement includes providing the Program with funding totalling $218,000, as well as proprietary data and participation in interviews, meetings and workshops.[1878]

Tourism

32. Crown has played a significant role in attracting tourists to Victoria. Tourism Research Australia found in 2011 that Crown Melbourne was Victoria's third most visited tourism destination for international visitors. In 2014, Crown was

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1874 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1488.

1875 Exhibit RC0434g CRW.512.012.1461 Crown Resorts Annual Report 2020 at 1467.

1876 The majority of the Foundation's Indigenous education partner organisations operate nationally, including in Victoria. These organisations include the Clontarf Foundation, Stars Foundation, Australian Literacy and Numeracy Foundation, Australian Indigenous Education Foundation, Ganbina (Shepparton), Melbourne Indigenous Transition School and the Aurora Education Foundation.

1877 CRF National philanthropic Fund Annual Review 2019/2020 (https//www.crownresorts.com.au/CrownResorts/files/0c/0cf165f0-e74f-44fd-86e9-181c328dc20e.pdf).

1878 Crown ARC Letter of Support (11 December 2020).

Australia's largest tourism revenue generator, excluding the airlines.[1879] In the same year, Crown Melbourne was named the best integrated resort of the year in the International Gaming Awards and Crown Towers was named Australia's best hotel by both Luxury Travel Magazine and the Asia Pacific Hotel Awards.[1880] In 2019, Crown Towers was named the Deluxe Accommodation Hotel of the Year by Tourism Accommodation Australia, and since 2017 it has been awarded a Five Star ranking by the international Forbes Travel Guide.

33. Crown provides approximately 10% of all Melbourne hotel rooms, playing a critical role in ensuring supply for visitors during major events.[1881] For example, Crown has been the official accommodation provider to the Australia Open for over 20 years. In addition, Crown is one of the largest function centres in Melbourne and regularly hosts major events connected to key dates in the Melbourne calendar, including in connection with the Melbourne Food and Wine Festival, the AFL Premiership (including the Brownlow Medal, Grand Final Eve Lunch and Best & Fairest for multiple AFL teams), the Melbourne Cup Carnival (including The Call of the Card and the Oaks Day Ladies Lunch) and the IMG Tennis Party on the eve of the Australian Open.

34. Crown also works with government agencies and industry to support bids for meetings and conventions that, before COVID, contributed more than $1.2 billion to the Victorian economy each year.[1882] In particular, Crown works closely with the Melbourne Convention Bureau to secure large conventions for Melbourne and partners with tourism and event providers to support Melbourne's major event calendar.

1879 Crown submission to the Productivity Commission: https://www.pc.gov.au/research/completed/international-tourism/comments/submissions/submission-counter/sub028-international-tourism.pdf

1880 Exhibit RC0445 COM.0005.0001.0001 Bergin Inquiry Report Volume 1 at .0121.

1881 CRW.531.005.3217 Presentation titled "Crown Melbourne's contribution to Victoria" at .3237.

1882 CRW.531.005.3217 Presentation titled "Crown Melbourne's contribution to Victoria" at .3237.

ANNEXURE C.1: HELEN COONAN AS A SUITABLE ASSOCIATE OF CROWN MELBOURNE

1. As already noted, Ms Coonan intends to retire from her role as interim Executive Chair of Crown Resorts and each of her directorships of Crown companies. She intends to announce her retirement as soon as Crown has finalised its plans in relation to the appointment of a new leader. Crown expects to appoint that new leader by 31 August 2021.

2. Accordingly, Ms Coonan will not be an "existing" associate of Crown Melbourne at the time at which this Commission provides its report to the Victorian government.[1883] In those circumstances Crown respectfully submits that the Commission need not, and ought not, make any finding as to Ms Coonan's suitability.

3. In the event that the Commission does decide to make a finding as to whether or not Ms Coonan is a suitable person, then Crown makes the following submissions regarding the conduct relied on by Counsel Assisting as supporting a finding of unsuitability.

4. These submissions are to be read with Crown's overarching submission, as set out in Part C.2 of these submissions, that Counsel Assisting's characterisations of Ms Coonan's conduct, even if accepted, would not provide a proper foundation for an unsuitability conclusion.

5. *First*, the criticisms by Counsel Assisting regarding:

   (a) Ms Coonan's so-called "track record of inaction as a non-executive director of Crown",[1884]

   (b) the Board's failure to hold management to account over the China arrests,[1885] and

   (c) the fact Ms Coonan signed off on the submissions made to the Bergin Inquiry[1886] and the propositions on China submitted to the VCGLR in January 2021,[1887]

   fail to pay sufficient regard to the commercial reality that boards operate as collective decision-making organs, and fail to recognise the fundamental shift in control of the company which occurred following the publication of the Bergin Report in February 2021.

1883 See Terms of Reference, paragraphs 10(H) and 10(I).

1884 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [5.20], [16.5.94].

1885 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [5.36]-[5.42].

1886 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [5.47].

1887 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16 at [5.50]-[5.51].

6. The singling out of Ms Coonan for not individually "carrying the Board" in relation to matters she acknowledges should have been handled differently (some of which she sought to have handled differently at the time),[1888] should not be accepted.

7. *Second*, Ms Coonan's evidence was clear that she thought Crown should have taken a less defensive approach before the Bergin Inquiry, and with the VCGLR in the months following it, but did not have the support of a majority of her (then) fellow directors.[1889] Indeed, the fact that Ms Coonan considered a different approach should have been taken to the Bergin Inquiry is apparent from the evidence she gave to that Inquiry.[1890]

8. The evidence from Ms Coonan, Ms Korsanos and Ms Halton that it was not until the Bergin Report was handed down and a majority of the former Crown Resorts Board resigned that the remaining directors "got control" over the affairs of the company and could chart a different course[1891] was not seriously challenged. Ms Coonan was not challenged on the explanation she provided as to why a different approach could not have been taken earlier.[1892] In those circumstances the criticisms advanced by Counsel Assisting in that respect are unwarranted.

9. *Third*, Counsel Assisting's submission that Ms Coonan failed to follow up the bonus jackpots tax issue with Xavier Walsh after their discussion by phone on 23 February 2021 and that such a failure gives rise to serious concerns about her suitability, should not be accepted. The relevant evidence concerning Ms Coonan's involvement with the bonus jackpots issue is set out in detail at paragraphs G.42 to G.47 and G.129 to G.135 above. That evidence demonstrates that:

   (a) it was Ms Coonan's direction regarding cultural change at Crown that contributed to the issue being raised by Mr Walsh in the first place;

   (b) the matter was presented to Ms Coonan as a legacy cultural issue that did not involve any illegal (or potentially illegal) conduct and that had been cured or fixed;[1893] and

   (c) far from ignoring or downplaying it, Ms Coonan wanted to ensure that it was properly investigated; that Crown received appropriate legal

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1888 Coonan T.3755:22 – 26, T.3767:44 – T.3768:4, 3768:40 – 41.

1889 Coonan T.3755:22 – 26, T.3766:45 – T.3767:1, T.3768:40 – 41.

1890 Bergin Inquiry Report at [55].

1891 See, eg, Coonan T3766.30-39: "*The way boards operate and the way in which old management operates are not something you can turn around quickly. A change, a real change of approach wasn't possible with old management and old Crown*". See also Halton T.3601:14-23; Halton T3610:34-45; Korsanos T.3660:22 – T.3661:21.

1892 Coonan T.3766:36 – T3767.1.

1893 Coonan T.3803:11.

advice in respect of it; and that disclosure of it was made if required. Ms Coonan therefore directed that the matter be raised with Crown's lawyers, with a view to it being disclosed. In the circumstances, that was entirely appropriate.

10. Counsel Assisting submits that "the lack of adequate explanation" as to why Ms Coonan did not "follow up" the matter gives rise to a concern about Ms Coonan's suitability.[1894] This is an example of Counsel Assisting deploying the concept of suitability in a way that is unmoored from its statutory meaning (ie. in a sense not focused on the relevant questions of honesty, integrity and character). As Ms Coonan said in evidence, it is not the role for an Executive Chairman to follow up and take responsibility for every matter that comes across his or her desk.[1895] Based on the manner in which the matter was raised with her, Ms Coonan had no reason to think that the matter required any other or more urgent or personal action by way of follow up. With the benefit of hindsight, Ms Coonan (and all other senior leaders at Crown) now well understand the importance of the issue. But, with respect, the Commission ought be careful to avoid judging the actions taken by Ms Coonan (or any other of Crown's senior leaders) by reference to what is now known about the issue, as opposed to the circumstances and terms in which the issue was then raised for consideration by her (and them).

11. *Fourth*, Counsel Assisting refer to the timing of ABL's letter of 2 July 2021, and Ms Coonan's decision to endorse it, as a further example of poor judgement and something that is the "antithesis of the cultural reform that Crown needs to move forward".[1896] Ms Coonan was concerned to emphasise in her evidence that the letter was not in any way intended to pre-empt or interfere with the processes of this Royal Commission.[1897] Rather, it was an attempt to begin a dialogue with the Government regarding potential outcomes from the Commission and the consequence that certain outcomes could have for Crown, the Government and other stakeholders.[1898] The letter was sent in the context of Ms Coonan at least perceiving Crown to have ongoing obligations to deal with all of its stakeholders, including Government.[1899] It is respectfully submitted that no finding of a lack of character, honesty or integrity ought be made on the basis of this letter having been sent.

12. *Finally*, Ms Coonan was a member of the Crown Resorts Board at a time when a number of the Group's failings emerged. She has accepted the collective

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1894 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16, [5.80].

1895 Coonan, T3811.34-38 (8 July 2021).

1896 COM.0500.0001.0001 Counsel Assisting Closing Submissions, Ch 16, [5.89] – [5.91].

1897 Coonan, T3835.29 – 32.

1898 Coonan, T3835.40 – 43, T3836.29-31.

1899 Coonan, T3832.40-42.

responsibility that attends being a Board member in those circumstances.[1900] It is accepted that judgments have been made which, with the benefit of hindsight, Ms Coonan would have made differently. But the requirement for an associate to be a suitable person is not breached by a person making honest mistakes or even by occasional lapses in good judgement. Something more is required, and is not found in the evidence before the Commission in relation to Ms Coonan.

13. To this end, it is important to note that the Bergin Inquiry undertook a detailed inquiry into the past failings of Crown, including a review of the conduct of the Crown Resorts Board. In undertaking that review, the Hon Patricia Bergin did not make any adverse findings against Ms Coonan or find that she was not suitable. At the Bergin Inquiry, Ms Coonan made a commitment to see the reform program get underway and stabilise the Crown Group pending the appointment of a new CEO and senior executive team and repopulation of the Crown Resorts Board with appropriate individuals to carry forward Crown's reformation. Since her appointment as interim Executive Chair, Ms Coonan has played a pivotal role in Crown's rehabilitation, driving the design and implementation of a substantial remediation program and the renewal of Crown's board and senior management

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1900 Coonan, T3861.01 – 22.

ANNEXURE C.2: XAVIER WALSH AS A SUITABLE ASSOCIATE OF CROWN MELBOURNE

1. Counsel Assisting submit that:

   (a) "on the basis of the overall evidence", it is open to find that Mr Walsh is not a suitable associate of Crown Melbourne; and

   (b) "the matters of integrity that underlie" the basis upon which it is open to find that Mr Walsh is not a suitable associate "preclude the identification" of action that could be undertaken in order to make Mr Walsh suitable in the future.[1901]

2. As noted, Mr Walsh will be leaving Crown on 20 August 2021 on terms that he is presently discussing with Crown. The Commission therefore need and ought not, in Crown's respectful submission, proceed to make findings in relation to either of these submissions.

3. If the Commission decides it is appropriate to make a finding about Mr Walsh's suitability notwithstanding that he is leaving Crown Melbourne, and will not be an "existing" associate of the licensee when this Commission provides its report government, Crown submits that neither proposition advanced by Counsel Assisting should be accepted.

4. As is accepted by Counsel Assisting, suitability under the CCA is an assessment to be undertaken holistically.[1902]

5. A holistic assessment of Mr Walsh involves not only an examination of all elements of his past conduct (not just decisions that are the subject of criticism), but also, inter alia, whether he has taken responsibility for his past mistakes and whether he was an honest and cooperative witness in this Commission.

6. Counsel Assisting point to four bases for their conclusions about Mr Walsh. These are dealt with in turn below.

Mr Walsh's failure to address and escalate concerns of money laundering

7. Counsel Assisting say that Mr Walsh's response to Mr Alvin Chau's request to transfer funds from the Star Casino to Crown and his response to ASB's intention to close the Southbank account "show at the very least a naïve or laissez faire approach to the high risk of a casino being exploited for money laundering purposes" and that "that approach is not befitting someone in such a senior and influential role".

1901 COM.0500.0001.0001 Counsel Assisting Closing Submissions the Commission at .0283 [16.4.46]-[14.4.47].

1902 COM.0500.0001.0001 Counsel Assisting Closing Submissions the Commission at .0019 [1.5.9] and .0263 [14.2.4].

8. Crown accepts that Mr Walsh's failure to escalate ASB's intention to close the Southbank account was a mistake. Importantly, Mr Walsh also accepted this error himself when giving evidence, and did not seek to diminish it,[1903] even though other personnel at the time were responsible for AML and compliance matters. Crown otherwise submits that Counsel Assisting's view is not supported by the evidence.

9. In the case of Mr Alvin Chau's request to transfer funds from the Star Casino to Crown, the quote from Mr Walsh's email of 9 November 2020 at 5:21 pm appearing at [16.4.14] of Counsel Assisting's submissions does not reflect the entire conversation.[1904]

10. When that email is viewed in its entirely, it is clear that Mr Walsh was merely giving his initial impression, but importantly asking others, and in particular Nick Stokes the General Manager of AML at the time, for his view (and also giving an indication he would likely defer to Mr Stokes' view). It reads as follows:

> Hi all
>
> Given the money has come from the Star email says the money has come from Chau Cheok Wa (refer extract below), so it is not a third party transfer, I would have thought we can accept payment.
>
> **However, I am available to discuss if you have a different view Nick.**
>
> Regards
>
> Xavier
>
> (emphasis added)

11. Further, when the chain is views as a whole it is revealed that approximately 19 minutes later Mr Walsh followed up again, stating:

> Sorry last email on this from me.
>
> **Mary will make enquires to get a little more background detail, so we can make a more informed decision**, including:
>
> What prompted the transfer from Chau?, and
>
> Were the funds winnings?
>
> Regards
>
> Xavier

1903 X Walsh T3294.19-24.

1904 Exhibit RC0369 CRW.513.023.7769 at 7771 Email chain between Xavier Walsh and Mary Gioras et all 12 November 2020.

(emphasis added)

12. Overall, what this displays is not a naïve or laissez faire approach to the risk of money laundering. Rather, Mr Walsh appeared readily appraised of the risk and directed steps be taken to investigate further. Ultimately, once those investigations had been completed and advice received, the money was not accepted by Crown.[1905] Further, transfers from other casinos were not regarded as third party transfers until 21 May 2021 (post this exchange) and so Mr Walsh's approach was in keeping with company policies as they stood at the time.[1906]

VCGLR

13. Counsel Assisting have criticised Mr Walsh's approach to the 21 January 2020 hearing of the VCGLR show cause notice. Crown accepts that some of that criticism is indeed fair, as does Mr Walsh.[1907]

14. That said, Counsel Assisting are not entirely correct to say that "Mr Walsh's submission … to the VCGLR was that Crown's due diligence process was robust".[1908] Rather, the thrust of the company's position which Mr Walsh advanced was that the four specific charges in the show cause notice did not constitute breaches of a clause in the Junket ICS that required "robust" due diligence systems. Mr Walsh did not contend for any wider proposition, namely that Crown's due diligence processes on junkets were generally, or in all instances, 'robust'.

15. It also ought to be noted that despite not being a lawyer, and having been in the role of CEO of Crown Melbourne for a little over one month, Mr Walsh was called upon to present legal submissions that had been prepared by others, on legal advice.[1909] Crown submits that to regard this one interaction, so early in his tenure as CEO, as demonstrative of such "poor judgment"[1910] to sound in a basis for a finding of unsuitability is inappropriate. It also assumes that Mr Walsh is incapable of learning from his mistakes, which is clearly not the case.

16. In this regard, Crown submits further that a factor militating towards a finding of suitability of Mr Walsh was his forthright contrite evidence to the Commission on this issue. In particular, that:

1905 X Walsh T3329.3-20.

1906 CRW.512.102.0002.

1907 X Walsh T3320.2-16.

1908 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0280, [16.4.21]

1909 X Walsh T3333.9-14.

1910 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0281, [16.4.32].

(a) Crown had taken a "narrow" approach to the hearing and adopted some overly technical legal positions that it should not have;[1911]

(b) Crown should have adopted a "completely different attitude", and Crown has made changes because it does not want to take that approach in future;[1912] and

(c) he had read the VCGLR's decision several times,[1913] and although it "stung"[1914] he thought that the points made by the VCGLR in its decision were "fair".[1915]

17. In considering Mr Walsh's evidence, Crown submits the Commission ought not to accept the submission of Counsel Assisting that Mr Walsh's comment that Crown's approach raised "the ire of the Commission" is "telling", "seems to limit the regret to raising the ire of the Commission" and "fails to appreciate that making an untenable submission, contrary to known facts, is not appropriate conduct on the part of a licensee". [1916]

18. That submission, to the effect that Mr Walsh merely regretted upsetting the regulator, is not fair to Crown or Mr Walsh. It relies on a single observation made by Mr Walsh — made in passing, and at the end of a longer answer, to the (with respect, obvious) fact that Crown's approach had "raised the ire" of the VCGLR[1917] and that had set back Crown's efforts to re-set the relationship with the VCGLR on a more positive and cooperative footing. The content of Mr Walsh's answer (which was itself only part of his evidence on those interactions with the VCGLR) was follows:

> A. Yes. If we had our time again, I'm not sure we would have adopted that position, and I'm not saying that just because of the million-dollar fine. We took a position, we had legal advice on that position, and I argued that position. It didn't serve us very well. In fact, if anything, all it did was raise the ire of the Commission.

Mr Walsh's management and disclosure of the bonus jackpot initiative

19. Counsel Assisting submit that had the bonus jackpot initiative not been exposed accidentally as part of the evidence of Mr Mackay "it is difficult to posit with any confidence that Mr Walsh would have been the person to bring the matter to the attention of this Commission or the VCGLR".

20. In this regard, Counsel Assisting are squarely calling into question Mr Walsh's integrity. That submission is not developed further and no evidence is referred

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1911 X Walsh T3318.43, T3332.13-26, T3349.23-28.

1912 X Walsh T3320.9-16, T3349.41-3350.3.

1913 X Walsh T3320.11-12.

1914 X Walsh T3320.11-12.

1915 X Walsh T3318.40-43.

1916 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0281 [16.4.28]-[16.4.29].

1917 X Walsh T3333.9-14.

to in support. The submission involves a thesis to the effect that Mr Walsh was trying to hide the initiative from the Commission, on the one hand, in circumstances where, on the other hand, he:

(a) called the 18 March 2021 meeting specifically for the purpose of raising the potential need to disclose the bonus jackpots matter to the Commission;[1918]

(b) in that meeting, identified all key aspects of the matter, including:

(i) that Crown appears to have started claiming certain deductions without being candid with the regulator;[1919]

(ii) the relevant presentation;[1920]

(iii) that Crown had been treating costs as deductions that may not have been deductible;[1921]

(iv) his understanding of the potential quantum of the underpayment;[1922] and

(v) the (internal and external) legal advice Crown had received;[1923]

(c) made it very clear that it was an important issue, and that disclosure may be required;[1924]

(d) provided Allens with the materials required to advise on disclosure;[1925] and

(e) followed the matter up on at least three occasions with Crown's lawyers.[1926]

21. As is developed in more detail in Part G (Bonus Jackpots) of these submissions, it is highly regrettable that the bonus jackpots issue was overlooked for a period, and not disclosed to the Commission earlier. As Mr Maher explained, that was Allens' oversight and if Allens had reviewed the folder of documents that Mr

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1918 X Walsh T3267.4-6, T3263.3-4, 3358.7-10, T3359.5-16.

1919 X Walsh T3261.10-12.

1920 Exhibit RC0229 CRW.0000.0003.0895 at .0895.

1921 X Walsh T3261.34-38.

1922 X Walsh T3263.37-40.

1923 Walsh T3358.21-31.

1924 Williamson T3122.18-20; Maher T2333.12-13; and Williamson T3122.45-47.

1925 Maher T2297.29-31.

1926 X Walsh T3271.37. See also X Walsh T3269.41, T3270.39-43, T3271.23-27, T3359.29-33.

Walsh had provided, it would have included the bonus jackpots matter in a response to RFI-2 before 7 June 2021.[1927]

22. Counsel Assisting's submission to the effect that Mr Walsh intentionally withheld the issue from the Commission's investigation, or downplayed its significance in briefing Allens, is inconsistent with the weight of the evidence and should not be accepted. Rather, the better view is that Mr Walsh would have been likely to raise the issue again "once things settled down";[1928] he had, after all, already followed up three times since the meeting with Allens, which is hardly the conduct of someone intending to let the matter drop.

23. Counsel Assisting go on to submit that:

    (a) Mr Walsh understood exactly how the initiative was structured, that it was designed to be concealed from the VCGLR and that it was wrong; and

    (b) as CEO and a director of Crown Melbourne he failed to have the matter addressed in breach of his duties.[1929]

24. The Commission ought not to accept those submissions. In terms of Mr Walsh's understanding of the issue, it was demonstrated in re-examination that Mr Walsh in fact thought that, after the VCGLR looked at the issue in 2018, the VCGLR then knew that the relevant items were being deducted from winnings.[1930]

25. Again, as is developed in more detail in Part G (Bonus Jackpots), in terms of his supposed failure to have the matter addressed as CEO and director of Crown Melbourne, in fact, he raised it with the Executive Chairman of Crown Melbourne's parent company, Crown Resorts, at the first available opportunity after Ms Coonan assumed that role following Mr Barton's departure.[1931]

26. Crown accepts that Mr Walsh could – and should – also have raised the potential underpayment of tax with Ms Coonan. Given the significance of that aspect of the matter it should have been raised squarely and promptly with her.[1932] For the same reasons, Crown accepts that Mr Walsh should have raised the

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1927 Maher T2298.9-13.

1928 Walsh T3275.45 – T3276.1.

1929 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0282, [16.4.38].

1930 X Walsh T3353.39 – 3356.42 (and that the delay in disclosure was because of a mix up with email addresses X Walsh T3356.44 – 3357.28).

1931 X Walsh T3219.15-21, T3229.11-12 (5 July 2021).

1932 It is, however, not entirely clear on the evidence whether or not Mr Walsh did raise that aspect of the matter with Ms Coonan. Ms Coonan's recollection is that Mr Walsh did not raise it: T3810.18-28. Mr Walsh said that he raised the bonus jackpots tax "issue"; but he did not say (and he was not asked) whether he referred to the potential underpayment of tax: see, e.g., T3218.3-11.

underpayment of tax in his discussions with the other directors.[1933] Whatever the precise content of Mr Walsh's conversations with the other directors regarding this issue, the matter was not raised in a way that made the potential underpayment clear to those directors. Mr Walsh did not (or did not intentionally) downplay the issue.[1934] The fact that he referred principally to Crown's failure to be frank with the VCGLR in 2012, suggests that, in those particular conversations, what he was focussed on and most concerned about was the aspect of the matter that he perceived reflected most poorly on Crown's previous culture.

27. Ms Coonan's recollection that Mr Walsh told her that the issue had been "cleared with VCGLR"[1935] and "cured" or "fixed" must be considered in the context of what was being discussed. What Mr Walsh was principally concerned about was Crown's failure to be frank with the VCGLR in 2012. As noted, as far as Mr Walsh understood, that issue had largely been cured or fixed, because the VCGLR was clearly aware from at least mid-2018 of the deductions that Crown was claiming, and had formed its own view about them. It might reasonably have been expected by Mr Walsh and others that, if the VCGLR had a different view of the deductibility of those amounts, it would have raised the matter with Crown.

28. Finally, as to the submission that Mr Walsh remains "unable to appreciate the significance of the concealment of this matter to the Commission",[1936] Crown maintains that the weight of the evidence is that there was no "concealment". As further set out in Part G (Bonus Jackpots), the contention of concealment is not correct; what occurred was an oversight, regrettable but a product of the immense pressure that Crown's lawyers and personnel were under at the time (including Mr Walsh), to follow the matter up in a timely way.

Mr Walsh's appointment as a director of Crown Melbourne

29. Crown submits that, barring extreme examples,[1937] how a person came to be an associate of Crown Melbourne is unlikely to be a valid basis for an assessment of suitability from the standpoint of analysis of questions of integrity and character.

1933 Whether Mr Walsh raised the potential underpayment of tax in those discussions is also unclear on the evidence. Ms Korsanos, Ms Halton and Mr Morrison said that he did not do so: see Korsanos T3608.25-43, T3609.30-37; Halton T3605.24-28, T3608.21-37, T3609.30-37; Morrison T2244.12-21. Mr Walsh, on the other hand, recalls referring to the legal advice that Crown received in 2012 and 2018 (describing it as "equivocal" and saying that it "didn't leave us in a clear position"): T3238.35-40, T3239.37-46.

1934 Cf. Counsel Assisting [5.1.118(d)], [5.1.138], [13.4.13], [16.6.27].

1935 Coonan T3804.22-23 (8 July 2021).

1936 COM.0500.0001.0001 Counsel Assisting Closing Submissions at .0282, [16.4.38].

1937 For example, if a person came to be an associate of Crown Melbourne as a result of a forged resume or alike.

30. For these reasons Crown submits that paragraphs [16.4.39] – [16.4.43] of Counsel Assisting's submissions are, with respect, not to the point.

31. Even if that was not the case, Crown submits that Ms Coonan's acceptance of the proposition that Mr Walsh was selected to make up the numbers[1938] does not mean that Mr Walsh is not qualified for the role. Mr Walsh was and is eminently qualified in the field of casino operations.[1939] He had served as COO of Crown Melbourne for over 7 years. He was a natural selection as its next CEO and an executive director.

Holistic assessment

32. As noted at the outset, if an assessment of suitability is to be undertaken notwithstanding Mr Walsh leaving Crown on 20 August 2021 on terms that he is currently discussing with Crown, and therefore cease being an associate of Crown Melbourne, then that assessment must be a holistic one which considers not just past mistakes, but has regard to all the available evidence.

33. Mr Walsh's acceptance of his past mistakes and his candour as a witness in the Commission will have been apparent to the Commission. In addition, Crown notes that:

    (a) Ms Halton has found Mr Walsh to be candid[1940] and "very open, honest and straightforward";[1941] and

    (b) Ms Williamson, who has worked at Crown for almost 20 years,[1942] gave evidence that:[1943]

    > Mr Walsh has been a breath of fresh air. I think he's one of the best CEOs in my time here that Melbourne has had. He wants to be open and transparent with all the regulators, the Commission, especially. I think he's a great CEO and he has a new way of doing things, and open and transparent is the name of the game, basically.

34. Crown submits that:

    (a) in circumstances where Mr Walsh has decided to leave Crown Melbourne, and will not be an existing associate of Crown Melbourne when this Commission provides its report to the Victorian government, [1944] the Commission need and ought not, in Crown's

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1938 Coonan T3817.16-19.

1939 Walsh I, [3] – [10].

1940 Halton T3612.1-2.

1941 Halton T3612.39-40. See also T3610.36-37.

1942 Williamson at [4].

1943 Williamson T3163.8-13.

1944 See Terms of Reference, paragraphs 10(H) and 10(I).

respectful submission, make any finding in relation to Mr Walsh's suitability;

(b) if, contrary to (a), the Commission decides to determine Mr Walsh's suitability, Counsel Assisting's submission of unsuitability ought to not be accepted for the reasons set out above.

ANNEXURE C.3: CROWN'S MALAYSIA OFFICE

1. Crown no longer has any overseas domiciled employees. Its overseas offices were closed, and all overseas staff reassigned or were made redundant, in early 2021. That decision was taken not for financial or COVID-19-related reasons, but because of the significant change in Crown's risk appetite.[1945] It is submitted that this reflects significant changes in Crown's culture and risk profile and consequentially its suitability to maintain its licence.

2. Crown submits that little of consequence to the present suitability analysis emerges from its past conduct in respect of operations in Malaysia. However, since that conduct is addressed in submissions by Counsel Assisting, Crown makes the following brief observations in response.

3. *First*, for the reasons addressed in Part C.4 above, the dichotomy between "risk" and "compliance" proposed by Counsel Assisting is, with respect, not valid. As Ms Halton explained, risk management processes help to ensure compliance with the law.[1946] It is appropriate for Crown to consider not just legal advice, but other matters relevant to risk, in making commercial decisions. Indeed, it would be irresponsible to disregard other relevant risk factors entirely.

4. *Second*, as Mr Murphy observed:[1947]

> the application of foreign laws involves the assessment of what the law actually says, how it might be interpreted, and how it might be enforced and what are the politics of enforcement. And in countries where the law is not clearly expressed, how it is going to be interpreted in terms of what it means in relation to day-to-day activities … is often unclear and different views could potentially be taken about it.

5. It follows that when considering its overseas operations, a responsible business should not limit itself to considering the text of the law. It must receive and consider advice about broader matters including how the law is administered and enforced in practice. The suggestion that risk advice or monitoring would be unnecessary "if Crown was complying with the law"[1948] is, with respect, incorrect.

6. *Third,* as regards its operations in Malaysia, Crown at all times was acting in accordance with its legal advice. Counsel Assisting place emphasis on a 2019 advice from MinterEllison which stated, as a general proposition, that the relevant Malaysian law could be interpreted to prohibit marketing of integrated resorts.[1949] Importantly though, the advice received by Crown was that the

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1945 McGregor T3519.22-30; Exhibit RC0437c CRW.507.001.7275 Memorandum regarding Overseas Sales Team at .7275-6.

1946 Halton T3571.45 – T3572.09.

1947 Murphy T2863.43-2864.5.

1948 COM.0500.0001.0001 Closing Submissions Counsel Assisting at .0193 [9.2.30].

1949 Exhibit RC0301 CRW.507.004.0879 Board diligent pack 11 February 2019 at .0892.

activities *actually* being carried out by its employees were legal under local law: Mr Murphy (who gave the advice) said that was his belief,[1950] and Ms Halton said that was the advice received.[1951] Further, Ms Halton gave evidence that this issue was tested by the Risk Management Committee "time and time again in these discussions, including with the lawyers".[1952]

7. *Fourth*, on the basis of that advice, Crown prepared detailed operating protocols and procedures to govern its overseas operations.[1953] There is no suggestion that Crown's procedures departed from the independent advice. Staff were required to follow those procedures, and subject to disciplinary action if they did not.[1954]

8. In any event, as noted above, those arrangements have now ceased as a result of Crown's changed risk tolerance and culture. Since February 2021, when the composition of the Boards and senior management changed, the message has been "absolutely unambiguous" that Crown should not be operating in any "grey zone".[1955]

9. Against that background, Crown observes that it is appropriate for it to now seek comprehensive, updated advice from a leading law firm to inform consideration of how the VIP International business might operate going forward (noting that it is currently not operational).[1956] That is particularly so given Crown's contractual obligation to endeavour to maintain the Melbourne casino as the dominant Commission Based Player casino in Australia.[1957]

10. Crown agrees that the "number one consideration should be compliance and whether Crown is operating legally".[1958] As Ms Halton observed, conduct should be analysed first in terms of whether it is legal, and then in terms of risk mitigation measures "to ensure there is no deviation from that".[1959]

11. That approach is reflected in the scoping of the advice being sought by the current leadership of Crown, which is first and primarily directed towards a legal analysis of whether various activities are lawful in some 29 jurisdictions, followed by a risk analysis.[1960] Once that advice is received, Crown will consider how it may responsibly be able to attract overseas customers.

1950 Murphy T2888.29-30.

1951 Halton T3567.2-3, T3569.3-7.

1952 Halton T3569.40-42.

1953 See, eg, Exhibit RC0299 CRW.510.050.0420 VIP International procedures.

1954 Williamson T3136.13-18.

1955 Halton T3574.5-9.

1956 Williamson T3168.35-41.

1957 Exhibit RC0435 COM.0005.0001.0985 Consolidated Casino Agreement cl 22.1(ra)(ii) at .1013.

1958 Halton T3571.13-17.

1959 Halton T3470-46-T3571.11.

1960 Exhibit RC0423b CRW.512.024.0002 International Markets Risk Assessment Scope Overview.

ANNEXURE F1: 2020 RGAP REPORT RECOMMENDATIONS AND STATUS OF IMPLEMENTATION BY CROWN

No.	Recommendation	Status
1	Crown should develop an online system for initiating the self-exclusion and/or third-party exclusion processes and providing ongoing monitoring for patrons.	Implemented.[1961]
2	The provision of external support and treatment services should be extended to all applicants for self-exclusion as a matter of course.	Implemented.[1962]
3	Crown should institute post-revocation monitoring to identify possible risk indicators (such as breach attempts, contacts with staff seeking immediate reinstatement, etc.) and intervene to prevent relapse.	Implemented.[1963]
4	The Panel strongly suggests that all Crown properties establish a contractual relationship with a treatment agency and/or specific providers who demonstrate they have received specialised training in gambling counselling and will evaluate all clients according to a similar standard.	In progress.[1964]
5	A group of gambling clinicians and a measurement expert should be empanelled to develop a uniform evaluation protocol for revocation and reinstatement that is universally applied to all gamblers across properties.	In progress.[1965]
6	Players should be allowed to reapply for VIP room access and/or marketing only six-month post-reinstatement, and only if the counsellor evaluation deems those options should be available based on assessment risk	Implemented in part.[1966]
7	Crown should undertake a statistical, longitudinal evaluation of facial recognition software detection of breaches, demographics of players accused of breaching, and outcomes of software-detected breaches to date to inform next steps in outreach to self-excluders who attempt to return to gambling at the venue.	In progress.[1967]
8	Crown should disseminate knowledge of the facial recognition tool and resulting actions against those who breach to the public. Analyses	Not implemented

1961 Bauer T1429.3-4.

1962 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 94, [1036].

1963 Bauer T1430.1.

1964 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 94, [1036].

1965 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 94, [1036].

1966 Bauer T1430.32.

1967 Bauer T1430.12-16.

No.	Recommendation	Status
	and dissemination of this data can be used to counter media and anti-gambling advocates who are unaware or misrepresent the effectiveness of Responsible Gambling interventions. It would also strategically enhance Crown's reputation as a leader in this area.	owing to security concerns.[1968]
9	Each area of the casino and each shift should have a designated staff member, branded as "ambassador" in similar programs at other properties, who is highly trained in recognising, approaching and managing problem gambling behaviour and very visible to staff and patrons.	Implemented.[1969]
10	Crown should increase and diversify staff training to include not only the basic training for all floor staff and managers but also "booster" trainings every six months, retraining every year to two years, and advanced training on topics like reading non-verbal cues, assessing high-risk behaviours and patron interactions for managers and employees on each shift who serve an ambassador function. All training materials and videos should also be available online, perhaps via an employee Intranet.	To be implemented in Q1, FY22.[1970]
11	Key floor personnel should be tasked with raising awareness of brochures, information on gaming machines and/or other informational materials that are central to informed choice.	Implemented.[1971]
12	Information available in brochure form (e.g., how to self-exclude) should also be available through websites both within and external to the casino and using dynamic displays; it should also include information targeting cognitions and beliefs as well as factual information about the games.	Implemented.[1972]
13	Crown should consider: 1) instituting limit-setting for EGMs in Perth, analogous to those required in Victoria; and 2) working with Victoria to access and evaluate the data in Melbourne and, subsequently, in Perth to identify characteristics of limit-setters, patterns aligned with raising and/or lower limits or switching limit types, and accelerations in patterns of expenditure.	Implemented.

1968 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 95, [1037].

1969 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 95, [1037].

1970 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 95, [1037].

1971 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 95, [1037].

1972 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 96, [1038].

No.	Recommendation	Status
14	Warnings or pop-up messages should be discrete, visible only to the player and not passers-by; limits/defaults and changes to limits should be accomplished by smart phone or other web-based means that would reduce stigma to the player; and Crown should devise an educational tutorial that clarifies the relationship of time/money expenditures to risk factors for problem gambling.	To be implemented[1973]
15	The program [the Crown Model] should, instead, identify marked changes in play patterns with regard to factors such as time spent gambling and/or gambling sessions, money expenditures, variations in bet size and frequency, increases in overall time at venue and number of games played.	To be implemented[1974]
16	Linked to Recommendation 15, the Panel suggests that data should then be used to inform a future model for identifying at-risk gamblers, perhaps according to a system that assigns colours to risk levels (e.g., green-yellow-red).	To be implemented[1975]
17	The RGC should be expanded to include additional office rooms where customers can be interviewed in private and in a manner conducive to confidentiality.	In progress[1976]

1973 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 96, [1038].

1974 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 96, [1038].

1975 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 96, [1038].

1976 CRW.510.102.0943 Crown Resorts Board Meeting Diligent Pack (15 June 2021) at page 96, [1038].

ANNEXURE F2: RECOMMENDATIONS FROM THE SIXTH REVIEW IN RELATION TO Responsible Gambling AND CROWN'S IMPLEMENTATION OF THEM

No.	Recommendation	Required date of completion	Date on which Crown submitted it had completed	Date on which VCGLR acknowledged completion
6	The VCGLR recommends that, by 1 January 2020, Crown Melbourne review its allocation of staffing resources to increase the number of work hours actually available to Responsible Gambling and intervention with patrons.	1 January 2020	23 December 2019[1977]	5 May 2020[1978]
7	The VCGLR recommends that Crown Melbourne use observable signs in conjunction with other harm minimisation measures such as data analytics to identify patrons at risk of being harmed from gambling.	Ongoing	30 December 2019[1979]	19 August 2020[1980]
8(a)	The VCGLR recommends that Crown Melbourne proceed with development and implementation of comprehensive data analytics tools for all patrons, to proactively identify for intervention patrons at risk of harm from gambling. In particular: (a) for carded play (that is, player activity which can be systematically tracked), Crown Melbourne will have in operation a comprehensive real-time player data analytics tool by 1 January 2020, and monitoring of play periods …	1 January 2020	30 December 2019[1981]	19 August 2020[1982]

1977 Exhibit RC0462x CRW.510.029.2969 Letter from Crown to VCGLR.

1978 Exhibit RC0462y CRW.510.029.2748 Letter from the VCGLR.

1979 Exhibit RC0208; Letter from Crown to the VCGLR setting out how it was implementing, *inter alia*, recommendation 7: CRW.510.029.3248. The appendices to the letter are: Exhibit RC0462cc CRW.510.029.3258, Exhibit RC0462dd CRW.510.029.3260, Exhibit RC0462ee CRW.510.029.3282.

1980 The VCLGR acknowledged that recommendation 7 was being implemented by letter: Exhibit RC0462ff CRW.709.036.9111.

1981 Exhibit RC0208 CRW.510.029.3248 Letter from Crown. Exhibit RC0462ccCRW.510.029.3258 Appendices to the letter, Exhibit RC0462dd CRW.510.029.3260, Exhibit RC0462ee CRW.510.029.3282.

1982 Exhibit RC0462ff CRW.709.036.9111 Letter from the VCGLR.

No.	Recommendation	Required date of completion	Date on which Crown submitted it had completed	Date on which VCGLR acknowledged completion
8(b) – limb 1	… (b) for un-carded play (that is, all other player activity), Crown Melbourne will, by 1 January 2019, commence a comprehensive study of all the practical options for a real time player data analytics tool …	1 January 2019	24 December 2018[1983]	March 2019[1984]
8(b) – limb 2	…with a view to reporting in detail (including legal, technical and methodological issues) to the VCGLR by 1 January 2020 …	1 January 2020	30 December 2019[1985]	19 August 2020[1986]
8(b) – limb 3	.. and the tool being in operation by 1 July 2022.	1 July 2022	Falls due next year.	N/A
9	The VCGLR recommends that Crown Melbourne arrange, at its expense, for an independent assessment of the real-time player data analytics tool for carded play (see recommendation 8(a) above), to be completed 12 months after implementation of the tool.	Early 2022[1987]	Falls due next year.[1988]	N/A
10	The VCGLR recommends that, by 1 July 2019, Crown Melbourne undertake a comprehensive review of its policy for the making and revocation of voluntary exclusion orders under section 72(2A) of the *Casino Control Act*.	1 July 2019	28 June 2019[1989]	13 November 2019[1990]

1983 Exhibit RC0462ll CRW.510.029.3170 Letter from Crown.

1984 Exhibit RC0462c CRW.510.029.1021 Letter from the VCGLR.

1985 Exhibit RC0208 CRW.510.029.3248 Letter from Crown. Exhibit RC0462ccCRW.510.029.3258 Appendices to the letter, Exhibit RC0462dd CRW.510.029.3260, Exhibit RC0462ee CRW.510.029.3282.

1986 Exhibit RC0462ff CRW.709.036.9111 Letter from the VCGLR.

1987 The required completion dated was originally 1 January 2021 but was extended to 15 months from the date that gaming recommences after COVID-19 shutdowns. Gaming recommenced late November 2020. Thus, recommendation 9 now does not fall due until early 2022.

1988 Because recommendation 9 contemplated the collection of 12 months of carded play data, and such data could not be obtained owing to the COVID-19 shutdowns (see Exhibit RC0462mm CRW.510.029.4186), the VCGLR, on 29 October 2020, granted a 15-month extension from the date that gaming resumes: Exhibit RC0462nn CRW.510.029.4207.

1989 Exhibit RC0109kkkk CRW.507.001.6111 Letter from Crown.

1990 Exhibit RC00014 CRW.510.029.4623 Letter from the VCGLR.

No.	Recommendation	Required date of completion	Date on which Crown submitted it had completed	Date on which VCGLR acknowledged completion
11	The VCGLR recommends that, by 1 July 2019, Crown Melbourne develop and implement a policy and procedure to facilitate Crown Melbourne issuing involuntary exclusion orders under section 72(1) of the *Casino Control Act* at the request of family members and friends in appropriate cases.	1 July 2019	28 June 2019[1991]	13 November 2019[1992]
12	The VCGLR recommends that, by 1 July 2019, Crown Melbourne expand facial recognition technology to cameras on all entrances to the casino and that Crown Melbourne provide written updates on a quarterly basis on its effectiveness to the VCGLR.	1 July 2019	28 May 2019[1993]	6 August 2019[1994]
13	The VCGLR recommends that, as part of developing a new Responsible Gambling strategy, by 1 July 2019, Crown Melbourne rebrand or refresh its Responsible Gambling messaging and publish new Responsible Gambling messages throughout the casino, in all Crown Melbourne publications, including online and social media platforms.	1 July 2019	29 June 2019[1995]	3 September 2019[1996]
14	The VCGLR recommends that, by 1 July 2019, Crown Melbourne develop and implement a Responsible Gambling strategy focusing on the minimisation of gambling related harm to persons attending the casino.	1 July 2019	29 June 2019[1997]	13 November 2019[1998]
15	The VCGLR recommends that, within three months of implementing the new Responsible Gambling strategy (recommendation 14), there is regular reporting to the Crown Resorts Responsible Gaming Committee for it to maintain oversight of Crown Melbourne's harm minimisation strategy for Responsible Gambling.	Within three months of the implementation of rec. 14 (ie, 1 October 2019)	1 October 2019[1999]	9 January 2020[2000]

1991 Exhibit RC0109llll CRW.507.001.6563 Letter from Crown.

1992 Exhibit RC00014 CRW.510.029.4623 Letter from the VCGLR.

1993 Exhibit RC0462qq CRW.510.029.5495 Letter from Crown.

1994 Exhibit RC0462i CRW.510.029.5545 Letter from the VCGLR.

1995 Exhibit RC0462yy CRW.510.029.6092 Letter from Crown.

1996 Exhibit RC0194 CRW.510.029.1861 Letter from the VCGLR.

1997 Exhibit RC0462zz CRW.510.029.6189 Letter from Crown. Exhibit RC0462aaa CRW.510.029.6375 Appendix to letter.

1998 Exhibit RC00014 CRW.510.029.4623 Letter from the VCGLR.

1999 Exhibit RC0462ccc CRW.510.029.6469 Letter from Crown.

2000 Exhibit RC0195 CRW.510.029.1855 Letter from the VCGLR.

No.	Recommendation	Required date of completion	Date on which Crown submitted it had completed	Date on which VCGLR acknowledged completion
16	The VCGLR recommends that, within three months of implementing the strategy, a charter is developed for the Crown Melbourne Responsible Gaming Management Committee (staff committee) which includes reference to the role and responsibility of driving a harm minimisation culture.	Within three months of the implementation of rec. 14 (ie, 1 October 2019)	1 October 2019[2001]	20 December 2019[2002]

2001 Exhibit RC0462rrr CRW.510.029.6674 Letter from Crown attaching the Charter (Exhibit RC0462sss CRW.510.029.6675).

2002 Exhibit RC0462qqq CRW.510.029.6669 Letter from the VCGLR: .

ANNEXURE I.1: CROWN'S IMPLEMENTATION OF THE SIXTH REVIEW RECOMMENDATIONS

TABLE A: RECOMMENDATIONS WITH A FIXED COMPLETION DATE

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
1	The VCGLR recommends that, by 1 January 2019, Crown develop, and submit to the VCGLR for approval, a change program to fully engage its independent directors in proactive strategic oversight of the operations of the Melbourne Casino.	1 January 2019	24 December 2018 Letter (CRW.510.029.0997) attaching memorandum (CRW.510.029.0999)	March 2019 CRW.510.029.1021	The VCGLR sought clarification of certain matters and further information between 3 January 2019 and 11 January 2019 (CRW.510.029.1527). Some further correspondence occurred in relation to, inter alia, recommendation 1 in August 2020 (CRW.510.029.1856).
2	The VCGLR recommends that, by 1 January 2019, Crown undertake a review of the required qualifications for committee chairs set out in the charters and ensure that the appointees' actual qualifications match.	1 January 2019	24 December 2018 Letter (CRW.510.029.1585)	March 2019 CRW.510.029.1021	In its letter of March 2019, the VCGLR asked that Crown perform, for Crown Resorts, the same qualification-review exercise as had been carried out for Crown Melbourne (CRW.510.029.1021). Crown undertook that review (CRW.510.029.1591; CRW.510.029.1621) to the satisfaction of the VCGLR (CRW.510.029.5545).
3	The VCGLR recommends that, by 1 July 2019, Crown assess the robustness and effectiveness of its	1 July 2019	1 July 2019	9 January 2020 CRW.510.029.1855	The VCGLR deferred its decision on whether Crown had implemented recommendation 3 pending an

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
	risk framework and systems, including reporting lines in the chain of command, and upgrade them where required. This assessment should be assisted by external advice.		Letter (CRW.510.029.1767) and appendices (CRW.510.029.1976; CRW.510.029.1978; CRW.510.029.1979; CRW.510.029.1985)		opportunity to consider a report by Deloitte that informed Crown's implementation of recommendation 3 (CRW.510.029.1861). The report was provided to by Crown (CRW.510.029.1745). The VCGLR sought additional information from Crown, and that information was provided (CRW.510.029.1940; CRW.510.029.1761; CRW.510.029.1763). Mr Harris of the VCGLR thanked Crown for the additional information, said that it was "very helpful", and directed some further queries at Crown (CRW.510.029.2093). Crown responded to those queries (CRW.510.029.1934). Some further correspondence occurred in relation to, inter alia, recommendation 3 in August 2020 (CRW.510.029.1856).
4	The VCGLR recommends that, by 1 July 2019, Crown undertake a robust review of internal controls to ensure that Crown's regulatory and compliance department is aware of	1 July 2019	1 July 2019 Letter (CRW.510.029.2332) and appendices	3 September 2019 CRW.510.029.1861	

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
	all projects and works in progress for which regulatory approvals might be relevant.		(CRW.510.029.2335; CRW.510.029.2341; CRW.510.029.2398)		
6	The VCGLR recommends that, by 1 January 2020, Crown Melbourne review its allocation of staffing resources to increase the number of work hours actually available to responsible gambling and intervention with patrons.	1 January 2020	23 December 2019 Letter (CRW.510.029.2969)	5 May 2020 CRW.510.029.2748	Ms Fielding and Ms Bauer answered various queries from the VCLGR in response to which Mr Harris of the VCGLR said: "Thank you for your responses. Very helpful indeed." (CRW.510.029.2798; CRW.510.029.2810; CRW.510.029.2811).
8(a)	The VCGLR recommends that Crown Melbourne proceed with development and implementation of comprehensive data analytics tools for all patrons, to proactively identify for intervention patrons at risk of harm from gambling. … In particular: (a) for carded play (that is, player activity which can be systematically tracked), Crown Melbourne will have in operation a comprehensive real-time player data analytics tool by 1 January	1 January 2020	30 December 2019 Letter (CRW.510.029.3248) with appendices (CRW.510.029.3258; CRW.510.029.3260; CRW.510.029.3282)	19 August 2020 CRW.709.036.9111	The VCGLR had certain queries in June 2020 to which Crown responded (CRW.510.029.3147). In its letter of 19 August 2020 (CRW.510.029.3311), the VCGLR requested that Crown provide a report prepared by Professor Blaszczynski. Crown provided a redacted version of the report on 2 September 2020 (CRW.510.029.3601; CRW.510.029.3603). On 15 October 2020, the VCGLR queried the redactions. On 29 October 2020, Crown provided an unredacted copy

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
	2020, and monitoring of play periods.				of the report (CRW.510.029.3177; CRW.510.029.4158).
8(b) – limb 1	… (b) for un-carded play (that is, all other player activity), Crown Melbourne will, by 1 January 2019, commence a comprehensive study of all the practical options for a real time player data analytics tool …	1 January 2019	24 December 2018 Letter (CRW.510.029.3170)	March 2019 CRW.510.029.1021	
8(b) – limb 2	… with a view to reporting in detail (including legal, technical and methodological issues) to the VCGLR by 1 January 2020 …	1 January 2020	30 December 2019 Letter (CRW.510.029.3248) with appendices (CRW.510.029.3258; CRW.510.029.3260; CRW.510.029.3282)	19 August 2020 CRW.709.036.9111	
8(b) – limb 3	.. and the tool being in operation by 1 July 2022.	1 January 2022	Falls due next year.	N/A	
9	The VCGLR recommends that Crown Melbourne arrange, at its expense, for an independent assessment of the real-time player data analytics tool for carded play (see recommendation 8(a) above),	Originally 1 January 2021, but extended to 15 months from the date that gaming	Falls due next year. Because recommendation 9 contemplated the collection of 12	N/A	

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
	to be completed 12 months after implementation of the tool.	recommences after COVID-19 shutdowns. Gaming recommenced late November 2020 – thus, recommendation 9 now does not fall due until early 2022.	months of carded play data, and such data could not be obtained owing to COVID-19 shutdowns (see CRW.510.029.4186), the VCGLR, on 29 October 2020, granted a 15-month extension from the date that gaming resumes (CRW.510.029.4207).		
10	The VCGLR recommends that, by 1 July 2019, Crown Melbourne undertake a comprehensive review of its policy for the making and revocation of voluntary exclusion orders under section 72(2A) of the *Casino Control Act*.	1 July 2019	28 June 2019 Letter (CRW.507.001.6111)	13 November 2019 CRW.510.029.4623	In September 2019, the VCGLR sent some queries in relation to, inter alia, recommendation 10 (CRW.510.029.4907). Crown responded to these by letter on 26 September 2019 (CRW.510.029.4343).
11	The VCGLR recommends that, by 1 July 2019, Crown Melbourne develop and implement a policy and procedure to facilitate Crown Melbourne issuing involuntary exclusion orders under section 72(1) of the *Casino Control Act* at	1 July 2019	28 June 2019 Letter (CRW.507.001.6563)	13 November 2019 CRW.510.029.4623	In September 2019, the VCGLR sent some queries in relation to, inter alia, recommendation 11 (CRW.510.029.4907). Crown responded to these by letter on 26 September 2019 (CRW.510.029.4343).

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
	the request of family members and friends in appropriate cases.				
12	The VCGLR recommends that, by 1 July 2019, Crown Melbourne expand facial recognition technology to cameras on all entrances to the casino and that Crown Melbourne provide written updates on a quarterly basis on its effectiveness to the VCGLR.	1 July 2019	28 May 2019 Letter (CRW.510.029.5495)	6 August 2019 CRW.510.029.5545	In addition to requiring Crown to expand facial-recognition technology, recommendation 12 required and continues to require Crown to provide quarterly updates on the effectiveness of that technology thereafter. Crown has been doing this: CRW.510.029.5668; CRW.510.029.5676; CRW.510.029.5679; CRW.510.029.5686; CRW.510.029.5693; CRW.510.029.5700. Crown answered certain queries about a particular tranche of data in November 2019 (CRW.510.029.5967).
13	The VCGLR recommends that, as part of developing a new responsible gambling strategy, by 1 July 2019, Crown Melbourne rebrand or refresh its responsible gambling messaging and publish new responsible gambling messages throughout the casino, in	1 July 2019	29 June 2019 Letter (CRW.510.029.6092)	3 Sep 2019 CRW.510.029.1861	

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
	all Crown Melbourne publications, including online and social media platforms.				
14	The VCGLR recommends that, by 1 July 2019, Crown Melbourne develop and implement a responsible gambling strategy focusing on the minimisation of gambling related harm to persons attending the casino.	1 July 2019	29 June 2019 Letter (CRW.510.029.6189) and appendix (CRW.510.029.6375)	13 November 2019 CRW.510.029.4623	In August 2019, Crown provided additional information in relation to recommendation 14 as requested by the VCGLR (CRW.510.029.6357).
15	The VCGLR recommends that, within three months of implementing the new responsible gambling strategy (recommendation 14), there is regular reporting to the Crown Resorts Responsible Gaming Committee for it to maintain oversight of Crown Melbourne's harm minimisation strategy for responsible gambling.	Within three months of the implementation of rec. 14 (ie, 1 October 2019)	1 October 2019 Letter (CRW.510.029.6469)	9 January 2020 CRW.510.029.1855	Recommendation 15 required the regular reporting to commence within a particular timeframe. That occurred, and regular reporting has thereafter continued (CRW.510.029.6461; CRW.510.029.6463; CRW.510.029.6534; CRW.510.029.6536; CRW.510.029.6538; CRW.510.029.6542; CRW.510.029.6544; CRW.510.029.6546; CRW.510.029.6548; CRW.510.029.6550; CRW.510.029.6552; CRW.510.029.6491;

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
					CRW.510.029.6492; CRW.510.029.6494).
16	The VCGLR recommends that within three months of implementing the strategy, a charter is developed for the Crown Melbourne Responsible Gaming Management Committee (staff committee) which includes reference to the role and responsibility of driving a harm minimisation culture.	Within three months of the implementation of rec. 14 (ie, 1 October 2019)	1 October 2019 Letter from Crown (CRW.510.029.6674) attaching the Charter (CRW.510.029.6675)	20 December 2019 CRW.510.029.6669	Some further correspondence occurred in relation to, inter alia, recommendation 16 in August 2020 (CRW.510.029.1856).
17	The VCGLR recommends that, by 1 July 2019, Crown undertake a robust review (with external assistance) of relevant internal control statements, including input from AUSTRAC, to ensure that anti-money laundering risks are appropriately addressed.	1 July 2019	1 July 2019 Letter (CRW.510.029.8076) attaching table (CRW.510.029.8080)	29 October 2019 CRW.510.031.0224	
19	The VCGLR recommends that, by 1 July 2019, Crown Melbourne implement a policy to make an exclusion order under section 72 of the *Casino Control Act* in appropriate cases where a person has engaged in significant unacceptable conduct in the casino	1 July 2019	27 May 2019 Letter (CRW.510.029.9145)	6 August 2019 CRW.510.029.5545	In its letter of 6 August 2019, the VCGLR requested that Crown make certain amendments to its Corporate Policy Statement (CRW.510.029.5545). Crown did this (CRW.510.029.9161; CRW.510.029.9154; CRW.510.029.9158) and that was

Rec. no.	Recommendation	Required date of completion	Date on which Crown submitted it had completed the recommendation	Date on which VCGLR acknowledged completion	Notes
	or is the subject of serious criminal charges.				acknowledged by the VCGLR (CRW.510.029.9385).
20	The VCGLR recommends that, between November 2019 and March 2020, VCGLR Commissioners and directors of the Crown Resorts board meet to review the implementation of the recommendations set out in this report.	Originally, between November 2019 and March 2020, but completion of the recommendation was deemed by the VCGLR to be no longer necessary (CRW.510.030.0856).	N/A	N/A	

TABLE B: ONGOING RECOMMENDATIONS

Rec. no.	Recommendation	Status
5	The VCGLR recommends that Crown convene annual round table sessions briefing key internal staff on the VCGLR's risk-based approach to regulation, with a particular focus on how that approach relies on the integrity of Crown's internal processes.	Being adhered to. On 7 May 2019, Crown emailed the VCGLR saying that it intended to hold the first such annual session on 21 May 2019, and asking whether there were any additional or recent materials that the VCGLR would like to have mentioned or provided at the session (CRW.510.029.2734). Crown sent a letter to the VCGLR on 28 June 2019 setting out how it was implementing this recommendation, including noting that it had convened a session of the kind requested on 21 May 2019 (CRW.510.029.2535). The VCGLR requested the minutes of that meeting and these were provided (CRW.510.029.2686; CRW.510.029.2689). That this recommendation was being implemented was acknowledged by the VCGLR on 29 October 2019 (CRW.510.029.8129).
7	The VCGLR recommends that Crown Melbourne use observable signs in conjunction with other harm minimisation measures such as data analytics to identify patrons at risk of being harmed from gambling.	Being adhered to. Crown sent a letter to the VCGLR on 30 December 2019 (CRW.510.029.3248) with appendices (CRW.510.029.3258; CRW.510.029.3260; CRW.510.029.3282) setting out how it was implementing, inter alia, recommendation 7. The VCGLR had various queries in March and June 2020 to which Crown responded (CRW.510.029.3156; CRW.510.029.3147). The VCLGR acknowledged the recommendation was being implemented on 19 August 2020 (CRW.709.036.9111).

Rec. no.	Recommendation	Status
18	The VCGLR recommends, in all future submissions by Crown Melbourne to the VCGLR for approvals under the *Casino Control Act* or *Gambling Regulation Act*, that Crown document: • the purpose; • obligations under relevant provisions of legislation, the Transaction Documents, and existing approvals; • what changes the grant of the approval would make to products, rules and procedures, etc; • risks associated with the approval and how they will be treated; • how responsible gambling considerations have been taken into account in the process and the measures Crown will implement to mitigate the risk of gambling related harm; and • which areas of Crown will be responsible for managing implementation.	Being adhered to. Crown sent a letter to the VCGLR on 11 October 2019 setting out how it was complying and continuing to comply with recommendation 18 (CRW.510.029.9131). On 20 December 2019, the VCGLR confirmed Crown had been implementing recommendation 18 (CRW.510.029.6669).

ANNEXURE J.1: TERMS OF REFERENCE 10(B) and 10(C) - SUMMARY

TOR 10(B): Whether Crown Melbourne is complying with the Casino Control Act, the Casino (Management Agreement) Act 1993, the Gambling Regulation Act 2003 (together with any regulations or other instruments made under any of those Acts), and any other applicable laws.

Provision	Counsel Assisting sub reference	Crown's position	Crown sub reference
Casino Control Act 1991 (Vic)			
68	**[7.1.1]-[7.8.5], [18.3.2]**	Admitted breach by CUP process Crown accepts that between 2012 and 2016, Crown committed a very large number of breaches of s 68 by way of the CUP process.	**H.28**
68	**[6.6.14], [6.6.19]-[6.6.22], [18.3.4]**	No breach by acceptance of bank cheques When Mr Hasna indorsed the bank cheque payable to order (by signing it) and delivered it to a Crown representative, the cheque was transferred by negotiation to Crown. Had it been a cheque payable to bearer, delivery alone would have been sufficient. As a result, the bank cheque had become "payable to the operator" for the purposes of s 68(3). Accordingly, Crown did not breach s 68 by crediting the amount of the cheque to Mr Hasna's bank account.	**H.72-73**
68	**[6.6.15], [18.3.4]**	No breach by release of funds before cleared Pursuant to s 68(3)(b), Crown is permitted to credit a bank cheque payable to the operator to Crown's deposit account. There is no requirement to wait for the bank cheque to clear.	**H.75-H.84**
68	**[6.6.16]-[6.6.18], [18.3.4]**	No breach by blank cheques being kept on file	**H.91-H.102**

Provision	Counsel Assisting sub reference	Crown's position	Crown sub reference
		There was no evidence of blank cheques being used in contravention of s 68; it is likely that the practices described in evidence were only in respect of international patrons (for which the carve-out in s 68(8) applies) and in accordance with the relevant Standard Operating Procedure and Internal Control Statement.	
69	**[6.3.47]-[6.3.50], [18.3.7]**	<u>No breach of RG Code by Play Periods Policy</u> The RG Code is to be read together with the Play Periods Policy. It follows that there is no conflict between them. The submission that the Play Periods Policy "countermands" the requirements of the RG Code, with the result that Crown has been "continuously" in breach of s 69, should not be accepted.	**F.73-F.80**
121(4)	**[4.3.26]]-[4.3.267]**	<u>Paid fine regarding junket controls</u> Crown paid a fine of $1m imposed by the VCGLR in respect of its junket controls.	**I.98**
123	**[18.3.8]-[18.3.9]**	<u>Better view is no breach of s123</u> The better view is that the operation of a bank account by a subsidiary does not constitute a breach of s 123. Section 123 of the CCA is concerned with the maintenance of *separate* accounts for banking transactions in relation to the CCA and the powers of inspection in respect of those accounts. On its terms, s 123 requires the casino operator to "keep and maintain separate accounts" for banking transactions at an authorised deposit taking institution (which Crown Melbourne did). The Southbank accounts were approved by the VCGLR pursuant to s 123 of the Act. It does not require the accounts to be held in the name of Crown Melbourne, and there is nothing in the extraneous materials that supports a wider interpretation of the section.	**D.11 (D.218)**

Provision	Counsel Assisting sub reference	Crown's position	Crown sub reference
124	**[18.3.13]-[18.3.14]**	Better view is no breach by aggregation in Southbank / Riverbank accounts In respect of the historical aggregation of transactions in the Southbank and Riverbank accounts, Crown accepts that on a very broad interpretation of "accounting records" it is possible that a finding of breach of s 124(1) is open. The better view is that no breach occurred, because SYCO is separate from Crown's internal accounting records. The aggregation practice did not lead to the individual transactions being incorrectly explained in Crown's accounting records, or lead to those accounting records incorrectly recording the financial position of the casino.	**D.11 (D.219)**
124	**[18.3.15]-[18.3.18]**	Admitted breach by CUP process In respect of the historical CUP process, which ceased in 2016, Crown also accepts that a finding of breach of s 124(1) is open.	**H.40**
AML/CTF Act (Cth)			
s 74(1A)	**[7.8.6]-[7.8.8]**	Possible breach by paid out process admitted Crown accepts that it is open to find that Crown may have provided a registrable designated remittance service in contravention of s 74(1A) by way of the paid out process.	**H.57**

TOR 10(C): Whether Crown Melbourne is complying with the Crown Melbourne Contracts.

Provision	Counsel Assisting sub reference	Crown's position	Crown sub reference
Casino Agreement			
Cl 22.1(ba)	**[18.3.29]-[18.3.37].** Note that CA include reference in the heading to cl 22.1(ba) and (bb) but do not make any substantive allegations.	No breach of cl 22.1(ba) Each of Crown Melbourne's Senior Executive Managers live in Victoria and conduct their meetings in Melbourne.	**C.110**
Cl 22.1(bb)	**[18.3.29]-[18.3.37].** Note that CA include reference in the heading to cl 22.1(ba) and (bb) but do not make any substantive allegations.	Possible historical breach while Barry Felstead CEO of Resorts Crown must ensure that its Senior Executive Managers reside in Victoria. Mr Felstead divided his time between WA and Victoria. Crown accepts that a finding is open that Mr Felstead having a residence in WA *may* have placed Crown Melbourne in breach, though the evidence was that he spent a considerable amount of time in Melbourne. In any event, any historic breach was rectified by Xavier Walsh assuming the role.	**C.111**
Cl 22.1(bb)		No breach by Xavier Walsh reporting to CEO of Resorts The Casino Agreement imposes residency obligations on Crown Melbourne's Senior Executive Managers, not of the Group. The amendments in 2005 to impose additional	**C.112**

Provision	Counsel Assisting sub reference	Crown's position	Crown sub reference
		obligations on Crown Melbourne's ultimate holding company did not impose any residency obligations on the management team of the ultimate holding company.	
Cl 22.1(r)	**[18.3.29]-[18.3.37].** Note that CA include reference in the heading to cl 22.1(ba) and (bb) but do not make any substantive allegations.	No breach of best endeavours obligations regarding Crown Sydney Cl 22.1(r) is only enlivened where Crown Resorts pursues a "business similar to that of Crown Melbourne". Crown Sydney's business, being a VIP hotel and casino, is quite different. In any event, the evidence is that Crown considered the project to be of long-term benefit to Crown Melbourne.	**D.116-D.128**
Cl 22.1(r)	**[18.3.19]-[18.3.28]**	No breach of best endeavours obligations regarding Crown Perth Crown accepts that the business conducted by Crown Perth is "similar to that of Crown Melbourne" within the meaning of Cl 22.1(r). Crown has used its best endeavours to ensure that the conduct of its Crown Perth business is beneficial to both Crown Perth and Crown Melbourne. Having multiple properties operating under a common brand serves to promote the interests of all properties in all States.	**D.116-D.128**
Cl 22(ra)	**[18.3.29]-[18.3.37].** Note that, strictly, CA only alleged that Crown's conduct "raises serious questions over	No breach of cl 22.1(ra) Crown Resorts locates the headquarters of its gaming business in Melbourne. The Melbourne Casino remains the "flagship casino" of the Crown Resorts gaming business in Australia: among other matters, Crown Sydney and Crown Perth are significantly smaller in scale and Crown Perth has far lower revenue and profit.	**D.130-D.131**

Provision	Counsel Assisting sub reference	Crown's position	Crown sub reference
	whether there was any consideration given to Crown Resorts' obligations under clause 22(ra).		
Cl 28	**[6.1.2]-[6.1.4], [6.5.12].**	<u>No breach of cl 28 by reason of RG practices and systems</u> Clause 28 requires Crown to conduct its operations in the casino in a manner that has regard to the best operating practices in casinos of a similar size and nature to the Melbourne casino. There is no evidence to suggest any casino in the world has Responsible Gambling systems and processes that address problem gambling more effectively than Crown. Nor was the extent to which Crown has sought to benchmark itself against other casinos explored with Crown's witnesses.	**F.207**
Cl 48.1(b)	**[18.3.41]-[18.3.42]**	<u>Compliance with applicable laws</u> Crown agrees that these clauses impose contractual obligations to comply with all applicable laws. As a result, to the extent Crown otherwise admits a breach of an applicable law, it accepts that, to that extent, a finding is also open that it failed to comply with the obligations in cl 48.1(b) of the Casino Agreement, and cl 41.1(b) of the Casino Management Agreement.	
Casino Management Agreement			

Provision	Counsel Assisting sub reference	Crown's position	Crown sub reference
Cl 22.1(b)	**[5.1.155]-[5.1.162]**	Bonus jackpots Crown Accepts that it underpaid casino tax with respect to "Category 5" (jackpots payments) and "Category 8" ("bonus jackpots payments"). It thereby breached cl 22.1(b) of the agreement. The underpayment was repaid with penalty interest on 27 July 2021, totalling $61,545,414.09.	G.71
Cl 22.1(b)	**[5.1.163]-[5.1.190], [18.3.40]**	No breach through deduction of "Matchplay" Contrary to Counsel Assisting's submissions, the conversion of loyalty credits to pokie credits does not involve "sums … received … by [Crown] from the conduct or playing of games" within the meaning of cl 2 of the Management Agreement. It merely reduces a contingent liability that arises under the Crown Rewards program.	**G.79-G.93**
Cl 41.1(b)	**[18.3.41]-[18.3.42], [18.3.40]**	Compliance with applicable laws Crown agrees that these clauses impose contractual obligations to comply with all applicable laws. As a result, to the extent Crown otherwise admits a breach of an applicable law, it accepts that it also failed to comply with the obligations in cl 48.1(b) of the Casino Agreement, and cl 41.1(b) of the Casino Management Agreement.	